JANUARY

MSW

Lakshmanamoorthy
Vs.
State Environmental Impact Assessment Authority, Chennai & Ors.

Original Application No. 237 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. A.R. Yousuf
Keywords: Municipal Solid Waste Plant, environmental clearance, authorisation
Decision: Application Disposed of
Dated: 5th January 2015

This application was filed to set aside the authorization issued by the Tamil Nadu Pollution Control Board in favour of the Respondent No. 4 for the purpose of setting up Municipal Solid Waste Plant. According to the Applicant, authorisation was not in accordance with law and the Respondent No. 4 had not obtained Environmental Clearance. The Tribunal observed that under the MSW Rules, the project proponent could only approach the Authorities concerned for the purpose of issuance of Environmental Clearance after necessary authorisation was issued by the Pollution Control Board. It was only after granting of such Environmental Clearance, that any further activities of the Project Proposal could be carried out. It was also noted that at the time of enquiry conducted for the purpose of grant Environmental Clearance, it was open to anyone including the Applicant herein to raise any objection. If in-spite of such objection Environmental Clearance was granted, it would still always be open to the person affected to challenge the same in the manner known to law. In such view of the matter except observing as stated above, no further orders were deemed required by the Tribunal. Accordingly, the application stood disposed of.

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

Appeal No. 1 of 2013

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Coastal Regulation Zone Clearance, recommendation, NGT Act, 2010
Decision: Appeal dismissed
Date: 7th January 2015

Respondent no. 4 and respondent no. 3 argued that this appeal was premature as the impugned communication was only a recommendation made by MCZMA and, therefore, it could not be subject matter of challenge under Section 16(h) of the NGT Act, 2010. It was stated that the project in question was not finally granted Clearance by the concerned Authority.

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

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

The communication dated 26.7.2013, showed that subject itself was referred as 'proposal' regarding redevelopment of MHADA layout of Aramnagar on certain plots. It appeared that the condition No. 1, mentioned that the proposed construction should be carried out strictly as per the provisions of CRZ Notification, 2011 and guidelines/clarifications given by MoEF&CC time to time. Regulation 4 of CRZ Notification issued on 6thJanuary, 2011 deals with permissible activities in CRZ area. In the present case the Housing Scheme was within CRZ area. Regulation 4(b), (c) and (d) were required to be read together. From the language of Regulation 4(b) it was manifest that the projects which involve more than 20,000 sq.m built-up area, "also attract EIA Notification, 2006" for clearance under the EIA Notification, subject to recommendation by the concerned State Coastal Zone Management Authority (CZMA).

In such a case, MCZMA had to recommend the project for Clearance to the State Level Authority (SEIAA). However, MCZMA was not the final authority to take decision in such a matter. The Tribunal opined that MCZMA should have recommended the project to SEIAA with reasons for approval or for non-approval as the case may be and SEIAA could independently examine merits of the recommendations prior to granting or refusing the Clearance by passing a 'speaking order.'

Considering the above reasons, the Appeal was held to be premature and liable to be dismissed with no costs.

M/s Shan Holiday Inn
Vs.
Tamil Nadu Pollution Control Board

Appeal No.41 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Closure order, TNPCB
Decision: Appeal disposed of (no cost)
Dated: 7th January 2015

ORDER

This appeal challenges an order of closure made by the 1st respondent, i.e. Tamil Nadu Pollution Control Board (Board) by its proceedings dated 30.5.2014. The matter was admitted.

It was represented by the counsel for the Board that the 2nd respondent, i.e. District Environmental Engineer submitted a report requesting for revocation of closure order, which was considered and accepted.

Hence, in the considered opinion of the Tribunal, nothing survived to proceed further in this appeal. Accordingly the appeal is disposed of. No cost.

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

Application No. 170 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Consent to Establish, Red Category, illegal construction, Water Act, Air Act, Pollution Control
Decision: Application Disposed of (without cost)
Dated: 9th January 2015

This application was filed to restrain the Kerala State Pollution Control Board (Board) from granting Consent to Establish to the 7th respondent, i.e. Malabar Gold Pvt. Ltd., for establishing the industry in question which is graded "Red Category" under the provisions of Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act and demolish the illegal construction done by the said respondent.

The case of the applicant was that the 7th respondent was proceeding with the construction illegally since it was being done without obtaining any permission either from the local authorities or Consent to Establish from the Board as required in law. A specific defence of the 7th respondent was that the construction was being proceeded with on the strength of the clearance given by the 6th respondent, i.e. Kerala Industrial Infrastructure Development Corporation, dated 25.9.2013.

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

EC

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

Application No. 370 of 2013 (SZ)
(W.P.(C) No. 2236 of 2011)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Non-appearance of counsel, permit/lease, Environmental Clearance
Decision: Application Disposed of (Without cost)
Date: 12th January 2015

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

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

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

The application was disposed of with liberty to the applicant to approach the Tribunal in the facts and circumstances if so warrant. No cost.

Pollution, Limitation period

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

Review Application No. 21 of 2014 (SZ)
in
Application No. 34 of 2013 (SZ)(THC)
(W.P. No. 3561 of 2011, Madras High Court)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Limitation period, review, Tamil Nadu Pollution Control Board, condonation of delay
Decision: Review Application disposed of
Date: 12th January 2015

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

The main objection raised by the respondents was that the application was barred by limitation and was not maintainable. Application No.34 of 2013 was disposed of on 12th February, 2014 on merits of the matter directing the respondents to maintain the status quo and also with a direction to the Appellate Authority Pollution Control to dispose of both the appeals in Appeal Nos. 32 and 33 of 2013 as expeditiously as possible. Aggrieved over the order of the Tribunal the respondents made a Writ Petition No.12176 of 2014 before the High Court of Madras which was disposed of on 5.8.2014 with a direction to the appellate authority to dispose of the matter and an observation that the appellate authority would pass necessary order within a period of three months. Both the appeals in Appeal Nos. 32 and 33 of 2013 were pending before the appellate authority. The learned counsel for the applicant/ review petitioner submitted that despite the direction by the Tribunal and also the observations made by the High Court of Madras, there was no co-operation on the part of the counsel for the applicant/ appellant which had caused undue delay. It was brought to the notice of the Tribunal that the appellate authority had posted this mater to 13th February, 2015 for final hearing and for arguments of both sides.

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

Miscellaneous: Cutting of Trees

Jamshid Kersi Dalal
Vs.
Union of India & Ors.

Application No. 108 of 2014

Coram: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Cantonment area, felling of trees, Municipal area, Maharashtra (Urban Areas) Protection and Preservation of Trees Act
Decision: Application disposed of (without cost)
Date: 12th January 2015

The parties were heard in view of Chapter IV (ib) of the Cantonment Law (I.P. Mittal) and communication dated 1st April, 2005. In the Tribunal's opinion, the Cantonment area was excluded from applicability of Municipal Laws. The trees may be felled/cut/pruned from the defence estate. They were required to be planted as per the Cantonment Act.

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

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

The Application was accordingly disposed of. No costs

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

And

Coorg Wildlife Society
Vs.
Union of India & Ors.

M.A. No. 894 of 2012
in
O.A. No. 26 of 2012

Coram: Justice Swatanter Kumar, Mr. U. D. Salvi, Prof. A. R. Yousuf, Mr. B. S. Sajwan
Keywords: Environmental Clearance, Forest Clearance, eco-sensitive area, Western Ghats, res judicata, felling of trees
Decision: Application dismissed
Date: 13th January 2015

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

It was noticed in the Goa Foundation judgment that the MoEF&CC had issued directions under Section 5 of the Act of 1986 on 13th November, 2013 for providing immediate protection in relation to Western Ghats to maintain its environmental integrity and tranquility. It was for MoEF&CC to consider the rival contentions of various States and objections while declaring and demarcating the eco-sensitive areas of Western Ghats. To the draft Notification, States were required to file their responses before the MoEF&CC, which thereafter was to proceed in accordance with law. Thereafter, the Applicants filed the present application to stay the operation of order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District, as it was in violation of order dated 25th September, 2014 passed by this Tribunal in Original Application No. 26 of 2012; Section 8 of Karnataka Tree Preservation Act, 1976; and the Supreme Court's order dated 12th December, 1996 passed in the case of *T.N. Godavarman v. Union of India &Ors*. (W.P (C) No. 202/1995), the area being a 'forest land'. The Applicants also prayed for the stay the felling of trees till the NBWL Clearance is obtained.

The Deputy Commissioner and the District Magistrate of Kodagu District, Madikeri, Karnataka, on 10th December, 2014, passed an order in relation to Transmission Line project from Kozhikode (in Kerela) to Mysore (in Karnataka) under Section 68 of the Electricity Act, 2003 read with Sections 10 & 16 of the Indian Telegraph Act, 1885

permitting felling of 1358 trees within the Margolly Estate. The apprehension of the applicant was that, in furtherance to the order of the Deputy Commissioner, a total 50,000 trees would be felled in private lands in the Virajpet Taluk of District Kodagu, Karnataka, an Ecologically Sensitive Area of the Western Ghats, and thus the order dated 10th December, 2014 would be very prejudicial to the environment.

Upon notice, the respondents appeared and contended that the present application was not maintainable on the principles of res judicata, as the pleas in Original Application No. 414 of 2013 before the Southern Zone Bench of this Tribunal and even before the High Court of Karnataka in Writ Petition No. 23456 of 2013, have since been decided.

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

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

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

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

(d) The applicant had also raised the question of felling of 50,000 trees, as a result of laying of this transmission line and its impact on the ecology and environment of the Eco-Sensitive areas in village Kozhikhode in District Kodagu. All these questions were deliberated and commented upon by the Southern Zone Bench of the National Green Tribunal in its Judgment dated 7th July, 2014, in the case of 'Coorg Wildlife Society'. Though, finally the application was dismissed as being barred by time and latches, the

applicant had preferred a civil appeal before the Supreme Court which was pending for hearing.

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

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

Hence the application was dismissed without any order as to costs.

Municipal Solid Waste (MSW), Polluter Pay Principle

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

Original Application No. 277 of 2013

Coram: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf
Keywords: Landfill site, Wetland, Pollution, Municipal Solid Waste, Polluter Pay Principle, Municipal Solid Waste Rules, 2000 , environmental charges
Decision: Application allowed with directions
Date: 13th January 2015

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

Certain recommendations were made at meetings by different authorities and they were required to take necessary steps for regular evaluation of quality of ground water as well as potable water being supplied to the inhabitants of the area. However, according to the applicant, the directions had hardly been complied with by the authorities and the state of affairs at the landfill site had gone from bad to worse.

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

It was further submitted by the respondents that closure of the site was not practical as it had been under such use now for a considerable time and was most ideally located as it did not infringe any of the distances from the water bodies that were provided under the Municipal Solid Waste (Management, handling & Disposal) Rules, 2000 (i.e. 'Rules of 2000') and was in consonance even with the other distances prescribed under the Rules of 2000.

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

During pendency of the proceedings before the Tribunal, the Commissioner of the SMC was directed to discuss the entire matter with the State Government and inform the Tribunal as to what would be the charges which shall be shared by the public at large for setting up such plant and collection and disposal of MSW in accordance with 'Polluters Pays Principle'.

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

The following directions were passed:

a. The conditions imposed by the JKPCB and the Ministry of Urban Development, Central Government, should be complied with, in relation to all stages and components of the project.
b. Sweeping of roads, cleaning of parks, common areas, and roadside low height drains through handcarts and dedicated trucks.
c. Management of construction waste as a separate activity by consent/permission & paid service.
d. Processing & treatment of MSW - To process bio-degradable waste through composting, refused derived fuel (RDF) and plastic waste etc.; Processing of non bio-degradable waste for fuel materials, plastic ingots, bricks & conditioning of recyclable materials.
e. The entire project was to be constructed, established and operationalised strictly in consonance with the Rules of 2000.
f. The Judgment of the Tribunal in the case of People for Transparency, Through Kamal Anand v. State of Punjab &Ors. Original Application No. 40(THC) of 2013 decided on 25 November 2014, shall mutatis mutandis apply to this case.
g. The schedule of charges as approved by the Srinagar Municipal Corporation in their affidavit before the Tribunal was approved. The charges paid by the public at large to the Municipal Corporation for 'Environmental Charges' shall be exclusively utilized by the State of Jammu and Kashmir and the SMC, only for the purposes of setting up of the MSW Plant and/or for developing other MSW Plants.
h. All the expenditure for constructions, establishment and operationalization of the plant shall be incurred under the supervision of the Committee. No expenditure would be incurred without specific approval of the Committee.
i. SMC was directed to seek authorization of the J & K Pollution Control Board in accordance with Rule 6(2) of the Rules of 2000, within four weeks from pronouncement of this order.
j. The project should be completed in a time bound manner and in any case within a period of one year.
k. A Committee was constituted to ensure proper construction, establishment, operationalization of the plant and optimum running of the plant as well.

Miscellaneous: Jurisdiction

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

Appeal No. 26 of 2014

Coram: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi
Keywords: Mining lease, limestone, Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960, NGT Act, jurisdiction
Decision: Appeal dismissed
Date: 13th January 2015

The Government of Himachal Pradesh on 16th March, 1984 granted a mining lease for mining of Lime Stone in Village Kalva, near Village Bhutmari (Renukaji), District Sirmour, Himachal Pradesh for a period of 20 years under the provisions of Mineral Concession Rules, 1960, to one Shri Lalit Kumar. The Appellant – a registered company incorporated under the Indian Companies Act, 1956, got the said mining lease transferred in its favour and since then it is involved in the mining activity of extracting limestone.

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

The Mining Officer vide its order dated 10th February 2014, directed M/s. Ahuja Plastic Ltd. not to undertake any further mining operations in the applied for mining lease area.

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

The Appellant Company contended that in the appeal they prayed for award of compensation of Rs. 63 lakhs in lieu of loss, damage in business and expenditure suffered by the Appellant Company, during the period of 2004 – 2010, along with interest. A prayer was also made for a direction to the respondents to renew the mining lease in its favour. The appellant also made reference to the provisions of Sections 15 and 17 of the NGT Act, 2010 in support of his contentions, which however had no merit. The provisions of Sections 17 are attracted only where damage to any person or property has resulted due to, or from an accident or an adverse impact of any activity or operation or process, under any of the Enactments specified in Schedule I, where such liability would be determined. Section 15 restricts the jurisdiction of the Tribunal to direct the payment of relief and compensation, restitution of property damaged and environment, to the victims of pollution or any other damage to the environment, arising from and under the Enactments specified in Schedule I.

None of these provisions had any application to the loss being claimed by the appellant, on account of loss of business or expenses which he had incurred upon his labour or maintenance of machinery. In the entire petition, the appellant had not averred any facts in relation to environmental pollution and any damage to person or property arising from such pollution.

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

The appeal, therefore, was dismissed as not maintainable.

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

Appeal No. 106 of 2013
And
M.A. No. 1098 of 2013

Coram: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf
Keywords: Natural Justice, Illegal Construction, Coastal Regulation Zone (CRZ), Gram Panchayat
Decision: Appeal dismissed, M.A. disposed of
Date: 13th January 2015

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

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

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

The applicant filed Application No. 49 of 2013 before the Tribunal, titled, Goa Foundation v. Goa Coastal Zone Management Authority and Others on 29 June 2013. He had filed the writ petition before the Bombay High Court at Goa in Writ Petition No. 126 of 96 regarding the illegal construction within 200 metres of the high tide line in the Costal Regulation Zone (CRZ) III coastal stretches and the total failure of the authorities to prevent such violation. The Writ Petition was finally disposed of by the High Court directing the Authority to examine specific cases and to take action in accordance with the provisions of Environment (Protection) Act, 1986. In this application, the applicant had prayed that the Tribunal should direct demolition of all the constructions listed in that application and those which have been raised in the 'No Development Zone' of the CRZ of Morjim and Mandrem villages. The applicant also prayed that the construction in the CRZ should be ordered to be stopped in these villages.

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

Show Cause Notice dated 18 September, 2013 was issued to M/s. Blue Wave Club,

whereafter the order dated 15 November, 2013 was passed. In the order, it was noticed that massive structure was being raised by M/s. Blue Wave, which was noticed even during the inspection dated 11 February, 2013.

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

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

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

Senior Counsel for the appellant contended that non-furnishing of the inspection reports dated 11 February, 2013 and 24 August, 2013 and not permitting an advocate to appear on behalf of the appellant before the authority, in its meeting dated 5 October, 2013 was clearly a violation of principle of natural justice. It was further contended that the impugned order did not record appropriate reasons that would provide clarity to minimize the chances of arbitrariness and reflect proper application of mind. Even for this reason, the impugned order was liable to be set aside. The Counsel appearing for the authority contended that the requisite documents had been furnished to the appellant. The appellant was given fair opportunity to be heard. Furthermore, the appellant filed a detailed reply to the Show Cause Notice and it was only after hearing the appellant that the authority passed the impugned order dated 15 November, 2013 in accordance with law.

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

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

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

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

Environmental Clearance

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

Application No. 297 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Environmental Clearance, Consent for Establishment (CFE), expansion activity, SEIAA
Decision: Application disposed of (with directions)
Date: 13th January 2015

This application was brought forth seeking to set aside the proceedings of the State Environment Impact Assessment Authority, (SEIAA) dated 12.11.2014 and also direct the respondent to consider the application dated 21.04.2014 by the applicant for proposed expansion.

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

The Board sent a communication dated 24.09.2013 informing the applicant that while the total built-up area of the entire project is 5,28,277.24 metre square the approved construction area is 4,67,172,04 m square and that the constructed area exceeded the extent specified in the CFE. Based on the SEZ Regulations there was a modification from the initial proposal for the areas of residential and commercial which were converted into IT or ITES Office Blocks. The respondent in the letter dated 23.10.2013 directed the applicant to obtain a certified compliance status of conditions imposed in the EC already issued by the MoEF&CC from its regional office.

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

The applicant had already obtained all clearances including the clearance from the respondent and therefore, the Office Memorandum dated 12.12.2012 was not applicable to the case of the applicant. The MoEF&CC had provided a detailed statement of compliance.

Hence, it was arbitrary and unreasonable to reject the application of the applicant after keeping the same pending for a very long time under the pretext of the pendency of the Application No. 135 of 2014 before the Tribunal.

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

Though the Project Proponent furnished a letter of commitment and apology for the violation committed in the letter dated 22.08.2014, as per the procedure adopted by MoEF&CC, the project had been delisted by the authorities and rejected as stated in the application. The application preferred by the applicant fell within the category of violation as per the provisions of the EIA Notification, 2006 and the guidelines dated 12.12.2012 and 27.06.2013 framed thereunder. Hence, action was being taken against the applicant as per the procedure laid down in the above Office Memoranda. Meanwhile, all the proposals involving violation had been held by the authorities. The grounds raised by the applicant to the effect that action was to be taken against the violation in accordance with the EIA Notification, 2006 were incorrect as the stay of the Office Memoranda dated 12.12.2012 and 27.06.2013 restrained the authorities to process the applications of this nature.

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

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

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

The contention put forth by the applicant's side that the Office Memorandum had no application to the expansion of the present project of the applicant and also the contention

put forth by the respondent's side that the official memorandum was squarely applied to the present project though it was an expansion did not arise for consideration. Hence, it was not considered. The applicant was only required to issue a direction to respondent authority to consider the application of the applicant pending for the past eight months and pass orders thereon. With the above observations and direction, the application was disposed of.

Environmental Clearance

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

And

Goa Paryavaran Savrakshan Sangharsh Samitee
Vs.
M/s. Sociedade Timblo Irmaos Ltd.

O.A. No. 112 of 2012
&
O.A. No. 134 OF 2013

Coram: Justice Swatanter Kumar, Justice (Dr.) P. Jyothimani, Dr. D. K. Agrawal, Dr. G. K. Pandey, Mr. Bikram Singh Sajwan
Keywords: mining lease, environmental damage, Environmental Clearance, illegal mining, Res Judicata, Principle of Judicial Propriety
Decision: Applications dismissed
Date: 13th January 2015

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

The Tribunal referred to the facts and documents of Original Application Nos. 112 of 2013 and 134 of 2013 in the matter of *Goa Paryavaran Savrakshan Sangharsh Samitee v. Sh.*

Rajaram Poiguinkar & Ors and *Goa Paryavaran Savrakshan Sangharsh Samitee v. M/s Sociedade Timblo Irmaos Ltd. & Ors*., respectively.

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

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

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

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

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

During the pendency of the proceedings before the Tribunal, M.A. No. 1020 of 2013 and 472 of 2014, were filed by the respondents praying that the proceedings of the main application and connected matters be stayed or kept in abeyance. These applications were dismissed vide order of the Tribunal dated 3 September 2014 and directions were issued stating that proceedings in all these applications would continue. M.A. No. 611 of 2014 was filed praying for issuance of directions to implement the order of the Tribunal dated 19 August, 2014, which was ultimately dismissed. Thereafter, in the Original Application, another application being M.A. No. 786 of 2014 was filed, praying for clarification of the order dated 3 September, 2014, passed by the Tribunal and that the proceedings in all these cases should continue. It was averred that the Order dated 3 September, 2014 was passed

by a larger Bench and a smaller Bench could not pass a conflicting or varying order.

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

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

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

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

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

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

Propriety' it is not expected that the Tribunal would deal with the issues raised and prayers made in these applications any further or otherwise.

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

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

Original Application No. 509 of 2014
AND
M.A. Nos. 880 of 2014 & 881 of 2014

Coram: Justice Swatanter Kumar, Dr. G. K. Pandey, Mr. B. S. Sajwan
Keywords: Natural Justice, Financial Liability, Pollution, CETP, Polluter Pays Principle
Decision: Applications disposed of
Date: 13th January 2015

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

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

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

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

According to the Tribunal, firstly, from the impugned order itself it was evident that no opportunity of being heard had been granted to the applicant. The counsel for the applicant had relied upon the judgment of the Tribunal in the case of *M/s. Sesa Goa Limited and Anr. v. State of Goa &Ors, (2013) All India NGT Reporter (1) PB 55*.

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

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

payment of an additional sum of Rs. 3 lakhs, over and above the sum of Rs. 5 lakhs that had been paid by the applicant.

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

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

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

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

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

Ranbir Singh
Vs.
State of Himachal Pradesh

Sunil Acharya
Vs.
Sanjay Bakliwal & Ors.

Promila Devi
Vs.
State of Himachal Pradesh

National Green Tribunal Bar Association
Vs.
MoEF & Ors.

Original Application No. 123 of 2014 and M.A. No. 419 of 2014

Original Application No. 343/2013 and M.A. No. 442 of 2014 and M.A. No. 1093 of 2013 in Original Application No. 343 of 2013

Appeal No. 23 of 2014 and M.As. no. 469 of 2014, 470 of 2014, 471 of 2014, 473 of 2014, 479 of 2014, 480 of 2014, 488 of 2014, 489 of 2014, 512 of 2014 and 563 of 2014 in Appeal No. 23 of 2014

Original Application No. 279(Thc) Of 2013 and M.A. No. 1120 of 2013 in Original Application No. 279(Thc) Of 2013

And

M.A. Nos. 529 of 2014 & M.A. No. 623 of 2014 in Original Application No. 171 of 2013

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D. K. Agrawal
Keywords: Environmental Clearance, mining lease, illegal mining
Decision: Applications disposed of with directions
Date: 13th January 2015

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

or wherever Environment Clearance has been granted, in violation of its conditions. It was also prayed that respondent authorities should formulate proper scheme to prevent illegal mining.

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

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

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

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

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

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

The stand of MoEF&CC in these cases was that the Ministry had already taken a decision

on 2 September, 2014 that no Environmental Clearance will be granted for extraction of minor minerals from any river bed where the area is less than 5 hectare in terms of its Office Memorandum dated 24 December 2013.

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

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

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

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

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

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

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

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

IV. All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Supreme Court in the case of Deepak Kumar (supra).

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

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

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

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

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

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

M.A. No. 773 of 2014
AND
Original Application No. 139 of 2014

Coram: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi
Keywords: Mohali, Environmental Pollution, Illegal Dumping, Municipal Solid Waste
Decision: Application disposed of with directions, M.A. dismissed
Dated: 13th January 2015

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

Vide order dated 7 August 2014 the Tribunal had constituted a Committee of Senior Officer of the State of Punjab from Environment Ministry, Environmental Engineer of Punjab Pollution Control Board, a Senior Officer of the Corporation and a Senior Officer of Urban Development Ministry, State of Punjab to visit the site and submit a report in regard to the status of the site in question and dumping of MSW on such site. On 29 September 2014 when the matter came up before the Tribunal, it was noticed that the authorities would get in touch with each other; particularly the Punjab Pollution Control Board and effective steps were to be taken to remedy the shortcomings that had been pointed out by the Committee. For compliance thereof the matter was adjourned. Thereafter, a detailed affidavit was filed on behalf of the Corporation, submitting the details of the project and the measures that the Corporation proposes to take not only to dump the MSW but also other wastes in accordance with the Municipal Solid Waste (Management and Handling) Rules, 2000 and other cognate provisions.

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

One of the contentions raised by the applicant was that even after filing the present

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

The Tribunal observed that the Principle of 'Sustainable Development' leads to some inconvenience and causes adverse effect on the environment. But so far such impact or effect on environment was retro-gradable or was not irretrievable within the concept of sustainable development, it should be permitted, particularly when it was in the larger public interest and for such time till lawful alternative becomes available. Till the time the MSW Plant was established and made operational, some site had to be used as a dumping site in accordance with the Rules of 2000. Thus, the Tribunal did not find it a fit case for issuing prohibitory orders; rather, it fell in the class of cases where the Tribunal should pass regulatory directions within the ambit and scope of Sections 14 and 15 of the NGT Act in light of the principles enunciated under Section 20 of the NGT Act.

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

1. The Corporation and all other concerned authorities shall ensure completion of acquisition proceedings at the earliest and in any case not later than one year.
2. The MSW Plant shall be completed and made operational by all concerned as expeditiously as possible, not later than January 2017.
3. The directions passed and the plan accepted by the Tribunal in the case of People for Transparency shall mutatis mutandi operate and apply to this case, as well as that order shall be treated as integral part of these directions.
4. The present site in question would be treated as a 'temporary dumping site'. On this site, the Corporation and all other concerned authorities shall collect, segregate, dump and dispose of the MSW and other waste strictly in accordance with the Rules of 2000 and/or other relevant Rules.
5. There shall be door to door collection of the municipal waste and it shall be manually segregated at the collection points as well as at the loading points and finally at the dumping site.
6. The waste that is recyclable shall be given to licensed persons who are entitled to recycle plastic and other waste. Every effort would be made to send this plastic waste and other allied waste that could be used as fuel, to such industry and units which can consume such waste as fuel. Remnant garbage and MSW shall be dumped at the site in question after constructing proper pits with proper lining. The waste shall be covered by soil. There shall be spray of disinfectant at regular intervals to ensure that there is no foul smell emanating or the environment is not contaminated in any manner, whatsoever.
7. The Municipal Corporation shall carry out collection of waste from door to door and from the transportation points regularly and without default. For the above, the Municipal Corporation would be entitled to prepare a schedule of environmental charges which every household, commercial, institutional or industrial units and/or any other person, living in and/or occupying any building, would be liable to pay, depending upon the area occupied by such person and approximate waste generated. The authorities will ensure provision of a green belt/temporary boundary wall around the temporary site.
8. The Municipal Corporation shall be liable to collect the MSW and all other wastes from the industrial area in accordance with the Rules of 2000.

9. The Corporation shall provide dustbins of distinct colours preferably green, red and black with appropriate signage upon it describing the kind of waste that can be put into that dustbin. This must be provided in the entire residential and industrial area falling under the jurisdiction of the Mohali Municipal Corporation.
10. The Corporation shall fix responsibilities on concerned officers of the area, to ensure compliance of these directions.
11. The Head of the Corporation shall report compliance of these directions to the Secretary (Environment), State of Punjab and Secretary, local bodies, State of Punjab, who in turn, shall inspect the temporary site in question, as well as observe the progress of completion of project, in accordance with the Rules of 2000.
12. In the event of default in compliance of these directions, the Tribunal would be compelled to pass coercive orders in accordance with the provisions of the NGT Act and the Code of Civil Procedure, 1908.
13. The applicant or any other person was given the liberty to approach the Tribunal in the event of persistent defaults on the part of the Corporation and/or other concerned authorities.

M.A. No. 773/2014

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

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

Original Application No. 6 of 2012
And
M.A. Nos. 967/2013 & 275/2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D. K. Agrawal, Prof. A. R. Yousuf
Keywords: River Yamuna, Dumping of Debris, Construction Activity, Drains, Polluter Pays Principle
Decision: Application dismissed with directions
Dated: 13th January 2015

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

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

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

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

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

substantial question of law relating to environment.

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

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

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

The MoEF&CC had constituted an Expert Committee vide its order dated 13 September, 2013. This Committee was to critically analyse and examine the YRFD Plan of DDA, steps to be taken for further improvement of river bank and also to consider other relevant aspects. This Committee submitted its report on 19 April, 2014.

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

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

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

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

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

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

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

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

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

vi. Existing wetlands and water bodies should be deepened and enlarged. The Chief Secretaries of the States of Himachal Pradesh, Uttarakhand, NCT of Delhi, Haryana and Uttar Pradesh, Secretary, Water Resources, Government of India and Secretary, MoEF&CC, were to hold a meeting within four weeks to prepare an immediate action plan required to ensure proper environmental flows throughout the year.

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

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

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

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

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

xii. The 'Principal Committee' was constituted which shall be responsible and under whose supervision the directions contained in this judgment and the project reports shall be complied with. All concerned Authorities responsible for carrying out directives of this

judgment, shall report the matters and submit the respective reports and data to the Principal Committee. The Committee shall file quarterly report of compliance before the Tribunal.

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

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

Original Application No. 27 of 2014
and
M.A. Nos. 92 of 2014, 140 of 2014, 314 of 2014 & 752 of 2014

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D. K. Agrawal, Prof. Dr. A. R. Yousuf
Keywords: Illegal Mining, stone crushing, Air Pollution, Forest Area, Forest Clearance, License
Decision: Application disposed of with directions
Dated: 13th January 2015

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

These reliefs were prayed on the premise that the applicant was residing in the village at a distance of less than 1000 meters, from the site where the private respondent no. 5 was carrying the illegal mining and stone crushing activity. It was averred by the applicant that the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No. 228 of 2002, had declared the entire land of Himachal Pradesh to be a 'Forest Land' and, thus, directed a complete ban on stone crushing activities in the State. As a result thereof, only those stone crushers were permitted to operate which already had the necessary clearances and approvals, required under the law. Respondent no. 5 was also permitted to carry on such activity and was holding a valid licence till 30 December, 2003. Thereafter, the land was declared as a forest area, thus, requiring respondent no. 5 to take Forest Clearance under the Forest (Conservation) Act, 1980. Despite the fact that the said clearance had not been granted, respondent no. 5 continued to operate till 15 September, 2009.

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

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

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

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

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

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

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

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

> i. Verify whether the stone crushers were operating or not.
> ii. Whether respondent nos. 5 and 6 were operating under a valid and operative consent from the HPPCB.
> iii. Had these units obtained permission of the concerned Department or Authority and hold mining lease for carrying on such activity?
> iv. Capacity of the stone crusher, its source of raw material, water supply and electricity etc.
> v. Whether these stone crushers were offending any prescribed distances or limits and are violating any of the conditions or requirements of the mining policy of the State and/or the judgment of the Supreme Court in Deepak Kumar's case and/or orders of the National Green Tribunal.
>
> vi. Whether respondent no. 5 and/or 6 had obtained mining licences, and if so, for which area and had they restricted their mining activity to that area alone.

b. No consent shall be granted and/or renewed in relation to these units, without taking into consideration the inspection report that was to be prepared by the Special Committee appointed under this order.
c. The Special Committee shall observe whether both these crushers provided all requisite anti-pollution devices and will also collect samples of stack and ambient air quality and place the analysis reports before the Tribunal along with its final report.

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

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

M.A. No. 762 of 2014 and M.A. No. 44 of 2013
in
O.A. No. 36 of 2013

Coram: Mr. Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf
Keywords: Industries, Air Pollution, Water Pollution, Water Cess
Decision: Application disposed of with directions
Dated: 13th January 2015

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

Vide orders dated 15 January 2013 and 15 February 2013, the Tribunal had directed the joint team of CPCB and Uttar Pradesh Pollution Control Board (UPPCB) to inspect the sites and give a report to the Tribunal. The industries that were operating without consent of the Board and without permission of the competent authorities and were causing pollution were ordered to be closed. It came to the notice of the Tribunal that large no. of industries were permitted to carry on their operation by issuance of NOC without obtaining the consent of the UPPCB. M/s Rathi Steel and Power Ltd. was stated to be one of the most seriously polluting industry. This unit had been given time by CPCB and UPPCB to take proper steps and measures to prevent and control the pollution. These measures had not been taken despite repeated extensions. In order to take preventive steps for water, air and noise pollution, the Unit had changed its manufacturing technology from time to time.

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

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

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

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

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

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

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

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

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

According to the Counsel appearing for the Respondent in the Board, the Supreme Court of India probably while granting the stay meant to stay the execution of the direction in relation to that regard. Firstly, the prayer in M.A. No. 44/2013 and even before the Supreme Court of India in the miscellaneous application would be inconsequential inasmuch as the time granted in M.A. No. 44/2013 was upto 25th April, 2013 which was

long over. Secondly, no direction had been passed after 29th November, 2013 requiring the industry to produce its books of accounts, balance sheet and other expenditure or income as was directed earlier.

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

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

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

Hence, the Tribunal passed the following order:-

1. M.A. No. 44/2013 had become infructuous as the only prayer in the said application was for granting of time for revamping and installation of most modern equipments to bring the air pollution within permissible limits till 25th April, 2013. Now nearly one and a half years had passed there from.
2. The joint inspection team was directed to inspect the unit and submit its final report to the Tribunal clearly stating whether the industry was complying all the directions issued by the Boards and was a non-polluting industry. The joint inspection team should clearly report as to the quantum of extraction of ground water by the industry, the cess payable and amount of cess actually paid by the industry for all these years. It should also be placed on record whether the industry has obtained the permission from the Central Ground Water Authority for extraction of ground water, if so, with effect from which date. The joint inspection team shall also verify if the units have authorisation to deal with hazardous wastes, if the same was found in the premises of the unit.
3. The industry was to show cause as to why it should not be directed to pay compensation for polluting the environment and its restitution for the period when it operated without consent of the Board and admittedly caused pollution as it had not installed proper antipollution devices to control and check air and water pollution.
4. The Uttar Pradesh Pollution Control Board and the competent authority under the Water (Prevention and Control of Pollution) Cess Act, 1977 were directed to issue notice to all the industries, particularly industries like M/s. Rathi Steel, wherever they were extracting ground water and were not paying appropriate cess in accordance with Water (Prevention and Control of Pollution) Cess Act, 1977. Further, if such industry was causing any pollution by their activity, show cause notices shall be issued by the Board within two weeks from the date of this order

and it should proceed with such industries in accordance with law.

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

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

M.A. No. 04/2015
Appeal No. 37 of 2014

Coram: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keyword: Consent to Operate, Water Act, Air Act, sick unit, closure
Decision: Appeal allowed
Dated: 13th January 2015

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

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

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

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

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

The grounds which were stated in the closure order were:

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

The Appellant was not called to give any explanation and never given opportunity of hearing in the context of grounds stated in the closure order, impugned in this Appeal. The impugned order did not speak about non-compliance made by the Appellant, in the context of excess emissions of ambient air beyond permissible limits, nor it reflected anything about adverse impact on the quality of water as a result of industrial activity the unit run by the Appellant. In other words, the Appellant's industrial activity was not shown to be polluting industry, prima facie, so as to attract any provisions of the Air Act or the Water Act, to order closure thereof. Thus, material ground for closure was that there was no further consent obtained by the Appellant after 31.10.1996. Thus, expiry of the date of consent was the main ground on which the impugned order was passed. Second ground for the impugned order was that the unit did not satisfy RRZ policy. The third ground was that for unit the MPCB issued SCN refusal of consent vide letter dated 20 September, 2014, of which the Appellant had failed to reply.

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

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

According to the Tribunal the impugned order was unsustainable in the eye of Law. The order of closure dated 13 October, 2014, was also illegal and liable to be quashed in view of the Circular of the MPCB, inasmuch as the Regional Officer had no delegated powers to issue such order. At the same time, though the Appellant's is a small unit and there was illegality committed by the MPCB, the Appellant also cannot escape from blame of causing

delay and committing the error of avoiding due procedure to apply for consent for a long period. Hence, while allowing the Appeal, the Tribunal was of the opinion that the Appellant shall deposit amount of Rs.50,000/- with the office of Collector, Nagpur, which shall be utilized for afforestation work in MIDC area and particularly, in the proximity of Appellant's unit. The Appellant will be responsible for care of the plantation done. In the result, the Appeal was allowed and impugned orders dated 18 October, 2014 and 13 October, 2014, were quashed and the Appellant was directed to deposit Rs.50,000/- in the office of Collector, Nagpur within four weeks and report compliance of the same to the Registrar, NGT (WZ) along with payment receipt. The Collectorate shall accept such amount in the Escrow Account and incur expenditure of the same for plantation of trees in the MIDC area and as stated above, if possible in the proximity of the land if available around the unit of Appellant of which the Appellant shall be made caretaker.

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

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

Appeal No. 04 of 2012

Coram: Mr. Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi
Keywords: Environmental Clearance, Wetland, Cement Plant
Decision: Appeal allowed
Dated: 14th January 2015

It was the case of the appellant that the Environment Clearance, in accordance with the provision of Act/Rules, had been reviewed and recalled on account of extraneous and political considerations. The Expert Committee of five scientists was constituted by the Supreme Court of India vide order dated 18th March, 2011 in special leave to appeal (civil) no. 14698/2010 from the Judgment and order dated 24th June, 2010 in 3477/2009 of the High Court of Gujarat at Ahmadabad disposing of the petition (PIL opposing setting up of the cement plant with captive electricity generation plant in question) to visit the site and answer the following issues: a. Whether the lands in question were wet lands/water bodies? b. Whether the project could come up on such wetlands/water bodies and if so what would be its impact on Environment? Would it lead to Environmental degradation? c. If at all the project could come up what steps the user agencies would take in the interest of Environment Protection; d. Prescribed current situation of the project may also be indicated by the Expert body. In pursuance to the report of the Expert Committee, the EAC recommended revocation of the environment clearance on the ground that it was initially accorded on undisclosed and incorrect postulates.

Respondent no. 3 opined that the Board had no objections for the allotment of proposed land to the project proponent, provided, it shall obtain environment clearance from MoEF&CC as per the EIA Notification dated 27th January, 1994. The policy regarding the Conservation of wet land was issued by MoEF&CC on 2nd February, 2007; and an application for grant of Environmental Clearance to the project was made by the appellants to MoEF&CC on 5th September, 2007.On this backdrop, the Government of Gujarat passed resolution approving the grant of land ad measure 268-52-5 Ha of the said villages to the Company on some material terms and conditions.
The Respondent No. 4 filed PIL-SCA 3477/2009 opposing the said project before the Gujarat High Court on 25th March, 2009. This was followed by grant of consent to establish the said cement and captive power plant by the GPCB on 25th May, 2009. The State Government appointed an expert committee to visit the site. The Committee gave its report on 4th August, 2009.

According to the appellants the MoEF&CC took U-turn as to the validity of the project and the environmental clearance granted to it at the instance of one Ms. Sunita Narayan who addressed an email to the then Minister of Environment and Forest Mr. Jairam Ramesh to have a relook into the project. The MoEF&CC sought adjournment, when the aforesaid petitions came up before the Supreme Court for hearing on 17.05.2011, in order to buy time to start the process of reversing the environmental clearance granted to the project

previously. The MoEF&CC appointed an Expert Committee of 7 Members to check the ground situation on 21.01.2011. The Committee reported that Samadhiyala Bandhara possessed all the characteristics features of wetland ecosystem. On 11.03.2011 a show cause notice was issued to the appellants under section 5 of Environment (Protection) Act 1986 to show cause as to why environmental clearance accorded to the project should not be revoked. This notice was challenged by the appellants before the Gujarat High Court in writ petition being SCA No. 3542 of 2011. The High Court issued the notice but refused to grant stay in the said writ petition. The appellants therefore moved the Apex Court by preferring an SLP bearing no. 559 of 2011 against the refusal to grant stay by the High court of Gujarat.

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

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

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

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

From the perusal of the Judgment dated 26-4-2010 passed by the High Court of Gujarat in the said petition, it appeared that the main grievance of the petitioners was in respect of the allotment of land by the Government of Gujarat for setting up of such plant in the middle of sweet water reservoir created by the construction of 250 meters long waste weir called Samadhiyala Bandhara; and the proposed site of the plant also occupied the land falling in catchment area of reservoir; and construction of the cement plant in such circumstances would destroy the entire reservoir. The respondents therein dismissed this application as ill-founded and contended that the capacity of the reservoir upon implementation of the recommendation of the Expert Committee as directed by the Government would increase and setting up of cement plant would generate local employment.

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

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

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

Learned Counsel for the Respondent No. 4 submitted that the plea of malice in law cannot be raised for the first time in the appeal when this issue was not raised before the Apex Court in reply to the notice issued on the SLP. He further submitted that neither Sunita Narayan the author of the email dated 14.01.2011, nor the then Minister of Environment and Forest had been made parties to the appeal and, therefore, the real facts regarding the episode of email remained shrouded for want of authentic material on record; and the plea of malice in law must fail. He further pointed out that there existed enough material on record to suggest the existence of water body/wetland as defined under Ramsar convention

and therefore it could not be said that the action taken by the Central Government for revocation of EC was without just cause or excuse, reasonable or probable cause.

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

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

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

M.A. No. 52 of 2014
in
Original Application No. 2 of 2013

Coram: Justice Swatanter Kumar, Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi
Keywords: Flood plains, Re-Alignment of Road, Removal of Debris, River
Decision: Application disposed of with directions
Dated: 14th January 2015

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

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

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

Municipal Corporation; and now it was the responsibility of Pune Municipal Corporation, Respondent No. 1 to obey the orders issued by the Tribunal.

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

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

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

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

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

The Tribunal had also directed the Respondent No.1 to undertake the demolition of the structures which came up at and inside the blue line of river Mutha vide direction (g) at

para 38. It was also noticed that the Respondent No.1 had issued notice to some of the structures lying within the blue line of river Mutha for demolition. There could not be two standards one for the common man and other for the Respondent No.1.

On one hand 92% of the work of construction of the road at the cost of Rs.15.34 crores drawn from public exchequer had been completed within blue line and on the other hand there was grave risk of impediment to the free flow of the river water which was an open invitation to natural calamities occasioned by un-precedented rainfall. On this backdrop the Tribunal considered the options which in the opinion of the Respondent No. 1 were supposed to provide solution to safe discharge of peak flood in the locality i.e. stretch under consideration between chainage 0+400 to 1+750 beyond blue line without causing additional submergence.

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

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

The Tribunal passed the following directions:

1. The Respondent No.1 was to remove all the debris dumped including embankments constructed at the present site particularly, within blue line right from chainage from 0+400 to 1+750 and shift the same to red line by following 1 in 25 year Rule, within three months beginning of the work being made for such removal within 15 days from the date of this order.
2. The Chief Engineer, PWD of the state of Maharashtra was appointed to do the work of removal of debris dumped including embankment constructed on failure of the Respondent No.1 to do so as directed in execution of the directions passed in Judgment dated 11th July, 2013, and such work shall be carried out by the PWD under the direct supervision of its Chief Engineer.

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

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

Chandrapal Singh
Vs.
State of UP & Ors.

M/s. Mata Brick Field
Vs.
State of UP & Ors.

Shafiq
Vs.
State of UP & Ors.

Harbir
Vs.
State of UP & Ors.

Rajkumar Singh
Vs.
State of UP & Ors.

Bhopal Singh
vs.
State of UP & Ors.

Application Nos. 328/2013, 288/2013, 353/2013, 348/2013, 351/2013, 350/2013, 349/2013
AND
M.A. No. 767/2014

Coram: Justice Dr. P. Jyothimani, Dr. G. K. Pandey, Mr. Ranjan Chatterjee
Keywords: Brick Kilns, Environmental Clearance (EC), Mining Projects, Mining Lease, Mining Rules
Decision: O.As allowed, M.As dismissed
Dated: 14th January 2015

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

It was stated that in many villages nearly 282 brick kilns were established. They were permitted by the District Administration without requiring them to obtain environment clearance. According to the petitioners, quarrying of brick earth in the brick kiln causes damage to environment and airable land. The excavation of the said minor mineral indiscriminately, affects the underground water recharge. The Government of India through

the MoEF&CC issued a notification dated 14.09.2006 providing for prior environment clearance before such mining and other activities contained therein.

According to the applicants, the State Governments in order to circumvent the notification of the Government as well as the order of the High Court had started permitting excavation of the minor mineral in the extent less than 5 hectares. When the matter was taken to the Apex Court in Deepak Kumar Vs State of Haryana, Supreme Court while directing the State Governments to immediately frame rules under Section 15 of the Minor and Mineral and Development Regulation Act, 1957, had directed that till then even if it is less than 5 hectares, prior environment clearance is required.

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

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

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

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

As per the reply of respondents no. 1 to 5 it was stated that under the EIA Notification 2006, it is mandatory to obtain Environmental Clearance for establishment of the projects listed in the Schedule and that mining of minerals is listed in Item No. 1. It is stated that in case of mining lease of area more than 50 ha, Environmental Clearance should be obtained

from MoEF&CC while in respect of less than or upto 50 ha, the clearance is obtained from the SEIAA.

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

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

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

The following issues were decided by the Tribunal:

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

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

It was pursuant to the Judgment of the Supreme Court in Deepak Kumar Vs State of Haryana and Ors and also after considering the representations received from the brick manufacturers and after considering the report of expert committee constituted by the MoEF&CC on 30.01.2013, the MoEF&CC in its office memorandum dated 24.06.2013 decided that the activities of borrowing/ excavation brick earth and ordinary earth up to an area less than 5 hectare may be categorised under B2 category subject to various guidelines in terms of the provisions under “7.1 Stage(1-screening)” of EIA Notification 2006.

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

Accordingly, the Tribunal held that the amendments brought in by the State Government of Haryana and U.P. were to be ignored and in spite of the same, until and unless the State of

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

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

Appeal No. 26 of 2014

Coram: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Conversion of Forest land, Construction, Conservator of Forests, Wild life, MoEF&CC
Decision: Appeal allowed
Dated: 15th January 2015

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

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

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

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

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

According to the Tribunal the above Rule was violated in the present case. The subsequent rejection of the proposal at the State level was not warranted when after the period of sixty days plus fifteen days, the rejection which was presumed under provision of the Rules, was not intimated to the Appellant. As a matter of fact, had such intimation been given to the Appellant, under the Rules, there was no further need to process the proposal and push it through the pipeline, but the same was not done and it went up to the State level and finally

was rejected vide the impugned order. Besides, the Appellant was not heard at time of rejection of the proposal. In case of passing any adverse order, the Administrative Authority, is required to hear other party, who will be affected by such adverse order

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

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

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

Coram: Justice Dalip Singh, Mr. P.S. Rao
Keyword: E-waste, E-waste (Management & Handling) Rules, 2010, Extended Producer Responsibility (EPR), environmental degradation
Decision: Application disposed of with directions
Dated: 15th January 2015

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

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

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

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

The Respondent No.7, Rajasthan State Pollution Control Board ('RSPCB') in their affidavit dated 20.08.2014 stated that the Board granted authorization to 9 E-waste Dismantlers in the State of Rajasthan out of which 7 Dismantlers had valid registration and 2 had applied for renewal. It was further stated that the Board had issued show cause notices to the major

Producers of the E-waste for non compliance of the provisions of the Rules of 2011 and would be duly taking action against the defaulters in accordance with the law and accordingly stated that the RSPCB was taking all the necessary steps for implementation of the Rules of 2011 in the State of Rajasthan.

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

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

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

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

i. Direction for the Producers to follow: to comply with the requirement of the rule 4 in respect of the items listed in Schedule I of the Rules of 2011 with regard to collection of E-waste, enforcing and implementation of EPR, setting up Collection Centres and system of take back, developing and financing arrangement. It shall also be the responsibility of the producers to get themselves registered and obtain authorisation from the State Pollution Control Boards and fulfill all the requirements of rule 9 of the Rules of 2011. Every Producer shall incorporate prominently devoting at least 10% of space/time with respect of each of the advertisement issued for their product under Schedule I of Rules of 2011 with regard to the requirement of proper management and handling of E- waste.

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

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

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

v. The Producer, Bulk Consumer, Dismantler, Recycler shall all comply with the requirement of rules and condition of the authority failing which the respective State

Pollution Control Boards shall take steps for Suspension/Cancellation of Authority in respect of holder of such Authority as empowered under Rule 10 of Rules of 2011.

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

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

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

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

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

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

The Original Application was disposed of. No order as to costs. The matter was listed for compliance on 26 May 2015.

Ajay Dubey
Vs
State of Madhya Pradesh & Anr.

Original Application No. 144/2014 (CZ)

Coram: Justice Dalip Singh, Mr. P.S. Rao
Keywords: Water Act, Air Act, environmental pollution, environmental norms, clearance
Decision: Application disposed of (without directions)
Dated: 15th January 2015

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

After admitting the case on 29 May, 2014, notice has been issued to the Respondent No.2 MPPCB. In their reply dated 1 September, 2014 the MPPCB submitted that before granting consent for establishment and operation of the industries, the MPPCB followed the procedure prescribed under the Air and Water Acts. The industries were recognized under Red, Orange and Green categories to address the type of pollution generated by them. It had been further stated that the MPPCB conducted the required monitoring(s) to understand the trend of pollution and for taking corrective measures.

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

The Applicant's averments were general in nature. By just enclosing copies of the lists furnished by the MPPCB under the RTI Act, he jumped to the conclusion that consent had been granted/ renewed to all the listed industries and they were permitted to continue their operations even though they were allegedly violating environmental norms and not

maintaining the required pollution standards. In the Tribunal's opinion, since the Applicant had not brought out any specific case against any particular industry found violating the norms or any particular officer of MPPCB for the alleged dereliction of duties in granting of permission in violation of the aforesaid Acts, directions could not be issued to take action against any particular industry or officer. However, the MPPCB shall always strive to ensure that the industries permitted to establish and operate follow the prescribed environmental standards and initiate strict action against those which are flouting the norms, in accordance with law. The Applicant was free to approach the Tribunal whenever if he came across with any specific case of violation of norms/standards by any particular industry.

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

Forest Clearance
Miscellaneous: Jurisdiction

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

Application No. 84 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: prohibition of construction, felling of trees, educational institution, EIA Notification 2006, jurisdiction
Decision: Application disposed of
Dated: 19th January 2015

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

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

The relief sought for by the applicant was to injunct the 6th respondent from making any construction in the future. In view of the exemption referred above, the said relief could neither be considered nor granted. The learned counsel for the Applicant further submitted that had also sought for the relief to regulate the kinds of activities and events that could be conducted within the campus. In the Tribunal's opinion, this part of relief sought for did not fall within the jurisdiction or power of the Tribunal and hence the same did not require consideration. Hence the application was disposed of. The learned counsel for the applicant made an appeal for giving liberty to approach the appropriate forum for necessary reliefs if so required and the same was recorded. No cost.

Forest Clearance

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

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

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: private forest area, construction/development, felling of trees, Forest Department
Decision: Application partly allowed
Dated: 22nd January 2015

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

This Application was dealt by High Court of Bombay. The High Court further directed the Respondents not to proceed to develop the property based on development permissions granted on the plot in question till further orders.

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

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

The Respondents relied on the plan provided with R.T.I. inquiry which indicated only two patches i.e. plot Nos.1 and 2 admeasuring 1.27 hectare and 1.57 hectare respectively, as identified forest. Considering these documents along with the Expert Consultant Report, the

Respondents claimed that both these documents were matching in terms of the area, location and the extent of forest patches and further state that they were willing to maintain the said area in its natural status as recommended by the Expert Consultants.

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

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

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

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

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

The Tribunal was of the opinion that there was no substantial reason for interfering in the

findings of the Forest Department regarding identification and demarcation of 12.61 Ha of private forest land in village Xelpem. It was therefore held that, that land shall be treated as private forest. The Chief Secretary was directed to issue necessary instructions to the Forest Department.

The Application was, therefore, partly allowed declaring 12.61 ha. of the land in question, as identified and demarcated by the Forest Department, as a private forest. The Forest department was directed to take all necessary steps immediately to preserve and protect this forest land as per the Law. Any construction on said land if done was to be demolished within eight weeks by the Collector, North Goa. The directions issued by High Court of Bombay at Goa in M.A. No.350/2003 in W.P. No.286/2003 on 2/7/2003 will continue to remain in force till entire demarcation work of private forest was completed in the State. Application was accordingly disposed of with no cost.

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

Application No. 48 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Noise pollution, Environmental Clearance (EC), residential area, Noise Monitoring, costs
Decision: Application disposed of with directions
Dated: 27th January 2015

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

The Applicant claimed that since 2007, they were regularly complaining to the authorities and even in November 2012, MPCB conducted the Noise Monitoring and on finding that the noise levels are exceeding the standards, directed the PMC to take necessary action. The Applicant claims that the Noise Pollution is a serious health related issue and continuous high noise levels are affecting the health of the society members, particularly, children and old ones. The Respondents Nos. 1 to 6, by their inaction, in total disregard to comply noise related regulations, are collectively and continuously causing the Noise Pollution.

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

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

The Respondent No. 7 submitted that they had received the complaint in this matter on 9-3-2012 and investigations were carried out on 16-11-2012 and subsequently, they recommended the Pune Municipal Corporation to take further necessary action, in view of the observed higher noise levels, as per Government of Maharashtra GR dated 21-4-2009. MPCB further submits that the above GR identifies and notifies various authorities for

regulating the Noise Pollution and accordingly, the Pune Municipal Corporation was the concerned 'Authority' for the zoning of areas under the Noise Rules and also, control of Noise Pollution due to construction and development projects Municipal areas.

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

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

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

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

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

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

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

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

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

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

MPCB conducted noise monitoring and observed that some of the equipments were causing noise pollution. The MPCB also recorded that cumulative effect of large number of outdoor ACs, exposed towards the Applicant-society, are causing noise pollution. The Tribunal was of the opinion that though MPCB had not granted consent with specific standards for

activities of the Respondent No.1, general standards available were not being complied by the Respondent No.1. Thus Issue No. 2 was answered in the 'Negative'.

Respondent Nos. 1 to 6 claimed that they carried out several measures to reduce noise from their activities. The project setting of the Respondent No.1 was a large scale construction and development activities had been permitted by the Developmental Authorities, just next to a Residential Colony. Such a critical aspect was not adequately considered while granting EC. The Tribunal was of the opinion that certain immediate measures were required to be carried out to control the noise pollution. And therefore Issue No.3 was also answered in the 'Affirmative'.

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

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

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

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

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

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

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

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

Application was disposed of. No costs.

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

Application No. 424 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: clearance, Steel plant, No Objection Certificate, Consent to Establish, health hazards, Puducherry Pollution Control Committee
Decision: Application disposed of
Dated: 28th January 2015

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

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

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

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

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

Application No. 02 of 2015 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: malafide intention
Decision: Application disposed of
Dated: 29th January 2015

Pursuant to the direction of the Tribunal, the 1st respondent, the Assistant Engineer (O&M), TNAGEDCO appeared before the Tribunal and submitted that without the knowledge of the pending proceedings and also only upon instructions, did he issue the impugned notice and hence the notice was not given with any malafide intention or mens rea and tendered his apology and his statement was recorded. At this juncture, the learned counsel for the 1st respondent submitted that the respondents 1 to 3 did not propose to further pursue or take any action pursuant to the impugned proceedings and the same could be recorded and the application could be disposed of. On the undertaking of the respondents 1 to 3, the application was disposed of.

Environmental Clearance

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

M.A. No. 60 of 2014
M.A. No. 123 of 2014
Appeal No. 7 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Western Ghats, Environmental Clearance (EC), bauxite mining, limitation period
Decision: M.A. No. 123 allowed, M.A. no. 60 & Appeal dismissed
Dated: 29th January 2015

The Appellants originally filed this Appeal on 15.3.2014, challenging OMs dated 17 October, 2013, 16th November 2013 and 20th December, 2013, issued by MoEF&CC, regarding moratorium on development activities in particular ecological sensitive areas of Western ghats. The Appellants also prayed to direct the MoEF&CC not to grant any Environmental Clearance (EC) in ecologically sensitive zones 1 and 2, pending hearing and final disposal of this Appeal.

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

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

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

remedy challenging EC of Respondent No.6, leaving Appeal of other issues and claims.

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

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

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

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

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

Forest Clearance

Vinod Raichand Jain
Vs.
Union of India & Ors.

Application No. 90 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: felling/cutting of trees, expansion of road project, Maharashtra Felling of Trees (Regulation) Act, replantation, ecological balance
Decision: Application disposed of
Dated: 29th January 2015

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

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

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

The Respondents submitted that unless an alternative road or stretch of land was identified, or arrangement could be made for replantation/new plantation of trees, the project work would be stalled. Thus, it was agreed that both the works should be permitted to proceed simultaneously.

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

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

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

According to the Tribunal, expansion of State Highway was an important project in public interest which could not be stopped merely because there were trees, which may have obstructed the project, when alternative arrangement for plantation/afforestation could be

made. Learned Counsel appearing for Respondent No.3 had informed the Tribunal that a number of trees would be planted to maintain ecological balance, as per the directions of the competent Authority, which granted permission to fell trees in question. It was directed that the concerned Authority i.e. Project Proponent, Executive Engineer of the project and DIGP, GC, CRPF, shall manage to execute proper agreement and place a copy thereof on the record of the Tribunal, within period of three weeks. The Registrar of NGT (WZ) was directed to forward a copy of this Judgment to the Additional Chief Secretary, PWD, Govt. of Maharashtra for suitable action, as may be deemed proper and particularly in the context of work/conduct of PWD officials named in the Judgment.

The Application was accordingly disposed of.

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

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

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: *suomotu*, Environmental Clearance (EC), construction project, Consent to Establish, Consent to Operate, felling of trees/cutting of shrubs, environmental degradation, Sustainable Development, Doctrine of Polluter Pays
Decision: Application disposed of with directions
Dated: 30th January 2015

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

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

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

The University requested permission from the Divisional Forest Officer, Wildlife Management Division, Tirupathi by a letter dated 29.05.2013 to clear the jungle growth in 30.01 acres in Sy.No.588/A and on reference to the Revenue Divisional Officer (RDO), Tirupathiit was found that the land was covered with thorny bushes and red sander trees and it was not possible to count the red sander trees without removing the thorny bushes and the DFO issued instructions to the University by letter dated 19.10.2013 for removal of thorny bushes for the limited purpose of enumerating the red sander and other tree species

located in that area. When a reference was made out to the University by the DFO regarding the felling of trees without approval of the competent authority in violation of the Andhra Pradesh Water, Land and Trees Act, 2002, the University replied that as the extent of 30.01 acres was leased out to the Andhra Pradesh Cricket Association, it was the lessee's obligation to obtain the clearances and it was responsible for the same.

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

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

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

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

By a letter dated 25.12.2013, the 8th respondent sent a communication stating about measures proposed to be taken for the protection of environment and ecology in reply to the notice dated 21.12.2013 of 5th respondent/APPCB. The environmental degradation due to the establishment of the Stadium had to be balanced judiciously on the principle of Sustainable Development. The proposal for the setting up of the Stadium should not be denied due to clearing of the shrubs, small plants and trees for construction of stadium under the guise of environmental degradation ignoring the Sustainable Development. The learned counsel for the 8th respondent/Association concluded that what was proposed in the land was only for a good cause which would not lead to any environmental degradation or cause detrimental effect on ecology. Therefore, the Association must be permitted to proceed with the work.

The learned counsel appearing for the 6th and 7th respondents submitted that pursuant to the lease agreement entered into in 1962 between the TTD and University, the TTD had parted with and put the University in possession in respect of 924.68 acres of land comprised in Sy.No.588/A on long lease. In so far as the proposal for the construction of the stadium, the TTD has no role to play at all and hence, the 6th and 7th respondents were not liable to answer to any one of the allegations made on the issues of the alleged environmental

degradation.

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

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

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

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

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

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

No cost.

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

Application No. 62 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: noise pollution, residential area, Consent for Establishment, Consent for Operation
Decision: Application disposed of with directions
Dated: 30th January 2015

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

Accordingly an inspection was made on 16.12.2013 and the report submitted by the Board showed the ambient noise level survey. The counsel for the applicant submitted that though the noise levels were within the prescribed limit, the Unit even as per the Revenue Records was located in the residential area. If so, necessary Consent for Establishment of the Unit should have been obtained from the Board. But admittedly the Unit had not done so. Hence, the functioning of the Unit had got to be stayed.

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

of two months. With the above observation and direction, the application was disposed of. No cost.

Jalbiradari
Vs.
Ministry of Environment and Forest

Appeal No. 08/2013(WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: CRZ clearance, construction, River Mithi, precautionary principle
Decision: Appeal partly allowed
Dated: 22nd January 2015

JUDGEMENT BY Dr. Ajay A. Deshpande

By this Appeal, the Appellants have challenged the CRZ clearance, dated 4th December 2012, granted for construction of retaining walls, service road, re-location of Bharat Nagar Police chowki along the bank of Mithi River, Mumbai by M/s. Mumbai Metropolitan Region Development Authority (hereinafter referred as MMRDA).

The Appellants filed the application with following prayers:
a. To issue a writ of mandamus and/or a writ/order or direction in the nature of mandamus restraining Respondent No.1, from carrying out any operation in furtherance of the deepening and widening of the Mithi river, other than de-silting.
b. To issue a Writ of Mandamus, or a Writ, order or direction in the nature of mandamus directing the Respondent No.3 to issue prohibitory orders to Respondent No.1 from carrying out blasting operations in the Mithi river.
c. To issue a writ of mandamus and/or a writ/order or direction in the nature of mandamus to take action against to punish the officers of Respondent No.1 appropriately for violation of the CRZ Notification, 2011
d. To issue a Writ of Mandamus, or a Writ, order or direction in the nature of mandamus directing the Respondent No.6(ii) to carry out a detailed study of the ecological features of the Mithi river, especially in terms of flood management.

In 2003, MPCB issued directions of disconnection of electricity and water supply of 210 units and after receipt of representations a Fact Finding Committee (FFC), was appointed and caused inspection of the area. The Committee identified that there are several streams where untreated domestic sewage is also meeting to River Mithi and therefore, MPCB has informed Municipal Corporation of Greater Mumbai (MCGM), to provide sewage treatment facility, particularly, decentralized small STPs to ensure domestic wastes do not meet Mithi River. MPCB subsequently filed several affidavits mainly in compliance with directions of the Tribunal and also had submitted proposed action plan for control of Mithi River pollution, with action taken report, which is on record. MPCB also claimed that there are several areas in the catchment of Mithi River, where large number of industrial clusters, are operating in unorganized manner and MPCB is not in a position to verify the compliances in those areas, as such small industrial units are operating without consent of the Board and also, it is difficult for MPCB staff to approach such areas.

Following issues were framed for adjudication:
1) Whether the Appeal is barred by Limitation as claimed by Respondent No.1?

2) Whether due process of granting CRZ clearance had been followed by MCZMA and MoEF?
3) Whether necessary safeguards have been incorporated while granting CRZ clearance?
4) Whether the blasting activities conducted by MMRDA have caused environmental damages? If yes, what is the nature and scope of such damages, and what remedial/restoration measures are required to be taken?
5) Whether the steps taken to control water pollution of Mithi river are adequate or any further directions are required to be issued in this regard?
6) Whether the CRZ clearance is liable to be quashed and any specific directions are required to be issued to the Authorities to protect the riverine ecology of River Mithi?

It was clearly established that as the Appellants had filed the present Appeal within 15 days, as per the order of Hon'ble High Court, Bombay, dated 5-2-2013, the present Appeal was well within the limitation and therefore, being proceeded with.

However, the scope of Appeal was restricted to the compliance of due process of law while granting the environmental CRZ clearance, incorporation of adequate environmental safeguards, due diligence of the base-line environmental status and the project status while appraisal of the project.

It was opined that the appraisal of the project does require evaluation as well as estimation of worth for the purpose of assessment/determination thereof. The process of "Appraisal" requires application of mind, independently, and evaluation of the material in order to find out whether it is a project worth grant of CRZ clearance or for the purpose of refusal of same, as the case may be.

Dr. Ajay A. Deshpande was of the considered opinion that necessary process of law as prescribed in Sub Rule 4.2 had not been followed while appraising the proposal of MMRDA for CRZ clearance. He was also of the opinion that the Expert Appraisal Committee had not applied its mind on the various critical issues which are mentioned above.

NEERI, Mumbai, was asked to conduct Environmental Impact Assessment of the blasting activities in Mithi River, which was submitted in March 2014. The MMRDA fairly submitted that considering the NEERI's Report and also the stance of MoEF, they would not go ahead with blasting operations till they get the necessary Environmental Clearance. Based on NEERI report and apprehension of increased sedimentation in the downstream of river, particularly the mouth of creek, it was evident that the blasting activities have caused certain environmental damages, which needs to be assessed for its restoration. Dr. Deshpande thought that the expert Body i.e. EAC of MoEF can deal this issue in most scientific and analytical manner. Issue No.4 was accordingly settled.

Thus, the following directions were issued:

i) The CRZ Clearance granted through the impugned communication of MoEF dated 4.12.2012, is hereby kept in abeyance for a period of four (4) months and the matter is remanded back to the MoEF to place it before the EAC for the re-appraisal of the project. The EAC is expected to re-appraisal the project, without any prejudice after (J) Appeal No.08/2013 (WZ) 52 ascertaining the factual physical progress of various works, various reports on the record including CWPRS and NEERI, and other material on record. The EAC or its subgroup shall visit the project area for field

inspection before such appraisal and verify the various contentions raised in this Appeal as well as earlier PILs.

ii) The MoEF EAC is at liberty to seek an independent report/s from NEERI/CWPRS or any other Expert Agency directly, on the specific issues, if required, for stipulating additional safeguards, including tidal exchange capacity, flood flows, effect of blasting in the river bed, sedimentation, mud flats etc.

iii) The MoEF shall take decision on the CRZ Clearance for this project within next four (4) months. If no such decision is taken in such period, the CRZ impugned clearance will be deemed as quashed and set aside.

iv) MoEF shall particularly identify the damage caused due to blasting activity and submit a detailed report on remediation along with costs within 4 months to this Tribunal.

v) MCZMA shall investigate complaints related to destructions of mangroves, dumping in CRZ areas of Mithi river basin and take stringent action as per directions of Hon'ble High Court, within two (2) months. MCZMA shall notify the CRZ area along the Mithi river with its boundaries within next 2 months and both, MCZMA and MCGM shall ensure that this area is regulated strictly as (J) Appeal No.08/2013 (WZ) 53 per CRZ notification and also, as per directions of Hon'ble High Court. MCZMA shall also ensure the compliance of directions in Para 48.

vi) The Director IIT Bombay is directed to expedite the final recommendations on STP feasibility by reconciling IIT's earlier report of 2006, in next two (2) months and the Commissioner BMC shall ensure that the work on such STPs shall commence in next six (6) months and completed in next two (2) years.

vii) MPCB/MCGM shall take action against defaulters, as directed by the Hon'ble High Court in its order dated 31st August 2005 immediately within next 2 months. MPCB shall ensure that the STP works are initiated by BMC in next six (6) months; else MPCB is at liberty to take necessary legal actions as per the directions of Hon'ble High Court against the BMC. Application is accordingly disposed of.

No costs.

JUDGEMENT BY Justice V.R. Kingaonkar

As per Justice V.R. Kingaonkar the issues which arose for determination, were as follows:

1. Whether Phase-II work described at A to D, above and enumerated in the impugned EC, would or is likely to cause damage to Environment?
2. Whether blasting activity undertaken by MMRDA and MRDPA (Respondent Nos. 6 and 7), is permissible under the provisions of CRZ and the Explosive (Prevention of Substance) Act?
3. Whether reclamation of land and construction of service road amounts to beautification work? If no, whether it is required to be restituted with certain directions?

Justice Kingaonkar stated at this juncture, that there were various Public Interest Litigations in context of the issues related to River 'Mithi'. It was, however, necessary to examine final outcome of PIL No.2116 of 2005, which was decided on 1st March, 2006, because that gave finality to the proposals put forth by MMRDA on basis of internal recommendations of CWPRS.

He opined that this was a fit case to apply the principle of public trust doctrine as well as the 'Precautionary Principle'. This was due to the fact that there was a possibility that the

land reclaimed for wide road was likely to the encroached over having regard to the tendency of nearby encroachers. Otherwise, it may be used for illegal or legal high rise buildings, which would be difficult to demolish.

Further, he stated that it was well settled that each Judgment stood on its own reasoning and only the legal principle laid down could be considered as precedent. However, the said Judgment could not be said to have such effect. In the facts and circumstances of the present case, it was not necessary to consider the said Judgment as an authority to lay down any particular principle of the Environmental Law as such. It could be gathered that there was heavy destruction of Mangroves in that patches of land, which had affected the tidal flow between the ground embankment and Wakola Nalla foot-over Bridge.

Thus, the subsequent report submitted by CWPRS, was rather improper and unacceptable in the teeth of independent report submitted by the High Court Committee. The Precautionary Principle was not at all considered while granting the impugned EC, nor was the legal procedure followed by the MoEF. Justice Kingaonkar was of the opinion that the service road was not a part of beautification work. If the beauty of Metro City was required to be enhanced, the project was given liberty to provide for green parks like Kamala Nehru Park or other parks, including Shivaji Park; or by installation of Statues for which places were being asked for; or Great Public Infrastructure which would add to the beauty of the city, such as Art Gallery etc. as may be recommended by the report of Experts in the field having regard to availability of space.

The MMRDA was free to improvise the system of the retaining wall as per Expert's opinion to ensure further capacity to get percolation of natural water in the soil. Further, it was deemed proper to issue directions in keeping with directions of the Hon'ble High Court, which had been ignored and also in keeping with Section 20 of the National Green Tribunal Act, 2010, else punitive action under Section 26 of the National Green Tribunal Act, 2010, maybe taken against concerned Authorities. In the result, the Appeal was allowed and the impugned EC was quashed.

The Collector, Suburb Mumbai, was directed to carry out the work before 15th April, 2015, in the manner as shown above.

Environmental Clearance

North East Affected Area Development Society
Vs.
Union of India & Ors.

Appeal No. 8 of 2011

Coram: Justice Dr. P. Jyothimani, Justice U.D. Salvi, Dr. G.K. Pandey, Mr. Ranjan Chatterjee
Keywords: Environmental Clearance, Assam, Lohit river, Hydro Electric Project, scoping stage, public consultation
Decision: Appeal Dismissed (with directions)
Dated: 13th January, 2015

The Appeal was filed seeking direction against the Environment Clearance granted by the MoEF dated 12.02.2010 to the Demwe Lower HEP (1750 MW) project in Lohit District of Arunachal Pradesh under taken by M/s Athena Demwe Power Pvt. Ltd. The appellant was an NGO working in upper Assam on livelihood and development issues. North East Affected Area Development Society (NEADS), i.e. the first appellant was working with disaster affected communities with the right to food and livelihood as a major thrust area and had also been working with local communities in district of Assam, including the Lohit and Dibang river basins. The first appellant also made submissions to the MoEF during the appraisal stage of the project.

The third respondent was the project proponent, a company responsible for implementing the project. It was the case of the appellants that in the downstream stretches, the Lohit river flows through the State of Assam before joining the Dibang and Siang to form Brahmaputra river in Assam. The project was considered by the Expert Appraisal Committee (EAC) for River Valley and Hydro Electric Projects (HEP) at its meeting held on 22.10.2009, 16.11.2009 and 16.12.2009 and ultimately 1750 MW Demwe Lower Project was granted Environment Clearance on 12.02.2010 by the MoEF namely respondent no. 1. The EAC consisted of 14 Experts from various fields and considered each and every aspect of TOR. Regarding the river Basin study it was stated by the MoEF that world-wide it was recognised that River Basin is developed in a cascade manner to work out the cumulative impact of all the projects in the River System. The purpose of basin study was only to supplement the Environment Management Plan efforts and to optimise them for ecological conservation and social upliftment of the area by additional measures. Moreover, there was no cumulative effect in the lower projects which are in less eco-fragile zone and that too it being the 1st project. The EAC had noted that on Lohit river Six HEPs were likely to come and except the said projects, no other projects were presented before the MoEF for EC. Therefore, the EAC had decided that basin study was required for understanding the capacity of the river for generating hydropower after fulfilling the requirement of water for local habitants and aquatic life.

The following were the issues to be discussed and decided:-

7) Whether the presence of Mr. P. Abraham during the scoping stage of EAC in considering Demwe Lower HEP would vitiate all the consequent proceedings of EAC and the EC?
8) What is the scope of scoping under EIA Notification 2006 and whether any decision taken at the scoping stage could not be changed and had to be treated final?

9) Whether EAC had considered all the issues relating to
   (i) The effect of the project on the cultural heritage of Parshuram Kund?
   (ii) Appraisal proceedings done as per the EIA Notification?
   (iii) Delinking of the basin study from the EC and its effect?
   (iv) Effect of peaking operations of the project?
   (v) Effect on Biodiversity including the effect on DibruSaikhowa National Park?
   (vi) Cumulative impact study? And
   (vii) Muck disposal and suggested sufficient safeguards.
10) Whether public consultation process had been done properly and in accordance with the EIA Notification 2006.
11) Whether the EC was liable to be held invalid.

The Tribunal held that there was no suppression of any material fact by the project proponent either in Form 1 proposal stage or subsequently, that the public consultation process had been done in accordance with the provisions of the EIA Notification 2006 and that the EAC which consisted of Experts from various fields and who had an independent status and merit had considered in complete, details on three of its meetings and in fact called for more information and additional particulars from the project proponent to satisfy itself as to whether the recommendation of EAC was to be granted or not. Therefore, there was a proper application of mind by the EAC. The two contentions mainly raised by the appellants, namely in the scoping stage, a foundation had been laid for the project which could not be altered subsequently and that public consultation was not done properly, were not acceptable at all. It was made clear that even during scoping stage there had been an alteration of the project which was originally proposed as Demwe Lower HEP 3000 MW for which in fact TOR was issued by EAC and that had been subsequently changed by dividing it into two parts when it was found that there was a possibility of submergence of a national park which were on environmental concern. Moreover, the additional TOR were being issued for the projects based on subsequent information and clarification, which was established factually in this case and therefore, it could not be accepted that any decision taken in scoping stage either could not be altered or changed by a change in circumstance. Coming to the public consultation, on a reference to record, it was clear that a large number of people had participated and the public hearing was conducted on the spot of the project and the appellants who were stated to be living in the downstream in Assam had been allowed to participate and in such circumstances it was certainly not open to the appellants to say that the public consultation was not properly done.

After hearing the arguments, the Tribunal held that the EC granted to the project proponent dated 10.02.2010 for Demwe Lower HEP 1750 MW project in Lohit District of Arunachal Pradesh was perfectly valid in law and was in accordance with the provisions of EIA Notification 2006. Consequently, the Appeal was devoid of any merits and liable to be dismissed and accordingly dismissed, however without any order as to cost.

Finally, the Tribunal made it clear that all the special and general conditions stipulated in the EC shall be scrupulously followed by the project proponent and the same had to be properly monitored by both the regulatory authority and the State Pollution Control Board, also reiterated that the project proponent must take all necessary steps to see that the existing nature of Parasuram Kund, including its water flow, especially during Mela season shall be maintained and all agreed developments in and around the Kund shall be carried out and the entire area be maintained with serene atmosphere. Further, the River Basin

Study shall be completed expeditiously and any recommendations/decisions arrived at therein shall be directed to be strictly followed by the project proponent.

Environmental Clearance

Rajeev Suri
Vs.
Ministry of Urban Development

Original Application No. 134 of 2014

Coram: Dr. Justice P. Jyothimani, Dr. G.K. Pandey, Mr. B.S. Sajwan
Keywords: Environmental Clearance, redevelopment, concealment of information, pollution, limitation, multiplicity of litigations, balance of convenience
Decision: Application dismissed
Dated: 13th January, 2015

The applicant, a resident of New Delhi, filed this application against the massive construction work being undertaken by the Ministry of Urban Development (MOUD)/NBCC for the redevelopment of the existing Government housing complex at Kidwai Nagar East, New Delhi. He stated that the proposed project of redevelopment undertaken at Kidwai Nagar East, would have adverse impact on the environment and should therefore be scrapped immediately. He further contended that the project had not received a clear "Green Signal" on the said project from the State Expert Appraisal Committee (SEAC). He also stated that according to the information available with him through RTI, the matter regarding the clearance from environmental angle was referred to DPCC whereby certain clarifications were sought and submitted by the project proponent but no specific approval or sanction was accorded and, therefore, he opined that the project obtained Environmental Clearance (EC) by the 'Law of Silence' due to lapse of time limits/ deemed clearance. The applicant raised an objection due to grant of EC on the basis of incorrect information or suppressing the factual information or giving misleading information in Form 1 and Form 1A as required under the EIA Notification, including concealing information especially on creating a commercial space. Also the Environmental Impact Assessment (EIA) had failed to address the core issues of the environment and SEAC had mechanically viewed the questionnaire (From 1 and 1A) and finally EC was accorded. The project, if executed in that form, would be an environmental disaster. According to him the information regarding the land use was suppressed and the master plan was deliberately changed to accommodate the commercial component in the redevelopment of the area. He also stated that the project was located in the residential area but was being converted to residential cum commercial complex. The prayer made by the applicant included grant of perpetual injunction staying all activities of NBCC at the site in question, revocation of Environmental Clearance, passing legal and judicial strictures for giving false and misleading information, misrepresentation and deliberate concealment of fact in their documents pertaining to EIA report, order status quo to be maintained in respect of the number of flats, the high rise building to be restricted to a maximum to G plus 5 floors keeping in view the status of the surrounding area, adverse impact on environment due to increase in air, noise, traffic pollution, etc.

Respondent No. 2, i.e NBCC raised the issue of locus and limitation and stated that the applicant was a resident of Defence Colony whereas the project under question was at Kidawi Nagar East which was quite far away from his residence and it was not known how the applicant will be affected due to the proposed redevelopment of Kidawi Nagar East. He also raised the issue of limitation as the EC was issued on 13.08.2012 whereas the application was filed by the applicant in NGT on 04.07.2014 and as such the same was

barred by limitation. The DPCC and SEIAA further stated in their affidavit that the SEIAA had received the application for EC on 28.09.2011 from the project proponent. The matter was considered by the authority on 22.11.2011, 10.02.2012, 13.04.2012, 04.05.2012 and finally the SEIAA accorded EC for a period of five years to the project proponent and since it is a 'B' category project there was no requirement of publishing EC along with all the conditions. Finally, SEIAA has accorded EC to the said project on 13.08.2012 subject to a number of conditions. Respondent No. 2 also stated that project had been cleared by UTTPEC, the Delhi Urban Arts Commission and the Air Port Authority of India. In view of the necessary clearances obtained by the project proponent, there appeared to be no reason to stop construction activity as prayed by the applicant.

The applicant could not establish any short comings with respect to appraisal process for the project by SEIAA during the hearing of the case except mentioning that there had been suppression/concealment of information and that major environmental ramifications would be caused due to the proposed project in question. The Tribunal did not find any force in this argument and the same could not be proved by the applicant based on any scientific/technical documents. Furthermore, the Tribunal noticed that a similar matter titled- "*Sh.Aman Lekhi versus Union of India and ors*", *WP(C) No. 3263/2014* was pending adjudication before the Hon'ble Delhi High Court. In accordance with the advice of the Hon'ble High Court, the Hon'ble Lt. Governor had held meetings with various experts and executive bodies on different occasions to understand the grievances of the public, particularly with regard to concerns about noise pollution, water pollution and air pollution, pressure on traffic. Any application raising the same issues before another forum may amount to multiplicity of litigations in parallel proceedings and hence the DPCC had requested that the present application may be dismissed.

The applicant also attempted to urge that in matters relating to environment and those affecting right to life, which covered right to a clean and healthy environment under Article 21 of the Constitution of India, such limitation may not apply. However, the Tribunal did not agree with the contention of the applicant as the period of limitation under Section 14 of the NGT Act 2010 was binding and the Tribunal could not extend such period of limitation as laid down in the statute. The application filed after 1 year and 11 months was, therefore, grossly barred by limitation.

In view of the above, the balance of convenience was in favour of the project proponent and the project had been approved by the authority competent in accordance with law. Thus, the Tribunal decided not to interfere with the Environment Clearance. Accordingly the Application failed and the same was dismissed except with the direction contained herein, without any order as to cost.

FEBRUARY

Air Pollution

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

Application No. 40/2014(WZ)

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Chambur, Volatile Organics Emissions (VOCs), consent to operate, chemical storage tanks
Decision: Application disposed of with directions
Dated: 3rd February 2015
(*corrected judgement pronounced on 18th December 2015*)

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

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

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

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

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

Applicants submitted that they had made regular complaints to the authorities and the KEM hospital conducted Respiratory Morbidity Survey and their report dated 18-07- 2013 indicated that Respiratory Morbidity was significant in Mahul and Ambapada village. The Applicants further submit that based on this report, MCGM had listed the licence granted to Respondent No.1 in 'not to renew' list and accordingly, informed the other authorities. The Applicants claimed that though MPCB conducted inspection after the complaints, it did not inspect any of the 10 storage tanks; neither had it inspected the actual functioning and operation of the chemical storage and handling process to understand and assess the VOC emissions. The M.P.C.B. accordingly, gave a show cause notice on 24-12-2013 and further

the S.D.O. also gave directions to the industry on 17-1- 2014 to install the scrubbers in 2 months. In spite of such directions, no initiatives had been taken by the Respondent No.1 to control VOC emissions. The Applicants also claimed that there was no buffer zone between the residential area and the Respondent No.1's unit and therefore, in case of any fire or hazardous and excessive emissions, there was huge and grave danger to the large population staying in surrounding and therefore, it was necessary that the Respondents should take suitable action in view of the above fact position.

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

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

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

KEM was directed to make a comparative study of health hazards vis-a-vis observed air quality data and particular nature of stack and process emission and industrial emissions, in order to locate contributory sources, in view of their earlier report and its findings. The Tribunal was of the considered opinion that the issues related to Respondent No.1 needed to be properly dealt with in the first instance and therefore, considering the submissions of MPCB, Institute of Chemical Technology, Matunga, was appointed to submit a report on the following issues :

1. The nature and composition of the VOC emissions from activities and unit processes at Respondent No.1 terminal
2. The nature of chemicals stored at Respondent No.1 and health impacts of the potential emissions on human health.
3. Adequacy and efficacy of the Pollution Control System at the Respondent No.1-Unit in terms of the operational standards adopted by Respondent No.1 for its processes and activities.
4. The potential impacts and change in the air and water emissions resulting from change in capacity from maximum 75,000 KL per month to 75,000 KL at a time and its environmental implications.

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

Stand over to 30th March 2015.

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

Application No. 32 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Municipal solid waste, hazardous waste, cargo, Customs Act
Decision: Application disposed of with directions
Dated: 5th February 2015

ORDER

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

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

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

Appeal No. 82 of 2014 (SZ)
And
Appeal No. 83 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: crushing unit, expansion, Consent to Operate, closure, prohibitive distance
Decision: Appeals dismissed
Dated: 5th February 2015

ORDER

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

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

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

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

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

Miscellaneous

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

Application No. 43 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: electric service connection, water extraction
Decision: Application disposed of with directions
Dated: 5th February 2015

ORDER

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

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

Environmental Clearance

Mathialagan
Vs.
Union of India &Ors.

Appeal No. 42 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: SEIAA, Environmental Clearance (EC), quarry sand, Udayamarthandapuram bird sanctuary
Decision: Appeal allowed
Dated: 5th February 2015

ORDER

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

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

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

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

Miscellaneous: Non application of mind

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

Application No. 46 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Electricity, industrial unit, non-application of mind
Decision: Application allowed
Dated: 5th February 2015

ORDER

This application was filed against the order of the Tamil Nadu Pollution Control Board dated 30.1.2015 passed under section 31 (A) of the Air (Prevention and Control of Pollution) Act, 1981 by which the power supply of the applicant unit situated at SF No.219, Kannampalayam Village, SulurTaluk, Coimbatore District had been directed to be stopped with immediate effect. It was the case of the applicant that without even serving a copy of the impugned order, the electricity came to be cut to the industrial unit, and the matter came to be filed as application and not as an appeal.

On perusal, the impugned order showed a clear non-application of mind. There was absolutely no reason assigned in the impugned order as such except to say that the Board was entitled to invoke its power under Section 31 (A) of the Air Act. When the show cause notice dated 24.6.2014 was issued to the applicant, the Board had found certain fault / defects in the operation of the applicant unit. The learned counsel appearing for the Board, on instruction, fairly submitted that the said requirements had in fact been complied with and also stated in clear terms that the Ambient Air quality recorded by the Project Proponent was within the permissible limit. The applicant also gave a categorical undertaking that it would eliminate its carbon-dioxide moulding process and adopt resin sand moulding process and thermal sand reclamation for recycling the entire sand and reuse the sand, at the earliest. On the issue of Air Pollution control measures, the equipment had been installed, according to the applicant, so as not to cause any environment related problems in the vicinity. In spite of the same, the Board appeared to have not taken note of the said point and passed the impugned order, as stated earlier, with total non-application of mind. Accordingly, the order was set aside. However, liberty was granted to the Board to continue to monitor the operation of the applicant foundry and to see that the same was carried out to satisfy the norms prescribed under the pollution laws. Thus, the Tamil Nadu Pollution Control Board shall direct the Electricity Board to restore the electricity supply forthwith.

With the above direction, the application stood disposed of and the impugned order was set aside. No cost.

Miscellaneous

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

Appeal No. 115 of 2013 (SZ)
And
M.A. Nos. 244 and 267 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: ownership of property, renewal of consent, Karnataka State Pollution Control Board
Decision: Appeal disposed of with directions
Dated: 6th February 2015

ORDER

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

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

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

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

Miscellaneous

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

Application No. 233 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: environmental hazard
Decision: Application disposed of with directions
Dated: 6th February 2015

ORDER

The Counsel for the 1st and 2nd respondent was to take appropriate steps against the 3rd respondent in the event of causing any environmental hazard by its activities. The Counsel for the 1st respondent, Municipality submitted that as on date, the activities of the 3rd respondent did not cause any hazard. If and when any hazard was caused by the 3rd respondent, the 1st and 2nd respondents would take appropriate action against the 3rd respondent in accordance with law. With the above observation, the application was disposed of. No cost.

Environmental Clearance

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

Original Application No. 137 of 2014

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D. K. Agrawal, Prof. A. R. Yousuf
Keywords: Yamuna river, construction, Environmental Clearance (EC), Signature Bridge Project, SEIAA
Decision: Application disposed of with directions
Dated: 12th February 2015

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

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

It was stated by the applicant that the Master Plan of NCT of Delhi, designated floodplains of River Yamuna in Zone 'O', expanding to an area bearing special characteristics in terms of being an eco-sensitive area. It was also averred that the whole expanse of the stretches were not to be used for development, therefore, need not be taken up under Section 8 (Zonal Development Plan) of Delhi Development Authority Act, 1957. According to the applicant, the construction of the bridge was likely to impact River Yamuna and river hydrology adversely. The applicant relied upon a report prepared by Environics Trust, New Delhi and Peace Institute Charitable Trust, Delhi, on 'Impact Assessment of Bridges and Barrages on River Yamuna', which was published in the year 2009. According to the applicant, considering this Report, it was necessary and prudent to conduct Environmental Impact Assessment of the Signature Bridge Project and its impacts on River Yamuna and its hydrology. The applicant claimed that it was necessary for the Project Proponent to obtain prior Environmental Clearance before starting the project in terms of the Regulations of 2006.

In reply to these, Respondent No. 1 admitted that it had commenced construction of the Signature Bridge over River Yamuna without obtaining any Environmental Clearance from the MoEF&CC/State Level Environment Impact Assessment Authority ('SEIAA'). According to the Respondent No. 1, since the existing two-lane Bridge at Wazirabad was unable to bear increased volume of road traffic, the Government of NCT of Delhi decided to construct a new eight lane bridge for high moving traffic. Thus, the construction work of the bridge was assigned to Respondent No. 1 by Government of NCT of Delhi in terms of MoU dated 27 August 2004. An Environmental Impact Assessment (EIA) study was also conducted which summarized that there was likely to be no significant impact on the environment due to the proposed construction of the bridge. According to Respondent No.

1, Delhi Metro Rail Corporation gave 'No Objection' as per letter dated 1 December 2004, similarly, the Ministry of Defense gave 'No Objection' on 23 May 2006, the Technical Committee of the Delhi Development Authority gave 'No Objection' on 14 June, 2006 and the Archeological Survey of India gave 'No Objection' on 7 August 2006.

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

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

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

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

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

The application was disposed of with the following directions:

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

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

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

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

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

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

Miscellaneous: No Jurisdiction

Amol S/o Ashokrao Raut
Vs.
The State of Maharashtra & Ors.

Application No. 121 of 2014

Coram: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Revised Development Plan, Schedule I – National Green Tribunal Act, 2010
Decision: Application disposed in *limine*
Dated: 17th February 2015

The prayers in the Application were as follows:

A. This Application may kindly be allowed.

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

C.The directions may kindly be given to the Respondent Authorities to suitably modify the proposed Revised Development Plan published in Official Gazette on 24.07.2014 considering the objections/suggestions of the Applicant on 20.02.2014 and 20.09.2014 so as to adhere to green policy and in the interest of environmental protection.

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

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

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

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

Thus the Application was disposed in *limine*.

Miscellaneous: Illegal Mining in forest area

Anurag Modi
Vs.
State of Madhya Pradesh & Ors.

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

Coram: Justice Dalip Singh, Mr. P. S. Rao
Keywords: illegal mining, mining lease, forest area, Forest (Conservation) Act, 1980 and Environmental Regulations, Mines and Mineral (Concession) Rules
Decision: Application disposed of
Dated: 18th February 2015

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

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

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

reports quoted by the Petitioner could not be taken cognizance and could not be relied upon. With regard to environmental issues highlighted by the Petitioner, it was submitted that the same can be dealt with by the National Green Tribunal.

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

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

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

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

With the above observations, the Tribunal felt that with regard to framing mining policy, taking necessary follow up action on the observations of the CAG in its annual reports and taking necessary legal action against the defaulting mining lease holders under Mines and Mineral (Concession) Rules, 1960 and MP Land Revenue Code etc. the Tribunal would not

be able to issue any directions as they did not fall under the purview of the Tribunal. However the Petitioner was at liberty to approach appropriate forum for obtaining such relief.

This Original Application was accordingly disposed of.

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

Appeal No. 40/2014(WZ)

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: authorization, Municipal Solid Waste (Management and Handling) Rules, 2000, MSW facility, site selection
Decision: Appeal allowed
Dated: 18th February 2015

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

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

The Appellants submitted that there was a grazing land which was reserved and used by the villagers since long time at the proposed location of MSW facility. A part of the said property was acquired for the purpose of the MSW plant of TMC. Appellants alleged that the Kojuli site had been finalized without assessing the environmental safety and risk aspects associated with the proposed location. The Appellants claimed that there was a major stream of Banganga river just adjoining to the said site and river Banganga was hardly 100m from the proposed site. The river-Banganga finally meets Vaitarana River, into upper Vaitarana dam. This entire catchment area of Vaitarana dam was classified as A-I zone by the River Regulation Policy of Government of Maharashtra. The Appellants submitted that any mismanagement or improper handling of the MSW at the site will result into contamination of Vaitarana dam which was the major source of drinking water for city of Mumbai.

The Appellants therefore, prayed for:

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

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

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

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

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

1) Whether the Authorization issued under MSW Rules, 2000 includes approval for site of MSW processing and disposal facilities?
2) Whether the proposed site was located in western ghat area and affected by RRZ Policy?
3) Whether necessary environmental safeguards have been considered while issuing the authorization?
4) Whether the authorization was granted as per the provisions of the law or it was necessary to set aside or quash the same?

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

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

clearly established that the MPCB had a controlling regulatory role in approval of MSW facility site.

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

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

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

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

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

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

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

Tulsi Ram Advani
Vs.
State of Rajasthan & Ors.

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

Coram: Justice Dalip Singh, Mr. P. S. Rao
Keywords: trading in charcoal, Vilayati Babul, forest produce, Rajasthan Forest Produce (Transit) Rules, 1957
Decision: Application disposed of
Dated: 19th February 2015

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

The Applicant contended that when such process of exemption of forest produce including the charcoal produced from the aforesaid tree species from the purview of the Rajasthan Forest Produce (Transit) Rules, 1957, the Respondents No. 1 & 3 issued orders dated 11.11.2009 and 18-11-2009 respectively under the Rajasthan Wasteland Development programme leading to harassment by the officials and interference in conducting their business. In the order dated 11.11.2009 it was ordered that uprootal of entire plant of Vilayati Babul sold in the auctions or for preparation of charcoal was prohibited. Consequently, Respondent No. 3, i.e. the Chief Executive Officer, Bi-fuel Corporation, Jaipur issued circular dated 18.11.2009 to the Development officers of Panchayat Samitis in the State of Rajasthan for strict implementation of the order dated 11.11.2009. It was the contention of the Applicant that there were no compelling reasons and circumstances which warranted issuance of such orders by the Respondents No. 1 & 3. As per the Applicant the orders issued by the Respondents No. 1 and 3 were illegal and without any jurisdiction. Further, rule 24 EE of Rajasthan Tenancy (Government) Rules, 1955 clearly provides for exemption from seeking permission for the removal/cutting of the trees of the aforesaid species. The Rajasthan Forest Produce (Transit) Rules, 1957 empower the State to prohibit/restrict movement of forest produce in the State. However, the provision under rule 2 of the aforesaid rules, which empowers the State Government to exempt forest produce of any species from the operation of these rules and allow its transport without transit pass/permit. Therefore, in exercise of these powers the State Government issued notification dated 19.01.1991 and subsequent clarification dated 22.02.2000.

The Respondent State filed their reply to the Writ Petition stating that the Government of

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

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

With the above observations, the orders issued by the Respondent No. 1 & 3 were not found to be contrary to the Rajasthan Forest Produce (Transit) Rules, 1957 and did not call for any interference by this Tribunal.

Miscellaneous: No merit

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

Application No. 35 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: natural pond, construction project, irrigation, public housing
Decision: Application dismissed
Dated: 23rd February 2015

ORAL JUDGEMENT

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

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

14. Direct the Respondent No.1, to not to carry on any construction in the area of natural water pond on the project land till the hearing and disposal of this application;
15. Direct the Respondent No.1, to not to carry on any construction activity on the project land till it obtained the environmental clearance;
16. Direct the Respondent No.4, to not to carry on any construction on the project land till the hearing and disposal of this application;
17. Direct the Respondent No.2 to 5 to take appropriate legal action against the illegal construction, illegal filling up of natural water pond, illegal cut off, hauling, abandoning and diversion of the natural water streams by the Respondent No.1 in gross violation of environmental laws;
18. Direct the Respondent No. 2 to 5 to take appropriate legal action against the Respondent No.1 for committing violation of environmental laws and EIA Notification 2006 and submit report thereon to this Tribunal;
19. Direct the Respondent No.1 to restore the natural water pond by removing the construction carried out in the water pond area;

According to CIDCO, there never existed any natural pond in plot no.2, of sector 36 of the property situated at Kharghar. It was stated that the Application was devoid of merits, inasmuch as whatever was being described as ‘natural pond’ was only stagnation of water

caused during rainy season in a ditch. It was further alleged that the ditch was caused due to construction activity, particularly, after excavation of material from the site, including debris, soil etc. and, thereafter, ditch was filled up due to rain water, which wrongly was being described as natural pond by the Applicant. According to CIDCO, the Applicant resides at village Rohinjan, Taluka Panvel, (district Raigad) on other side of the land of village Owe, and Taloja, which had been acquired and handed over to CIDCO for development. The Application, according to the pleadings of CIDCO, was ill-motivated, unfounded and liable to be dismissed.

Question of significance, was as follows:

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

The Applicant never appeared before the Tribunal since day one, except on one occasion during the proceedings. Initially, he filed certain photographs to indicate that some work of filling in the pond and putting up certain iron bars for construction work, was being done at the first stage. The photographs, however, were placed on record along with the Google map. The Google map was said to be prepared on 11.12.2003, which did not show existence of pond at the place. Those photographs were taken in June, 2013 i.e. the rainy season.

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

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

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

Forest Clearance

Ram Swaroop Yadav
Vs.
State of Rajasthan &Ors.

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

Coram: Justice Dalip Singh, Mr. P. S. Rao
Keywords: stone crushing unit, Forest Land, Revenue Land
Decision: Application disposed of
Dated: 23rd February 2015

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

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

The District Collector, Sikar was directed to produce before this Tribunal all relevant documents and records pertaining to the allotment of forest land to the private persons and manner in which objections filed by the Forest Department of the State Government for conversion of the 'Forest Land' to the 'Revenue Land' prior to allotment had been decided as it was alleged that the land in question had in fact been notified as 'Protected Forest' under the Rajasthan Forest Act, 1953 in the year 1964 and subsequently the same came to be allotted to various landless persons as alleged by the Respondents No. 5 to 9 who purchased the same from the allottees after the land was de-notified from 'Forest Land' to the 'Revenue Land' prior to its allotment.

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

During the course of hearing, since the Respondents No. 5 to 9 alleged that the land had been allotted to them after it was de-notified in terms of the orders of the District Collector in 1971 to the allottees who were landless persons from whom such land was purchased by the Respondents No. 5 to 9 and their entire stakes were based upon the fact that upon being de-notified, the land ceased to be forest land and as such the provisions of the Forest (Conservation) Act, 1980 had no applicability to the land in dispute. Whereas the State Government in its reply had not only disputed the fact that the allotment itself was bad and

could not have been made, the fact remains that the procedure for de-notification of the Protected Forest was required to be carried out in accordance with the procedure contained in Section 29 of the Rajasthan Forest Act, 1953 and more particularly in terms of Sub-Section (4) of the Section 29 of the said Act.

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

In view of the above, the land in dispute continued to be a forest land and without being de-notified no non-forest activity could be permitted on such land and therefore, any such activities which may have been permitted or have been carried out by the Respondents No. 5 to 9 or any other person over the land in question were in violation of the provisions contained in the Forest (Conservation) Act, 1980. Accordingly, it was directed that such activities be immediately put to stop and the land be reverted back to the Forest Department and only such permissible activities as provided under the Rajasthan Forest Act, 1953 and the Forest (Conservation) Act, 1980 shall be allowed. The structures that had been erected by the Respondents No. 5 to 9 shall remove the same and shall be permitted to do so by the officials of the Forest Department as well as District Administration. The aforesaid task was to be completed within three months. The Original Application No. 131 of 2013 accordingly stood disposed of. All the pending Misc. Applications filed by either parties also stood disposed of accordingly. No order as to costs.

Miscellaneous:
Encroachment of forest area

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

Application No. 294 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Suo motu, Tiger Reserve Forest Area, encroachment
Decision: Application disposed of
Dated: 24th February 2015

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

Pollution
License Renewal

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

Application no. 85 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: granite unit, renewal of license, Consent to Operate
Decision: Application disposed of with directions
Dated: 26th February 2015

ORDER

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

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

1. Restraining the 2nd respondent by way of permanent injunction for granting consent order to 5th respondent under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and under Section 25 of Water (Prevention and Control of Pollution) Act, 1974;

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

From the submissions made, it was quite clear that the renewal was given to the 5th respondent unit till 30th September, 2014 and thereafter it had not been renewed. From the submissions made by the counsel for the 5th respondent, it could be seen that the renewal application for the period thereafter was filed and necessary fee therefore had also been remitted. But there was nothing to indicate that the renewal had been granted for the subsequent period. Hence, it became necessary to restrain the 5th respondent not to carry on its operational activities of the Granite unit without necessary renewal therefore. There was no impediment for the 5th respondent to commence its activities if and when the renewal was granted on the application made by the 5th respondent by the Board. The Board was also directed to consider the application of the 5th respondent and pass suitable order in

accordance with law. It was also made clear that the District Environmental Engineer concerned had to monitor that the operational activities of the 5th respondent shall not be carried out without the necessary permission and licence from the Board. With the above observations and directions, the application was disposed of.

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

R.A. No. 02 of 2015
IN
Appeal No. 106 of 2013
(M.A. No. 93 of 2015)

Coram: Justice Swatanter Kumar, Dr. Justice P. Jyothimani, Dr. D. K. Agrawal, Mr. B. S. Sajwan, Mr. Ranjan Chatterjee
Keywords: unauthorized construction, Coastal Regulation Zone (CRZ) area, demolition
Decision: Application dismissed
Dated: 26th February 2015

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

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

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

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

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

that can order such demolition.

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

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

The Ministry of Environment & Forests issued a Notification dated 19 February 1991 which declared prohibited activities within the CRZ as well as activities which were permissible subject to regulations.

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

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

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

where huge quantity of iron, concrete and cement had been used.

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

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

Waste Management (Hazardous)
Compensation & Restoration

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

Application No. 91/2014(WZ)

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: res judicata, hazardous waste, Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF), damages, restore
Decision: Application dismissed
Dated: 27th February 2015

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

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

It was the contention of the Applicants that the assessment done by the Collector and District Magistrate on 22-5-2013, under the provisions of Gujarat Disaster Management Act, was highly underestimated and had been issued unilaterally without proper consultation, assessment of damages caused to the Applicants and their properties. It was the contention of the Applicants that the inaction on the part of authorities and also, the Respondent Nos.3 and 4 was resulting in the entire process of remediation being delayed. The Applicants therefore, submitted this Application with following prayers:

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

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

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

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

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

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

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

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

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

The application was accordingly disposed of. No costs.

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

Application No. 19/2013

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: fishermen, project activity, Mangroves, compensation, rehabilitation, fishery rights
Decision: Application allowed
Dated: 27th February 2015

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

The case of Applicants was that, due to project of widening, deepening of the sea for 4th additional berth at port of JNPT, inter-tidal sea water exchanges, flow of the sea water in Nhava creek would be substantially affected. Destruction of mangroves alongside beaches would cause loss to spawning and breeding grounds of fishes. Hence, stock of grown fishery would be unavailable to them for earning their livelihood. The Applicants alleged that their right to fisheries was governed under The Mahul Creek (Extinguishment of Rights) Act, 1922. The Indian Fishery Act, 1897 also recognized their rights, but did not take away any right which was available earlier.

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

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

Respondent No.9, ONGC, resisted the Application and denied the report of MCZMA, regarding non-restoration of the Mangroves around underlying pipeline. Respondent No.10, objected to the maintainability of the Application on the ground that it was barred by

limitation. Also, the Applicants had been approaching the Govt. authorities including 'Lokayukta' etc. Thus, they were indulging in forum-shopping which be discouraged. In substance, CIDCO alleged that it owed no liability directly or indirectly to pay any compensation to the Applicants and did not come within domain of jurisdiction of the Tribunal.

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

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

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

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

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

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

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

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

- Whether the width of entrance area for passage of the Boats of traditional fishermen inside the sea within Port area, near additional Berth No.4, of widening project, was likely to be reduced or substantially altered/bottlenecked due to reclamation activity/project activity of JNPT?
- Whether reclamation, cutting of Mangroves and other activities undertaken by JNPT and other respondents, did or would cause substantial environmental damage/degradation, which will result into loss of ecology, resulting into loss of natural spawning of fish species, breeding of fishes, availability of fish catch and species thereof?

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

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

- Whether ONGC, (Respondent No.9), has cleared off Mangroves cover around the underline pipeline, as directed by the concerned Authorities and restored ecology?
- Whether CIDCO through its land development activities have affected coastal system, in violation of CRZ Notification?

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

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

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

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

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

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

Miscellaneous: CAMPA Fund

Babu Lal Jajoo
Vs.
The Chief Secretary, Government of Rajasthan & Ors.

Original Application No. 10/2014 (CZ)

Coram: Justice Dalip Singh, Mr. P. S. Rao
Keywords: CAMPA fund, National Highway Authority of India (NHAI)
Decision: Application disposed of
Dated: 24th February 2015

This Original Application was filed by the Applicant under Section 18 read with Section 14, 15, 16 and 17 of the NGT Act, 2010 on the issue of utilisation of CAMPA funds with the prayer that the Tribunal would be pleased to direct the Respondents to use and spend the amount deposited under the head of CAMPA in the State of Rajasthan for its rightful purpose of afforestation, development and conservation of forests and wildlife. The Applicant alleged that in fact the CAMPA funds were being diverted for purposes other than what they were meant for in terms of the judgment of the Supreme Court in the case of T.N. Godavarman V/s Union of India & Ors in the order dated 12.03.2014 as well as earlier order dated 10.07.2009.

Vide order dated 28.01.2014, notices were ordered to be issued to the Respondents. Subsequently vide order dated 19.08.2014, the National Highway Authority of India (NHAI) was also ordered to be impleaded as party and notices issued. On 29.09.2014, the State of Rajasthan was directed to submit the response and file data with regard to the utilisation of CAMPA funds and details of the works which had been carried out in the State of Rajasthan. On 28.10.2014, the Additional PCCF, Rajasthan dealing with the CAMPA fund was directed to appear personally to explain the entire position and accordingly on 15.12.2014. It was submitted that the funds being allocated under the CAMPA to the State of Rajasthan were being utilised in accordance with the directions of the Supreme Court and there had been no diversion of funds.

So far as the first issue with regard to utilisation of the CAMPA funds was concerned, it was submitted by the Learned Counsel for the State that henceforth the State Government shall be utilising the CAMPA funds in terms of the directions issued after the 5th Meeting of the National CAMPA Advisory Council contained in the letter dated 29.01.2015.

Learned Counsel for the State of Rajasthan submitted that in fact all the State Governments in the country are now bound not to divert the CAMPA funds for any of the aforesaid activities as was mentioned in Annexure 'A' to the letter dated 29.01.2015 and National CAMPA Advisory Council having dealt with the issue, the Tribunal was of the opinion that no separate directions need to be issued by this Tribunal.

The State level Governing Body of the CAMPA headed by the Chief Minister met only once on 22.09.2010. Thereafter, for the past 5 years, no meeting of the Governing Body of the State CAMPA had been convened and only the meetings of the State level Steering Committee had been held on 01.09.2011, 19.07.2012, 19.07.2013, 22.07.2014 and 11.12.2014. The Tribunal emphasised that the meeting of the Governing Body which had not met for the last 5 years should be convened immediately so as to take stock of the

issues involved as discussed in the judgment of the Supreme Court with regard to establishment of CAMPA fund and its utilisation as also the achievement as a result of the same and for fixing of future plans and targets.

As regards the main issue raised in the application on alleged diversion of funds, the State heads submitted that in fact no diversion at all took place and now that the position having been cleared in terms of the directions given in letter dated 29.01.2015 of the Inspector General of Forests (FC) and Chief Executive Officer, Ad-hoc CAMPA, MoEF & CC that the question of any diversion of CAMPA funds did not arise and whatever misgivings may have been there, stood clarified. It was for the authorities concerned to take appropriate action against the concerned if any such irregularity had taken place in the past.

Learned Counsel for the Applicant submitted that despite the expansion/widening of the highways in the State of Rajasthan resulting in felling of fully grown trees, new roadside plantations by the NHAI or the State functionaries have yet to come up to the expectation. It was also submitted that apart from the NHAI, there are various other State agencies developing the roads and mega highways which also had developed large stretches of roads in the State and there also there are not many roadside avenue plantations.

It was brought to the notice that the CAMPA fund was the major source of budget available with the State Forest Department for carrying out afforestation works and therefore making the Forest Department to rely only on the CAMPA funds was not proper for the State Government. Hence, the State Government must take necessary steps and make provisions in the annual plan allocation for Forest Department and insist the department for raising large scale successful avenue plantations along the highways, state roads ensuring proper identification of species. Whatever works had been done in the past need to be reviewed with regard to survival of the trees planted earlier. In view of the above, the Original Application No. 10 of 2014 was disposed of.

Miscellaneous

Mr. S Yuvaraj
Vs.
Revenue Department

Application No.44 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Consent to operate, Solid Waste Management, Natural Fertilizer Park, Tamil Nadu Pollution Control Board
Decision: Application dismissed
Dated: 4th February 2015

ORDER

The applicant filed this application challenging the order of the District Collector, i.e. the 6th respondent dated 26.11.2014, by which the District Collector had rejected the representation made by the applicant and other residents of the area for the purpose of giving up the place allotted for Solid Waste Management (SWM) in the Fertilizer Park in Sankari Town Panchayat. On a perusal of the impugned order, it was clear that the Collector, while handing over the land to the Town Panchayat for the purpose of constructing the MSW process in Sankari Town, had taken note of every aspect into consideration including the cultivating lands, as well as the residential areas. In fact, the Collector had on enquiry come to the conclusion that there was no case for such dispute at all. The Tribunal opined that the Collector had taken a correct stand by implementing the Natural Fertilizer Park in the concerned land taking note of the fact that it would not cause any health hazard and it would not affect any cultivating lands and ground water.

However, according to the applicant, the Collector had not sought permission from the Tamil Nadu Pollution Control Board (Board). He further stated that, a School was situated in the nearby area which could be affected by the project. The applicant stated that the Board should be directed to inspect the spot, taking note of this aspect about the existing of the School and take an appropriate decision in this respect.

Considering the above said submissions made by the learned counsel for the applicant and after hearing the Tamil Nadu Pollution Control Board as well as the other respondents, the Tamil Nadu Pollution Control Board was directed to make a spot inspection forthwith and decide the feasibility or otherwise of the scheme in the said Sankari Taluk and pass appropriate orders regarding the same expeditiously and in any event within a period of two weeks from the date of receipt of a copy of this order. With the above observation, the application was dismissed, with no order as to cost.

Miscellaneous

Mettur Water
Vs.
TNPCB

M.A.Nos. 22 and 23 of 2015 (SZ)
in
Appeal No.65 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Consent to operate, Tamil Nadu Pollution Control Board
Decision: Application disposed of
Dated: 3rd February 2015

ORDER

During the course of hearing of this application, it was admitted that the Tamil Nadu Pollution Control Board (Board) had granted Consent to Operate to the appellant/ applicant in the order dated 16.10.2014, which was valid upto 31.3.2015. In such view of the matter, nothing survived in this appeal. Accordingly, with a direction to the Board to keep monitoring the activity of the appellant/applicant, the appeal stood disposed of. Since the appeal had been disposed, M.A. No. 23 was also closed. The Tribunal further directed the Tamil Nadu Pollution Control Board to monitor the functioning of the appellant Unit for strict compliance of the various conditions. No cost

Miscellaneous

M/s. Sundar Aqua Product
Vs.
TNPCB

M.A.No. 26 of 2015 (SZ)
in
Application No. 149 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: No Objection Certificate, water unit, Tamil Nadu Pollution Control Board
Decision: Application disposed of
Dated: 3rd February 2015

ORDER

The application was filed because the Public Works Department had granted a No Objection Certificate for the Water Unit of the applicant which was situate under the SAFE Area. Admittedly, the applicant had not made any necessary application to the Tamil Nadu Pollution Control Board (Board). In such a view of the matter, the could be disposed of permitting the applicant to give necessary application to the Tamil Nadu Pollution Control Board within a period of one week along with all materials required. On receiving such application and after conducting necessary inspection, the Tamil Nadu Pollution Control Board shall pass appropriate orders within a period of three weeks from the date of receipt of the application in accordance with law and on merits. Till the final order was passed by the Tamil Nadu Pollution Control Board, the order already passed in M.A. No. 126 of 2014 in Application No.149 of 2014 regarding the maintenance of machinery and membranes shall continue to be in operation. Accordingly, the application was disposed of.

MARCH

Miscellaneous

M/s. Deepak Construction Co.
Vs.
Haryana State Pollution Control Board & Anr.

Appeal No. 35 of 2014

Coram: Justice Dr. P. Jyothimani, Mr. Ranjan Chatterjee
Keywords: land lease, renewal of lease, stone crushing unit
Decision: Appeal dismissed
Dated: 5th March 2015

This appeal was filed by the appellant who was the project proponent against the order of the Learned Appellate Authority who had dismissed the appeal on the ground that the lease of the land in which the unit of the appellant was functioning had been cancelled by Deputy Commissioner, Mahendergarh at Narnaul. In spite of opportunity given, the appellant had failed to place the status report of the case stated to be pending before the High Court.

The appellant was a stone crushing unit established in the Panchayat land, leased out initially for the period of 10 years and stated to have been renewed from time to time for every 5 years. The respondent was stated to have issued consent under Air Act in the year 2004-05 and which was renewed from time to time. According to the appellant, his application for consent for the year 2012-13 was not disposed of and therefore, it was deemed consent for the said year. The appellant had applied to the respondent for consent for the year 2013-16 and the same was not granted. However, a direction in the form of a show cause notice was issued by the respondent Pollution Control Board under Section 31 A of the Air (Prevention and Control of Pollution) Act, 1981 on 03.09.2013. Ultimately, the respondent passed an order of refusal on 21.08.2013 against which a statutory appeal was filed before the Learned Appellate Authority under the said Act, which was dismissed under the Impugned order dated 07.04.2014. It was this order against which the present appeal was filed.

The main ground on which the appeal was filed was that the lease was under challenge before the competent Civil Court and consent ought to have been granted subject to the outcome of the result in the civil case, and that the appellant had not violated any law or caused any environmental pollution. It was the case of the appellant that it had a right of renewal of lease in law.

A show cause was issued on the ground that the appellant was running the unit without a legal land lease. The appellant filed a Civil Suit against Municipal Council for permanent injunction. Pending the suit he had filed an interim application praying for an interim injunction restraining the authorities from interfering with their possession of the disputed land. The said application came to be dismissed by the Learned Civil Judge (Junior Division), Narnaul.

It was against the said interim order of the Learned Trial Judge, that the appellant filed a miscellaneous Civil Appeal No. 71 of 2013 before the Learned Additional District Judge, Narnaul. The learned Appellate Judge had found that the appellant had no prima facie case and therefore dismissed the appeal. While dismissing the appeal, in the order dated 05.08.2013 the learned Appellate Judge had permitted the appellant to remove its articles within one month from the disputed land and the respondents were restrained only for a period of one month from taking possession of the suit land.

Not satisfied with of the said order of the learned Appellate Judge, the appellant moved the High Court of Punjab and Haryana at Chandigarh and filed a Civil Revision No. 4942 of 2013 under Article 227 of the Constitution of India. While disposing of the said Revision, in the order dated 23.10.2013 the High court had found that to the extent the findings of the lower courts that the appellant could not continue to be in possession, as the lease period had come to an end, as correct. However, in so far as eviction of the appellant was concerned, the Court directed that the same had to be done in accordance with law. Therefore, the said portion of the Judgment alone had been set aside and had given liberty to the Municipal Council to take action for the eviction of the appellant.

The appellant's possession had been found to be not in accordance with law which had been confirmed by all the three Courts including the High Court. The High Court had only granted permission to the Municipal Council to evict the appellant in accordance with law. It did not mean that the appellant who may have been entitled to be in possession till lawfully affected, was entitled for the stone crushing activities by way of consent from the Pollution Control Board, which was to be exercised by the Board independently.

Thus, the Tribunal was of the considered view that the appellant could not be directed to be given consent by the Pollution Control Board for running its stone crushing unit and in that view there was no reason to interfere with the order of the learned Appellate Authority.

Accordingly, the appeal stood dismissed without any order as to cost. As the main appeal was dismissed all miscellaneous applications namely, M.A. No. 282 of 2014, 283 of 2014 and 353 of 2014 stood closed.

Environmental Clearance

Ambai Taluk Tamirabarani
Vs.
Union of India & Ors.

Application No. 256 of 2013 (SZ)
(W.P. (MD) No. 3274 of 2011 of Madurai Bench of the Madras High Court)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: granite quarrying, mining lease, mining project, Kalakad-Mundandurai Tiger Sanctuary, EIA Notification 2006
Decision: Application dismissed
Dated: 5th March 2015

This Application was filed after an order of transfer of the Writ Petition (MD) No. 3274 of 2011 and W.P. (MD).No. 13266 of 2010 of the Madurai Bench of the Madras High Court. The Writ Petitions were filed seeking a writ of mandamus to direct respondent Nos. 2, 5 and 10 not to give permission to the respondent No. 11 for the multicolored granite quarrying in survey Nos. 526 to 555 situated at Mela Ambasamudram Village and survey No. 58 at Kodarankulam Village in Ambasamudram Taluk, Tirunelveli District, since the above said lands were very close to the Kalakad- Mundandurai Tiger Reserve and just about situated in the Tamirabarani River bed; and also direct the respondent No.2 to take effective steps to protect the Kalakad-Mundandurai Tiger Reserve Eco-system in Tirunelveli District. The above mentioned lands were situated within a 5 km radius from the Mundandurai Tiger Sanctuary (Sanctuary in Ambasamudram Taluk).

The 1st respondent, i.e. MoEF, filed the reply which was adopted by the 8th respondent in Application No. 256 of 2013 (THC), namely, the SEIAA, stating that any mining project coming up within the boundary of 10 km of a national park or wild sanctuary should have clearance from the Standing Committee of the National Board for Wildlife as per the orders of the Supreme Court of India, besides EC from the MoEF under Environment Impact Assessment Notification, 2006 (EIA Notification, 2006). Further, the subject of grant of mining lease lies within the domain of the Ministry of Mines and the respective State Governments.

The mining lease for an area which is 50 ha or more should be obtained after getting prior EC as per the procedure laid down in EIA Notification, 2006. For the area falling within 50 ha (B Category) the clearance from SEIAA would be necessary. If the area is more than 50 ha, (Category A) the EC from MoEF would be necessary. Any project or activity specified in Category B will be treated as Category A project if located in whole or in part within 10 km from the boundary of the protected areas notified under the Wildlife Protection Act, 1972 and such projects need EC from MoEF as per EIA Notification, 2006. The clearance from the Standing Committee of the National Wildlife Board is also necessary besides EC from MoEF.

The 9th respondent in Application No. 256 and 10th respondent in Application No. 259 stated that the area in Survey No. 58 in Kodarankulam Village granted to TAMIN was classified as un-assessed waste and no permanent structures were located in the area or in the adjacent and surrounding fields. Besides, there was no objection from the public while calling for A1 notice. Based on the recommendations of the Revenue Authorities, the District Collector, Tirunelveli sent proposals to the Government for the grant of quarry lease to TAMIN. The Government passed a Government order granting the lease for quarrying granite in the above mentioned area for a period of 30 years and the grant was subject to the outcome of W.P. (MD).No. 13266 of 2010 pending on the files of the Madurai Bench of the Madras High Court and also subject to safety precautions stipulated. There was no connection between the lease applied area in Kodarankulam Village and the Tiger Reserve in any manner. However, the consent of the TNPCB had to be obtained only at the time of quarrying operations. As per the statutory provision in rule 36(1) general restriction in respect of quarrying operation stipulated in the TMMCR, 1959, safety distance of 50 m is sufficient for any quarrying activity, whereas the Kodarankulam Village is situated at a distance of 1 km away from the quarrying site. The Tiger Reserve was also situated at a distance of 7 km from the leasehold area and no harm will be caused to the wildlife. Hence, the contentions of the applicant were against the facts. There were no objections for the grant of quarry in favour of the TAMIN from the local authorities and administrators of the dam and there were no objections from any corner which would prove that the grant of quarry in favour of TAMIN was sustainable in law. The Government order granting the lease to TAMIN was in accordance with the rules and in no way illegal. The Government also directed that the TAMIN should form a Monitoring Committee comprising the officials of the Geology and Mining to implement the conditions and other safety parameters imposed in the Government order. The Monitoring Committee shall ensure protection to the Tiger Reserve also by taking due precautionary measures while quarrying. The apprehension of the applicant was baseless and hence, the TAMIN should be permitted to carry on the quarrying operations as per the conditions laid down in the Government order.

Furthermore, it was stated that obtaining prior EC as envisaged in EIA Notification, 2006 applied only to major minerals. As granite is classified as minor mineral under the provisions of TMMCR, 1959, it was not necessary either for the Government of Tamil Nadu or TAMIN to obtain EC from the MoEF. In view of the decision that in the instant case, obtaining of EC from MoEF was neither required nor mandatory as envisaged under EIA Notification, 2006 was to be followed. The other question, namely, whether the mining site was within the protected area as found in the EIA Notification, 2006 would not arise for consideration.

In view of the discussions made above, both the applications were dismissed as devoid of merits.

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Dharam Raj
Vs.
State of Maharashtra & Ors.

Misc. Application No. 18/2015 (WZ)
Misc. Application No. 22/2015 (WZ)
in
Application No. 118 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: slaughterhouse, Effluent Treatment Plant (ETP), environmental hazard
Decision: Application disposed of
Dated: 9th March 2015

By filing the Application, the Applicant sought following reliefs:

A. The Respondent No.4 be directed to immediately shut down the Idgah slaughterhouse.
B. The Respondent Nos. 1, 2 and 3 be directed to initiate immediate legal action against Respondent No.4.
C. As the violation of law is continuing willfully and voluntarily, a heavy cost may be levied on Respondent
D. The Tribunal may direct the Respondent Nos. 1 and 2 to initiate inquiry as to why no strict and immediate action was taken by the officers of Respondent Nos.2 and 3 as the illegal slaughterhouse continued to operate for more than 7 months and may pass appropriate orders as it deems fit.

Bhivandi- Nijampur City Municipal Corporation (BNCMC) ran an abattoir at the site near Idgah Maindan. Undisputedly, there was no proper Effluent Treatment Plant (ETP), and proper arrangement for treatment of effluents discharged after slaughtering of animals at that place. BNCMC, attempts to incinerate some of part of the animals remains, which are found after slaughtering at the place. A part of place was said to be levelled after dumping and disinfected. However, the slaughterhouse was not in order as per norms of Pollution Control Board.

According to the Applicant, unscientific slaughtering at the site causes environmental hazard, adverse impact on environment, health hazard and spreads foul smell in the entire vicinity around the slaughterhouse. He requested concerned officials of the BNCMC to deal with the problem and install proper, modernized mechanized slaughterhouse, but the complaints remained unheeded. Hence, he filed the present Application.

The Commissioner of BNCMC filed affidavit along with affidavit of Mr. Latif Gaiban. Their affidavits go to show that Mr. Latif Gaiban undertook to complete the work of ETP within 6 months and entire work of mechanized slaughterhouse within period of one year. In case, he would be unable to execute the work, his Bank Guarantee, would be forfeited by

the Corporation and work may be assigned to another Agency at his cost and he would be held responsible to pay escalation cost to another Agency.

The affidavit of Municipal Commissioner, BNCMC, revealed affirmative action, which appeared to be absent in case of other Govt. Officials. He had also undertaken personal responsibility to face the consequences, if work was not completed within given timeframe. It was directed that as far as possible the work shall be carried out in accordance with in timeframe mentioned in the affidavit of the Municipal Commissioner and no further occasion for issuing directions should be given and the work shall be monitored by MPCB on monthly basis of which report be submitted to this Tribunal. With these directions, the Application and Misc. Applications were disposed of with no costs.

Miscellaneous

Mrs. Pappa alias Radha & Anr.
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 304 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Consent order, appellate authority
Decision: Application disposed of
Dated: 10th March 2015

ORDER

The applicant sought for a direction to the respondents 1 and 2, the authorities of the Tamil Nadu Pollution Control Board (Board) to close the Unit Velmurugan Starch Factory at S.F. No.98/1, Bypass Road, Kanthapatti Village, Salem Taluk (3rd respondent).

It was seen that the 3rd respondent Unit which was carrying on its operation applied for renewal of the Consent already granted by the Board. On the rejection of the application by the 1st and 2nd respondents Board, the 3rd respondent preferred two appeals in Appeal Nos.42 and 43 of 2014 before the appellate authority – Tamil Nadu Pollution Control, Chennai where the appeals were still pending. It was also brought to the notice that an application for stay of the proceedings of the 1st and 2nd respondents was sought for and the appellate authority – Tamil Nadu Pollution Control had granted stay on the strength of which the 3rd respondent had been carrying on the Unit. Pending the proceedings, the instant application No.304 of 2014 was filed seeking direction to the respondents 1 and 2 to close the 3rd respondent's Unit. In the considered opinion of the Tribunal, it would not be fit and proper and the circumstances also did not warrant for a direction to be issued to the 1st and 2nd respondents to close the Unit since the very same subject matter is pending before the appellate authority – Tamil Nadu Pollution Control in the aforesaid appeals and also an interim order is in favour of the 3rd respondent also had been granted. Under such circumstances, there was no necessity to keep this appeal pending. Recording the above, the application was also disposed of. No cost.

Air Pollution

M/s Raasi Blue Metal & Ors.
Vs.
The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application No. 216 of 2013 (SZ)
Application No. 218 of 2013 (SZ)
Application No. 221 of 2013 (SZ)
Application No. 223 of 2013 (SZ)
Application No. 242 of 2013 (SZ)
Application No. 243 of 2013 (SZ)
Application No. 029 of 2014 (SZ)
Application No. 215 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Stone crushing unit, Consent to Establish, Air Pollution Control Measures
Decision: Applications allowed (Application No. 215 dismissed)
Dated: 11th March 2015

All these applications were filed for a report on the compliance of the precautionary and preventive pollution control measures. All the Units covered by all these applications are Stone crushing units.

All the applicants were running the stone crushing units at different survey numbers in Thirumangai Alwarpuram, Thiruneermalai Village, Kancheepuram District for a long past. They were engaged in crushing of Blue Metal Jelly after obtaining Consent to establish their respective units from the 1st respondent Board both under Air Act and Water Act and the same was renewed from time to time. While the matter stood so, all the units were inspected by the District Environmental Engineer (DEE) concerned of the Board and served with Show Cause Notice on the non compliance of the direction and conditions attached to the Consent order. Not satisfied with the reply given, a closure order was served on the applicants' Units for not providing adequate Air Pollution Control Measures (APCM). Aggrieved over the said order of closure, all the closed units preferred the instant applications.

Pursuant to the interim order granted by the Tribunal, except the applicant in Application No.215 of 2013 all other applicants had been carrying on their activities. Pending the applications, it was submitted by the counsel for the applicants that all the conditions attached to the Consent order were strictly complied with and all the provisions were made in respect of APCM which were adequate also. Necessary directions were issued to the concerned DEE to make an inspection and file a report. After making a scrutiny of the report, directions were issued by the Tribunal to all the Units who are the applicants herein to strictly comply with the conditions of the Board by taking adequate APCM as noticed by the DEE concerned in the report. It was submitted by the counsel for the applicants that all the Units had strictly complied with the conditions as per the report of the DEE concerned in respect of the deficiency in the APCM. The DEE concerned was again directed to make

an inspection and find out whether adequate APCM to prevent pollution were taken by the Units as contended by them. Finally it was reported in the last hearing by the Board that out of 23 Units only one Unit who is the applicant in Application No.215 of 2013 was without consent and in respect of all the other 22 units, 7 units had strictly complied with the requirements in respect of APC and the remaining 15 units were yet to comply with the conditions.

Admittedly, out of the 23 Units the one Unit in Application No.215 of 2013 had to be dismissed since it was without any Consent whatsoever and accordingly the Application No.215 of 2013 was dismissed. Insofar as the other 22 Units were concerned, it is fairly conceded by the Board that the Consent to Operate has been renewed for all the 22 Units till 30.6.2015. But all these Units were served with closure order since the conditions attached to the Consent to Operate in respect of APCM were not complied with. Pending the applications, only 7 Units which are covered in Application Nos.216, 218, 221, 223, 242, 243 of 2013 and 29 of 2014 had strictly complied with the APCM. Under such circumstances, there was no impediment to allow these seven Units to carry on their operations and all those applications are allowed and the impugned orders of closure under challenge are set aside. No cost.

Environmental Clearance

Mr. Jagannath Pandurang Sinnari
Vs.
The State Level Expert Appraisal Committee (SEAC), Maharashtra & Ors.

Misc. Application No. 12/2015
Appeal No. 49 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Environmental Clearance (EC), principle of natural justice
Decision: Misc. Application disposed of, Appeal allowed
Dated: 12th March 2015

The Appellant, herein had impugned communication dated May 26th, 2014, of Deputy Secretary, Environment Department, Mantralaya, Mumbai, whereby, his Application for grant of Environment Clearance (EC), was refused to be considered. In other words, he was informed that his Application will not be considered.

There was a stone quarry situated in the land Survey No.77/1A and Survey No.78/2 of village Degave, taluka Sawantwadi, district Sindhudurg. Appellant Jagnnath was running stone quarry on year to year lease/permit basis. There was no dispute about fact that the period of lease/permit expired in September 2012. So, he submitted an Application to the Collector for renewal of the transit pass. He also submitted Application dated 2nd August, 2013 for EC to the Collector. It was forwarded to the Respondent No.1 on 10th December, 2013 for EC. The appellant alleged that he did not come to know about fate of his Application. Eventually, he submitted the representation to SEIAA on 23rd March, 2014. In pursuance of such representation, he received impugned communication by way of reply, which practically amounted to rejection of his request, inasmuch as it was informed that his Application could not be considered for EC, because it was received by the Environment Department after cutoff date i.e. on 17th April, 2014 and moreover, the area in question falls under Ecological Sensitive Area (ESA) in Western Ghats, which was identified by the Higher Level Working Group.

The material issues that required determination were as follows:

i. Whether the impugned communication issued by the Deputy Secretary, was in accordance with the principles of natural justice and, therefore, can be considered to be legal and valid even otherwise, if it is permissible under the Enactments/Rules?
ii. Whether the impugned communication on dual grounds stated therein, was sustainable under framework of the Law, particularly, when Notification pertaining to Western Ghats, as identified by the High Level Working Group of the Committee, placed before the authority was only draft Notification at the relevant time and could not be deemed as final without approval of MoEF, in this behalf?

The Application submitted by him to the Collector for the first time for issuance of permission/licence was on 2nd August, 2013. Along with Application, he also paid amount of royalty, by way of depositing Challan of the payment in respect of royalty as usual. The amount of royalty was not refunded to him immediately either by the Collector, SEAC or environment department, on the ground that his request was totally untenable for the reason that the Application was barred by limitation, or could not be considered on the ground that quarry in question had been declared to be within eco sensitive area. In other words, implicitly, the authorities did not convey refusal to the Appellant on either grounds that the Application could not be considered and, therefore, he should be required to take some other course, as available under the Law. He was not given opportunity to show as to whether the Application was, in fact, filed within period of limitation available, under the Law or that he could have been able to get extension of time on count of payment of royalty/fees for the Application filed by him in the office of Collector or being already existing operating stone quarry. The Appellant was deprived of fair opportunity to be heard and to explain his case in the context of grounds stated in the impugned communication.

The Tribunal opined that the Appellant was denied opportunity of hearing and, therefore, impugned communication was faulty, erroneous and unsustainable due to violation of principles of natural justice. The Principle 'audi alteram paratem', is breached in the present case and, as such, impugned communication will have to be set aside on this ground.

The question as to whether the Appellant was required to apply to the Deputy Secretary, Environment Department or to Environment Department itself, or to SEAC/SEIAA for activity was a debatable question. This question had to be examined in view of the O.M. dated 20th December, 2013, issued by the MoEF. We cannot overlook the fact that said O.M. was issued by the MoEF, by way of guidelines in order to explain provisions of the Environment (Protection) Act/Rules. In the present case, basic reason for issuance of the O.M., was the direction issued by the Apex Court in case of 'Deepak Kumar etc Vs. State of Haryana and Ors' and directions under Section 5 of the Environment (Protection) Act, 1986, dated 13th November, 2013.

The Applicant had to go through the proper process of making the Application to the concerned Authority i.e. SEIAA, which could direct the Applicant to submit rapid Environment Impact Report (EIA), and thereafter forward the same with recommendation or otherwise, for grant/refusal of request for EC to MoEF. The decision making authority would be the MoEF, in such a case, if area of lease was be below 5ha for minor minerals. However, the Deputy Secretary could not be the authority to deal with the subject and the environment department could not practically without considering the subject in any kind of meeting and deliberations or without asking the Project Proponent to go through proper procedure, refuse to consider the Application. According to the Tribunal such communication, was arbitrary, unreasonable and unsustainable in the eye of Law.

The Misc. Application was disposed of and the amount laying in the Escrow Account would be dealt with after decision, which will be taken after final decision of the Authority on the Application of the Applicant. In the result, the Appeal was allowed and the impugned communication was set aside. No costs.

Miscellaneous: Limitation, forum

Mr. A. Arjunan & Anr.
Vs.
The State of Tamil Nadu & Ors.

Application No. 11 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Consent to Establish, Limitation, statutory remedy
Decision: Application dismissed
Dated: 18th March 2015

ORDER

This application challenged the Consent to establish order dated 19.11.2011 issued by the Tamil Nadu Pollution Control Board (Board), the 2nd respondent in favour of the Sivagangai Municipality, the 3rd respondent. The Counsel for the 3rd respondent raised a question as to the maintainability of the application on the point of limitation.

An application was made by the 3rd respondent and on consideration of the parameters and requirements, the "Consent to Establish" for STP was granted along with the conditions imposed therein in its favour by an order dated 19.11.2012. While the matter stood so, the instant application was filed by the applicant seeking to quash the said order on the grounds alleged in the application. It was also brought to notice that pending the proceedings, a renewal application was filed and the same had also been extended till 5.1.2017. At the time of filing the application, on the submissions made, status quo was ordered and the same was in force.

The Tribunal was of the considered opinion that the application had to be dismissed on the ground that the applicants had chosen this forum to file an application instead of filing the appeal before the appellate authority – Tamil Nadu Pollution Control and also when the application was filed it had gone out of time. Admittedly, the Consent to Establish was granted in favour of the 3rd respondent on 19.11.2012. The applicants without preferring an appeal before the appellate forum filed this application before the Tribunal that too on 15th February, 2014. Thus, it would be quite evident that they had not filed the application before the appropriate forum. Also, by bypassing the statutory remedy, which they should not have done, they filed the application out of time prescribed in the provision of the NGT. Accordingly, the application was dismissed on the above grounds. No cost.

Waste Management
Compensation & Restitution

Shri Vishwas More
Vs.
Krishi Utpanna Bazar Samitee, Pimpalgaon Bswant

M.A. No. 5 of 2015
Application No. 38 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Sewage treatment plant (STP), Environmental Clearance (EC), agriculture, temporary shed, compensation
Decision: Application partly allowed with directions
Dated: 18th March 2015

By this Application, Applicant Mr. Vishwas More raised certain issues pertaining to Sewage Treatment Plant (STP) to deal with sewage on account of use of sheds by large number of stockiest/farmers for storage, sale and auctioning of Tomatoes in the area of market yard of Respondent No.1 as well as absence of arrangements for shifting of sewage without proper arrangement, allowing it to another nearby farms, causing damage to the land, crops, contamination of groundwater, well water and other environmental adverse impacts. Claim put forth by him, was that construction of premises, shelters so called temporary sheds erected by means of pipes attached to the pipe framework in the market yard area, were considered construction work excessive of 20,000sq.mtrs area and, therefore, approval of competent authority, as per MoEF Notification dated 14th September, 2006, was essential, which the Respondent No.1 desired to bypass.

Environmental problems were further enhanced, because the Market Committee had allowed traders to have permanent construction of sheds annexed to their shops/premises for storage of stock received for sale. The storage of Tomatoes, Grapes, and Onions during relevant season necessitates more people to visit the market yard, which adds to more sewage, which remains untreated. The market yard had not obtained Environmental Clearance (EC) from the State Environmental Impact Assessment Authority (SEIAA), notwithstanding the fact that construction was over and above 20,000sq.mtrs and falls within the category of entry No. 8(a) of the EIA Notification dated 14th September, 2006

Thus the Applicant has prayed for following reliefs:

A. Immediately stop operations of the Respondent No.1 till effective STP is provided along with proper drainage arrangement and till 'Environmental Clearance' is applied and obtained under category 8(a) or as applicable, after following due process of law (or if they have been already stopped operations, then maintain the status quo).
B. Appoint an expert or Expert Committee to assess the damage to crop, groundwater, well water, farms and farmland.
C. MPCB to take appropriate action to forthwith ensure the compliance in respect of providing STP and proper drainage system and to take appropriate action for the violations

of the provisions of Water (Prevention & Control of Pollution) Act, 1974 and take appropriate steps to restore the damage to environment.
D. Pay relief and compensation as may be determined by the expert committee for the damage to crop, farm, farmland and contamination of groundwater and well water and for restitution of environment.

Chief bone of contention raised by Respondent No.1, was that temporary shades situated in the premises of APMC, pertained to necessary activities of unloading, branding and packaging of the agricultural products of Tomatoes during season of Tomato crop between June to December of each year. For such purpose, agents of traders erected temporary shelters/sheds with wooden/Bamboo support, covered by zinc sheets. Their intention was to protect the vegetables brought by the agriculturists to the market yard. According to Respondent No.1, the Applicant filed Writ Petition No.11221 of 2013, only regarding effluent, untreated running from toilet blocks, which allegedly contaminated water, but now, in this Application, he had also added certain other issues. He had also filed a complaint before the Maharashtra Water Resources Regulatory Authority (MWRRA), with same grievances. The requirement of MWRRA, regarding installation of Sewage Treatment Plant (STP), was complied with by Respondent No.1 and, therefore, the complaint of the Applicant was disposed of.

According to Respondent No.1, there was no need to seek Environmental Clearance from the competent Authority, because construction area did not cross outer limit of 20,000sq.mtrs. It was alleged that mere putting of temporary sheds during season of Tomato, Grapes will not attract entry No. 8(a) or 8(b), Schedule 8 of EIA Notification dated 14th September, 2006, and as such, the activity was within legal framework of the Environmental Laws. It was denied that the Respondent No.1 had failed to provide required STPs and toilet facilities in the premises of market yard. It was also denied that untreated sewage was allowed to run without control in the nearby lands, which had caused environmental damage to the lands. It was denied that the Applicant suffered loss of crops due to illegal acts of Respondent No.1.

The points which arose for determination were:

i) Whether the project activity, inclusive of temporary sheds require any EC, in view of entry No.8 (a) of Schedule 8, appended to EIA Notification dated 14th September, 2006, or amended thereafter in 2011, because it has to be included as ‘covered area’, due to putting up of the sheds, covered by roofs of zinc sheets alongside the main shops/market premises, allotted to traders and total side area is over and above 20,000sq.mtrs, if considered together?
ii) Whether Respondent No.1 has failed to install required number of STPs and thereby caused adverse environmental adverse effect in the premises of APMC (Respondent No.1), with the result that surrounding area and agricultural lands in the vicinity, as well as water in the wells of nearby areas are adversely affected?

iii) Whether Respondent No.1, discharged untreated water/effluents in the land of Applicant, which contaminated his well water and thereby caused loss to his agricultural crops? If yes, to what extent?
iv) What precautionary measures, are necessary to be taken by Respondent No.1 for appropriate and effectively manage affairs of the market yard in the area where auctions are held, large number of agriculturists come for night-stay, there is inadequacy of toilets, huge quantity of Tomatoes or like vegetables/fruits etc. are brought for sale, for auctioning process and there is pulp of thrown or useless or rotten Tomatoes drifted to some extent?

Re: Issue (i): The Applicant raised this issue, in order to show that entire activity carried out by the Respondent No.1, was illegal for want of appropriate EC. No such averment was made in the Writ Petition No.11221 of 2013, which was filed before the High Court. The pleadings of Applicant in that Writ Petition did not show that temporary sheds were the part and parcel of shops given to the traders of APMC. The Applicant mainly relied upon inadequacy of essential facilities like toilets, STPs, contamination of water and health hazard, caused due to pollution on account of uncontrolled waste management of Respondent No.1. The plea which was given up previously ought to be held as abandoned, in view of the provisions of Order 2, Rule 2 of the Code of Civil Procedure, 1908, because the Applicant could have taken such a plea in the earlier proceedings to which he failed to do so and did not explain as to why no such plea was taken in the course of such proceedings.

The project in question was not a building but is related to market activities pertaining to sale of agricultural produce brought by the agriculturists/farmers for sale through the agents/traders at a common place, under special provisions of an enactment called 'the Maharashtra Agricultural Produce Marking (Development and Regulation) Act, 1963'. Entry 8(b) also was irrelevant in respect of present project, because it deals with the projects and township and area development. In the present case, the project is not of development of township or development of area. The project of APMC i.e. Respondent No.1, did not fall under either of category. Issue No.1, was, therefore, answered in the Negative.

Re: Issue (ii): Affidavit of the Regional Officer of MPCB showed that water of well of the Applicant, was found contaminated due to discharge of waste effluents by Respondent by Respondent Nos.1 to 3. Perusal of the record showed that toilet facilities were disproportionately made available to the farmers, who visit the market yard. So also, there were no adequate numbers of capable STPs. The activity of temporary shed required to be erected during rainy season, for the purpose of auctioning the vegetables/fruits, was permissible. However, it did not mention that such temporary sheds can be erected for period beyond rainy seasonal period. The Respondent No.1 filed another affidavit wherein the Respondent No.1 submitted that both the STPs were now operational and further a proposal to construct a new solid waste treatment facility was approved by the Respondent No.1- Board and the approval of concerned Govt. department was expected soon for start of the work. Though certain progress of sewage treatment was observed during pendency

of the matter, the Tribunal was of the opinion that MPCB needed to conduct a special audit to assess effluent generation, STP operations, and effluent disposal arrangement, particularly land and also distribution of said work.

Considering all the aspects, issue No.(ii) was answered in the Affirmative.

Re: Issue (iii) & (iv): The present activity of the Respondent No.1 was to be regulated by MPCB, though consent management, under the Water (Prevention & Control of Pollution) Act, 1974. MPCB on the other hand, submitted that as the built up area of this project was less than 20,000sq.m, it was not covered under the consent management. However, no such policy decision or any nexus of built-up area visa-a-visa water pollution load/source, as envisaged under Ss. 25 and 26 of the Water Act, had been placed on record by the MPCB. It is necessary for MPCB in "stricto senso" to adhere to the provisions of Ss. 25 and 26 of the Water Act while regulating water polluting sources and activities.

Under these circumstances, the Application was partly allowed in the following manner:

i) The Respondent No.1, shall pay compensation of Rs.five (5) lakhs to the Applicant for deterioration of quality of his well water and remediation thereof and provide sufficient number of Toilets/Urinals at an appropriate locations for men and women, to ensure that there is no open defecation or urinals.
ii) The Respondent No.1 shall operate the STPs effectively and continuously and the treated effluent shall not be discharged outside the premises.
iii) MPCB shall take a decision regulating activities of the Respondent No.1, in view of effluent generation load in next 2 months.
iv) MPCB shall conduct environmental audit of the Respondent No.1's activities, as mentioned and issue suitable directions, in next two 2 months, in case of any shortfall or shortcomings to improve the same in a time bound manner, within 3 months from date of issuance of such directions.
vi) The Respondent No1 shall provide solid waste management and disposal plant within next 3 months.
vii) MPCB shall ensure compliance of above the directions.

Miscellaneous: Limitation
Environmental Clearance

Variya Gandabhai
Vs.
Union of India

Misc. Application No. 147/2014
In
Appeal No. 27 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Limitation, Environmental Clearance (EC), Central Effluent Treatment Plant
Decision: Application dismissed
Dated: 20th March 2015

By this Application, the Appellants, sought condonation of delay caused in filing Appeal No.27 of 2014. The Appeal had been filed on August 26th, 2014, challenging order of Environment Clearance (EC), passed by MoEF on December 16th, 2013. The project was for installation of a Central Effluent Treatment Plant (CETP) in the outskirts of Ahmedabad city, allegedly for reduction of load of already existing STP by updating and using modern technology, and to avoid pollution.

The facts of the matter were that Respondent No.6, i.e. the Project Proponent (PP) submitted an Application to MoEF for grant of EC. The Application was processed by the MoEF as per procedure laid down under the EIA Notification dated 14th September, 2006. Thereafter the impugned EC dated 16.12.2013, was granted. According to the Appellants, they were not aware of the impugned EC until they came to know regarding the same during pendency of Writ Petition bearing Writ Petition No.177 of 2014, on 12th June, 2014. According to the Appellants, they had filed the Appeal within 90 days after obtaining knowledge of EC. They submitted that they had no reason to commit delay in filing of the Appeal. They alleged that delay was unintentional, well justified and, therefore, should be condoned.

The Project Proponent (PP) alleged that the Appellants had full knowledge of the impugned EC, due to the fact that publication of grant of EC was duly made in 2 Newspapers, as required under the procedure, on January 2nd, 2014 and, therefore, limitation period of filing of Appeal had commenced much earlier. It was further submitted that when the Appellant Nos.1, 2 and 4, participated in the public hearing, they could not be allowed to say that they had no knowledge about ongoing process of public consultation and other steps of process, which could end in grant of EC and, therefore, they could have vigilantly pursued the matter. Secondly, according to learned Advocate for the Respondent No.6, the Textile Units situated at border of Narol, Ahmedabad, may start discharging effluents in river 'Sabarmati', which was likely to pollute the water if excessive effluents are not properly treated by making due arrangements of CETP.

It was well settled that knowledge of Appellants by any 3 modes like a) going through information from Website of MoEF, or b) from information gathered through Newspaper report or c) the publication made by the public authority, would be triggering point that would start running of limitation. It was noticed that the Appellants did not refer to filing of the Writ Petition in their Main Appeal and outcome of the said Writ Petition or, knowledge gathered from their Advocate during pendency of the said Writ Petition. This was significant, because the Appellant No.4 was one of the Writ Petitioner and could have gathered knowledge of the EC, as the documents were filed by the Respondent No.6, through his Advocate, during course of first hearing of the Writ Petition on 22nd May, 2014. Obviously, at least on 22nd May, 2014, the Appellant No.4, could have attributed due knowledge of impugned EC which he could have shared with other Appellants.

Thus, it was clear that the Appellants first came to know about the impugned EC during course of hearing of the Writ Petition No.177 of 2014 by the Advocate of Respondent No.6, on 22nd May, 2014. It may be gathered that being a party to the said Writ Petition, the Appellant No.4, could have knowledge of the said EC on 22nd May, 2014 and, therefore, limitation triggered on that date for all the Appellants, who got knowledge of the EC, being together in the instant action that being the first triggering point, the Appeal ought to have been filed within thirty 30 days from 22nd May, 2014. The period of thirty 30 days elapsed on 21st June, 2014.

According to the Tribunal, once the limitation triggers from 22nd May, 2014, it could not be arrested and after period of thirty 30 days, the Appellants could not seek extension, as a matter of right, unless there was any explanation to indicate the existence of 'sufficient cause' for the delay. That apart, even assuming that first point of knowledge to the Appellants triggered from date of order passed by the High Court of Gujarat on 22nd May, 2014, then also period of thirty 30 days, was over as on 21st June, 2014, and, hence, the Appeal was barred by limitation. Even assuming that limitation started when the EC was put on Website on 23rd May, 2014, then also period of limitation of thirty 30 days was over on 22nd June, 2014 and period of ninety 90 days was over on 21st August, 2014.

The Application was, therefore, dismissed. No costs.

Waste Management
CETP

M/s Standard Colours
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 93 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Common Effluent Treatment Plant (CETP), monitoring committee
Decision: Application disposed of with directions
Dated: 23rd March 2015

The relief claimed in this application which was filed under Section 14 of the NGT Act was to direct the 1st respondent Tamil Nadu Pollution Control Board not to insist the applicant to join the trial run undertaken by the 4th respondent.

On earlier occasion Common Effluent Treatment Plant (CETP) had made a trial run and that there was a failure in it. In that regard, the CETP spent abnormally huge amount depriving the business activities of its members including the applicant. It was also noted that there was no dispute that the High Court had constituted a Monitoring Committee directing its members along with the officers of the TNPCB to monitor the functioning of the CETP. It was clear that as per the directions issued by the High Court of Madras, on earlier occasion, when a trial run was done, the Committee along with the officers of the Board made an inspection and a report filed before the High Court stating that zero discharge level had not been achieved by the CETP. Now after enhancing the methods a further trial was sought to be done by the CETP. The learned counsel for the applicant submitted that the proposed further trial run was being carried on for quite a long time and nothing had come out fruitfully. The applicant has no objection for the Monitoring Committee as well as the officers of the Board to inspect properly.

The Tribunal was of the opinion that a time frame must be made for the officers of the Board as well as the Monitoring Committee to complete the process of trial run of the CETP so as to enable the Board to arrive at an appropriate conclusion, to which the applicant had no objection therefore.

Thus the following directions were passed:

(i) The CEPT shall make its trial run for a period of 3 months from today.
(ii) During this period, an official nominated by the Board along with the Monitoring Committee shall make periodic inspection following the appropriate mechanism.
(iii) After such inspection made within the period of 3 months, a report shall be submitted by the members and the officers of the Board to the Chairman, Tamil Nadu Pollution Control Board which shall be done within 15 days after the expiry of 3 months.

(iv) The Chairman of the Board thereafter shall pass appropriate order as per law expeditiously, in any event within a period of 15 days.

With the above directions, the application stood disposed. No Cost

Forum for Prevention of Environmental and Sound Pollution
Vs.
State of Kerala & Ors.

Application No. 140 of 2013 (SZ) (THC)
(W.P. (C) No. 9166 of 2010, High Court of Kerala)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Noise pollution, Mosque
Decision: Application disposed of
Dated: 23rd March 2015

The 3rd and 4th respondents appearing in person tendered their unconditional apology for non-appearance on earlier occasions before this Tribunal. The learned counsel for the applicant submitted that the High Court of Kerala passed an order in W.P. No. 8254 of 2015 (F) dated 20.3.2015 granting an interim order against the said party not to cause noise pollution and use the loud-speaker without obtaining necessary permission from the Competent Authority.

The issue involved in this case was that the 3rd respondent should not use the loud-speaker in the Mosque. Under the Noise Pollution (Regulation and Control) Rules, 2000 framed as per the provisions of the Environmental Protection Act, 1986 limitations are prescribed for loud-speaker. It was clear that no action had been taken for unscrupulous using of loud speaker and the consequent noise pollution. It was made clear in the order that the applicant should approach this Tribunal as well the High Court of Kerala, if there is any violation.

It was made clear that the undertaking filed by the respondent shall be in clear terms that the respondent shall not use loud-speaker without getting permission from the Competent Authority. Even otherwise, he shall not cross the limit prescribed by the law. Also the 2nd respondent was to have a watch over the 3rd and 4th respondents and take necessary action if and when the said respondent did not follow the rules as well as the order of the Tribunal and also take action under Section 19 of the Environment Protection Act, 1986.

With the above observations, both the applications stood disposed of.

CRZ
Limitation

The Goa Foundation
Vs.
Goa Coastal Zone Management Authority

Appeal No. 31 of 2014

Coram: Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Limitation, CRZ, construction
Decision: Appeal dismissed
Dated: 27th March 2015

By this order, preliminary objection raised in respect of limitation for filing of the appeal, was being considered. The Appellant challenged impugned order of GCZMA (Respondent No.1) issued on 22nd Oct., 2013 and also urged for restoration of beach at Querim to its original condition by Respondent No.2.

The Appellant's case was that, the work of bridge in question fell within the CRZ-I as per the approved Coastal Zone Management Plan and CRZ Notification. Respondent No.2 had not obtained approval of the MoEF as required under the CRZ notification, 2011. The permission granted by Respondent No.1 for construction work was illegal, because the construction work fell within the CRZ-I area and in violation of procedure laid down in CRZ Notification. The bridge was being constructed without prescribed study of Environmental impact and that too, in the No Development Zone (NDZ) Querim across the river which is eco sensitive area. The northern side access in Tiracoal village is Forest land, for which there was no F.C. diversion order sought from Forest Conservative authority as per the Forest Conservation Act, 1980. The Appellant alleged that, though the Application is not strictly within the time, set out in the NGT Act, it is still within time, from the knowledge of the work, which had commenced at the spot. So, the Appellant sought condonation of delay in filing of the appeal.

Respondent Nos. 1 and2 raised preliminary objections, on the ground that, the appeal was barred by limitation and was liable to be dismissed, because, it was filed after 30 days and therefore, did not come within the ambit of Section 16 of NGT Act. The Appellant made a complaint dated July 14th, 2014 to GCZMA which shows that, on July 13th 2014, the construction of bridge across the Tiracoal River was noticed by him. He, also stated in the complaint that, no permission can be given for such development in NDZ, thus, the Appellant was well aware that the area was within NDZ and the work was being done in such area before July 13th, 2014.
It was argued on behalf of the Appellant that, first date of knowledge shall be the date where from the knowledge of illegal order be considered and therefore, it was well within time. According to the Learned Advocate, the Appellant came to know, only on 13th June 2014, that the construction was started without approval of the competent authority, and therefore, the complaint was lodged on next day. Thus, July 14th 2014 was the date which

triggered limitation and as such, the appeal was within limitation, since it was filed on October 13th 2014. From the record, it appeared that the Appellant submitted an Application of NOC issued by GCZMA, NOC issued by Captain of Port and Site Inspection under the RTI Act, 2005. This Application was submitted on August 6th 2014. The applicant was directed to collect the copies on payment of required fees. It appears that, all the information was received by him on 11-8-2014, after collecting the copies. Obviously, the Appellant came to know about the impugned order on 11-8-2014, even assuming that, the copy was received somewhat late, though he came to know about earlier, yet date of knowledge of the Appellant was, somewhere in midst of August,2014. Filing of the appeal in the 2nd week of October, 2014, i.e. about one year after the knowledge, was outside the limitation, provided Under Section 16 of the NGT Act.

According to the Appellant, technical issue of limitation should not detain the Tribunal from considering of the appeal, which could be termed as an application, because the Appellant had also sought restoration of the land at the beach of Querim to its original condition, which was a relief, that fell within the provision of Section 14(1) r/w Section 15 & 18 of NGT Act. The contentions of Learned Advocate was that, the limitation of 6 months was applicable in case of Application filed U/Sc.14(1) r/w Section 14(3) of NGT Act from date of knowledge, even if the present Application was considered as an application, instead of an appeal. So, it was argued that the application/appeal was not barred by limitation.

So far as the starting point of limitation for the purpose of appeal was concerned, U/Sc.16 of NGT Act, 2010, the limitation triggers when the Appellant can be attributed knowledge in relation to the impugned order, at first time. The Appellant had come up with a case that for the first time the activity of the construction was noted on 19-8-2014.He received reply from GSPCB on 28th Aug.2014. He received reply dated 16th Sept.2014 from GSIDC.

Chief bone of contention advanced by learned Advocate General appearing for the State of Goa was that, the Appellant had knowledge of the project in question since very beginning when the issue of Tiracoal Bridge and other bridges were discussed during a meeting held on 2-1-2012 between the Chief Minister and other officials. He pointed out that, the construction of Tiracoal Bridge finds mention in the Chief Minister's speech of May of 2012. Thus, the project was in contemplation of State of Goa since 2012 and this was known fact to the Appellant and all the concerned members of nearby area.

The Affidavit of Member Secretary of GCZMA showed that the construction of bridge was exempted under the EIA Notification from procedure to seek permission. Moreover, the CRZ Notification gives authority to the GCZMA and the Notification itself exempts the construction activities of the bridge from the CRZ Clearance. The "exemption" was applicable to project in question, if it is so looked from the stand point of view of CRZ Notification. The regularity authority prima-facie has the powers to deny the permission if the Application does not satisfy parameters required for a particular regulations, in the present case CRZ norms or the EIA norms.

There can be no doubt that, the delay can be condoned as provided under Section 16, if "Sufficient Cause" is shown by the Appellant and the extension of such period can be up to 60 days further." Thus, there is outer limit of 90 days provided by Section 16 of NGT Act, for filing of the appeal. Unfortunately, in the present appeal, The Appellant has not given any "Sufficient cause" for the delay.

Alternative contentions of Learned Advocate of Appellant were that the Application also sought restoration of land and therefore, it would come within the ambit of Section 14 (1) of the NGT Act, 2010. The Appellant did not raise any "Substantial question" relating to enforcement of any legal right relating to environment as contemplated under Sub Section (1) of Section 14 in the appeal-memo. In the present case, assuming that this Tribunal has jurisdiction to decide the civil cases, where the dispute arises, in regard to implementation of enactment specified in Schedule-I, then also the period of limitation is of 6 months from the date on which the cause of action for such dispute first arose.

The simple case of the applicant was that, the impugned order passed by the GCZMA was illegal, incorrect and improper. The Appellant alleged that, the decision making authority is MOEF and not the GCZMA and therefore, the impugned order is illegal, which is therefore impugned on ground of basic legality. It was for such reasons, including violations of EIA notification and conditions of CRZ that the impugned work of the bridge in question was under challenge in the appeal. As stated before, even if, the response to the RTI Application is considered as triggering point and then also the appeal under Section 16 of the NGT Act was barred by limitation.

In the result, the appeal was barred by limitation and was dismissed. No costs. Considering the fact that prima facie there appeared certain material, which indicated violation of CRZ, the Applicant could file Application or any petition as may be permissible under the Law to challenge the impugned project/ CRZ order non-compliance and for that 2 weeks the Status quo was continued.

Shri. A. Gothandaraman
Vs.
Commissioner, Nagercoil Municipality

Application Nos. 173 and 175 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Sewage pumping system, construction, environmental degradation, Environmental Clearance
Decision: Applications disposed of with directions
Dated: 17th March 2015

The application was filed seeking directions to the respondent authorities-
(i) to refrain from constructing a sewage pumping station (SPS) in Vadiveeswaram, Nagercoil, to remedy the damage already caused to the site by taking suitable action; and
(ii) to refrain from constructing the sewage treatment plant (STP) Nagercoil Village, Agastheeswaram Taluk, Nagercoil.
In the scheme then present, the contour permitted flow of the sewage by gravitation and no sub pumping station was required. Hence, the SPS was selected at low level area of Paraikkal Madatheru. During the excavation for the suction well in the pumping station, the seepage from the nearby odai intruded.

In view of the status quo order passed by the Tribunal, funds could not be released by the local body and the work could not be completed before the target date. The TNPCB had given No Objection Certificate (NOC) for the construction of STP and issued CFE under Water (Prevention and Control of Pollution) Act, 1971 (Water Act) and Air (Prevention and Control of Pollution) Act, 1984 (Air Act) vide proceedings dated 21.08.2013.

Hence, the following questions were formulated for consideration:
In Application No. 173 of 2013 (SZ)-
1. Whether the applicant is entitled for a direction to the respondent to refrain from constructing a SPS at 420/51 in Vadiveeswaram, Nagercoil.
2. Whether the applicant is entitled for a direction to the respondents to remedy the damage already caused to the site by taking suitable remedial measures.
3. Whether the applicant is entitled for a direction to the respondents to find an alternative site for the setting up of the SPS in accordance with the governing laws.

In Application No. 175 of 2013 (SZ)-
1. Whether the applicant is entitled for a direction to the respondent to refrain from constructing a STP at M7/9-2 in Nagercoil, Agastheeswaran Taluk, Nagercoil.
2. Whether the applicant is entitled for a direction to the respondents to remedy the damage already caused to the site by taking suitable remedial measures.
3. Whether the applicant is entitled for a direction to the respondents to find an alternative site for the setting up of the STP by following siting criteria issued by the TNPCB.

Taking note of the situation, the TWAD Board, the 3rd and 4th respondents herein were directed to take up the investigation work for the preparation of a detailed project report for providing underground sewage scheme for the Nagercoil municipality. Accordingly, a project report was prepared on different aspects and was submitted before the Government

of Tamil Nadu. In pursuance of the said project report, the proposal for Phase-I got administrative approval by the State government on dt. 30.03.2012 for Rs.76.04 crore.

While the matter stood thus, the instant applications were filed before the Tribunal against the establishment of STP and SPS. While ordering the status quo, it was made clear by an interim order dated 22.08.2013 that there was no impediment for the TNPCB in deciding the applications filed by the applicant on merits and in accordance with the law. Pursuant to the interim order of the Tribunal, the 5th respondent, DEE concerned, made his recommendations putting forth additional conditions to be made and after passing a resolution, the consent was given by the TNPCB for the establishment of STP under Water Act, 1974 and Air Act, 1981 on 22.08.2013.

After hearing the submissions made by both sides, the Tribunal was of the considered view that the judgment made by the Principal Bench, NGT in Application No. 124 of 2013 in the matter of Kehar Singh, Haryana vs. State of Haryana would squarely apply to the present factual position. No reason was noticed by the Tribunal to interfere with the selection process of the sites for the establishment of both the SPS and STP and hence, no relief could be granted to the applicant in that regard. Further, no direction was issued to the respondents either for restoration of site or to find alternate sites for both the SPS and STP.

Tribunal directed the 1st respondent, Municipality to make an application for the grant of Environmental Clearance (EC) for the project in question from the 7th respondent, SEIAA. Ordinarily, the CFE has to be applied for and obtained and only after obtaining the EC from the competent authority which in the instant case is SEIAA. Though the CFE has already been obtained by the 1st respondent, Municipality, there is no impediment for making necessary application for an EC from the 7th respondent, SEIAA at the earliest but not later than one month from today. The 7th respondent, SEIAA is directed to consider and complete the exercise for the grant of EC and pass necessary orders in accordance with the law within a period of 2 months therefrom.

During the pendency of the proceedings before the Tribunal, the 3rd and 4th respondents who were entrusted with the establishment of the project of SPS, STP and conveyance network had carried out in part the laying of conveyance pipeline network and manholes wherever required along with protective measures such as providing bunding. In view of the appraisal of the facts and circumstances, the 3rd and 4th respondents were permitted to complete the civil works related to the pipeline networks, manholes and related appurtenances. It was also made clear that the 3rd and 4th respondents shall not commence any civil works pertaining to the SPS and STS till such time the EC was obtained from the 7 th respondent, SEIAA. The 1st respondent was directed to place the EC if and when obtained before the 6th respondent, TNPCB who in turn shall review the CFE already granted in favour of the 3rd and 4th respondents and if necessary, add additional conditions as required from the point of view of environment protection.

Considering the enormous environmental and health benefits that would be bestowed on the region in question on completion of construction and effective functioning of the STP, minor physical damage that might occur is insignificant and deserves to be ignored. Further, no necessity would arise to restrict the respondent from either construction and no direction can be issued to the respondents either for restoration of any damage or to direct the respondents to find an alternate site either for SPS or STP.

With the above observations and directions, the applications were disposed of with no order as to costs.

Miscellaneous

Mr. L. Michael
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 133 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Saw mill, injunction, consent to operate
Decision: Application disposed of
Dated: 3rd March 2015

The application was filed pursuant to the order of transfer in Writ Petition No.10973 of 2012 by High Court of Madras in Madurai Bench. The application was filed seeking the following directions:

- To dispense with the production of the original of the impugned proceedings imposing additional conditions for running a saw mill by the 5th respondent.
- To grant an order of interim injunction restraining the respondents 1 to 4, 6 and 7 from permitting or enabling the 5th respondent from starting or running a saw mill.
- To issue a direction in the nature of writ of Certiorari calling for the records relating to the impugned proceedings issued by the 8th respondent, amended by proceedings imposing additional conditions for running a saw mill by the 5th respondent and quash the same.

The application was disposed of recording the proceedings of the 1st respondent that consent was given on 16.12.2009 with modified conditions. Thereafter, a number of representations were given in respect of non-compliance of the conditions.

Pending the proceedings, directions were issued to the concerned District Environmental Engineer, Tamil Nadu Pollution Control Board (Board) to carry on an inspection and file the report. It was evident from the submissions that the 5th respondent's Saw Mill was being carried on vide the permission given by the DFO dated 28th June, 2013 to carry on the wood based industry and also the Consent to Operate dated 17.2.2015.

The Tribunal disposed of the application with a liberty to the applicant to approach the Tribunal in future. It was also made clear that the Board shall monitor the compliance of the conditions attached to the Consent to Operate dated 17.2.2015. No costs.

Shri. C Palani
Vs.
District Collector, Vellore & Ors.

Application No. 116 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Environmental pollution, iron melting unit, consent to establish
Decision: Application disposed of with directions
Dated: 3rd March 2015

The application was filed seeking direction regarding the establishment of an iron-melting unit without obtaining permission and commencement of its operation in causing all kinds of environmental pollution.

Pending the application, an inspection was made by the 2nd respondent, the District Environmental Engineer (DEE), wherein it was noticed that the 5th respondent should have obtained necessary Consent both under the Water Act and Air Act, and instead it had commenced the Unit without obtaining the same in contravention of law. Hence, the Unit was closed on 13.12.2014.

The DEE concerned was directed to ensure that the 6th respondent did not carry on the above process of iron melting without obtaining necessary Consent to Establish and Consent to Operate, as well as any license as required by law. There was no impediment for the 6th respondent to carry on the above iron melting unit after obtaining the Consent to Establish and Consent to Operate.

With the above observation and direction, the application was disposed of with no order as to costs.

M/s. Janajagruthi Samiti
Vs.
Environment and Ecology Dept.

Application No. 156 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Appellate authority, constitute
Decision: Application disposed of
Dated: 3rd March 2015

ORDER

The applicant sought the following relief:-

"Direct respondents 1 and 2 to forthwith constitute and make functional the appellate authority as mandated by the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 within a time frame fixed by this Hon'ble Tribunal." (emphasis supplied)

The counsel for the 3rd respondent placed a copy of the Notification indicating the constitution of the Appellate Authority, Karnataka State Pollution Control. He also made a submission that the constituted Appellate Authority was functional. Hence, the relief sought for did not require any consideration by the Tribunal.

Accordingly the application was disposed of. No cost.

Miscellaneous: Consent to Establish

M/s. Dhana Udhayam Crisher
Vs.
TNPCB & Anr.

Appeal No. 16 of 2015 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Consent to Establish, consent to operate, renewal
Decision: Appeal dismissed
Dated: 9th March 2015

The application was filed seeking direction against the order of the respondent No.1, i.e. Tamil Nadu Pollution Control Board dated 05.02.2015. The appellant made an application for Consent to Operate under provisions of Air Act and Water Act on 24.12.2014. After an inspection on 21.1.2015, the impugned order was made rejecting the application. The only contention put forth by the appellant was that when the application was made for Consent to Operate, all other parameters were satisfied. Under such circumstances, there could not have been any impediment for the Board to grant Consent to Operate. But on the contrary, the same was rejected. The appellant further added that the Consent to Establish was not at all necessary at a time when an application for Consent to Operate was in the hands of the Board for consideration. Since it was only technical, law did not make the same mandatory.

The Tribunal was of the view that in a given case, a party who did not have a valid Consent to Establish would not entitled to have Consent to Operate. Hence, the appellant did not make out a case for consideration by the Tribunal.

Thereafter, the counsel for the appellant put forth an appeal that the appellant may be permitted to make a fresh application for renewal of Consent to Establish before the Board. It was made clear that the above order would not stand in the way of the authorities for making consideration of the application. Accordingly, the appeal was dismissed with no order as to cost.

Miscellaneous: Consent to Establish

M/s. Swadeshi Granites
Vs.
TNPCB

Application No. 134 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Consent to operate, consent to establish, renewal
Decision: Application disposed of with direction
Dated: 9th March 2015

ORDER

The applicant sought for a direction to the 1st respondent, i.e. the Tamil Nadu Pollution Control Board (Board) to consider his application dated 25.03.2014 for grant of Consent to Operate in respect of the manufacture of Granite Blocks in Thalamalai Village, Sathyamangalam Taluk. After hearing the submissions, the only objection raised by the respondent Board was that the period covered under an order given in favour of the applicant for Consent to Establish had come to an end already and hence the present application seeking Consent to Operate could not be entertained. Accordingly, the counsel for the applicant placed a copy of the application seeking renewal of Consent to Establish made before the 1st respondent Board. Hence the application had to be disposed of with a direction to the 1st respondent Board to consider the application of the applicant seeking renewal of Consent to Establish in accordance with law within a period of two months. Thereafter, if and when the renewal of Consent to Establish was given, there would not be any impediment for the applicant to make an application for Consent to Operate the unit. With the above direction, the application was disposed of. No cost.

Miscellaneous

M/s. JS Aqua
Vs.
TNPCB & Ors.

Application No. 63/2014 (SZ)

Coram: Justice M. Chockalingam, Prof Dr. R. Nagendran
Keywords: Consent to operate, consent to establish, restoration of electricity
Decision: Application disposed of with direction
Dated: 9th March 2015

ORDER

The Applicant submitted that originally the applicant's Unit was situated in the "Over Extraction area" and the application seeking Consent to Establish and to Operate was pending before the Tamil Nadu Pollution Control Board (Board). The applicant filed an application No. 271 of 2014 which was disposed on 3rd November, 2014 with a direction to the Board to consider the application and pass suitable and appropriate orders thereon. This Application No. 63 of 2014 was filed seeking restoration of electricity for the applicant's Unit. Pending this application, the application filed by the applicant's Unit for granting of Consent to Establish and to Operate was ordered pursuant to the orders of the Tribunal on 9.12.2014. It was brought to the notice of the Tribunal that the water was not being transported from the safe area to the applicant's Unit for which the licence was also given by the Public Works Department (PWD). Under the circumstances, the counsel for the applicant submitted that the relief sought for was not pressed and hence nothing survived in this application. Accordingly, the statement was recorded and the application was disposed of. No cost.

PS Vajiravel
Vs.
TNPCB & Ors.

Appeal No. 03 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: closure order, dyeing unit, Water Act, Air Act, consent order, electric supply
Decision: Appeal allowed
Dated: 26th March 2015

The application was filed seeking direction regarding vacation of land during the subsistence of a valid lease. The land on which the ETP was constructed was taken on lease, for that purpose, in the year 1999 by the appellant from, Mr. Shanmugham, who secretly sold the said land in the year 2007 to one Mr. Prabhu, son of Mrs. Mallika Paramasivam, an influential politician and present Mayor of Erode. Immediately after the said sale, even during the subsistence of valid lease, the appellant was asked to vacate the land in use immediately. Since the appellant had not agreed to the same, he was repeatedly put to various types of harassment at the instance of the said purchasers, to give up his possession of the land which was leased out.

The Tribunal, after considering the entire facts and circumstances of the case and records, set aside the said order of closure vide its order dated 28.02.2013 and directed the respondents to issue renewal letter of consent to operate and give electricity supply. However, during an inspection on 20.11.2014 in the night hours, the appellant unit was under operation and many defects were noticed. The unit was under operation, violating the orders of the High Court of Madras, issued in W.P.Nos.5494/98 and 30153/03 and also violated the conditions attached to the Consent Order issued under the Water Act, 1974. In view of the observations made during night inspection on 20.11.2014 and non-compliance of the High Court orders, the appellant unit had been issued with closure directions and disconnection of power supply as per the TNPCB's proceedings, which was the subject matter challenged in this application.

It was conceded by the respondent, TNPCB that the consent order was renewed for a period up to 31.03.2014 and thereafter renewed up to 30.06.2015 with certain conditions as found therein to be complied with.

The Tribunal observed that a perusal of the impugned order would be indicative of the fact that after the inspection of the unit, there was nothing to show that any copy of the inspection report was served upon the appellant or any show cause notice was issued calling for an explanation by giving an opportunity of being heard. Thus, it was a case of glaring violation of the principles of natural justice. When a party enjoys a consent order, even assuming that violation of the consent order is noticed, a show cause notice should have been served upon the person calling for an explanation by giving him an opportunity; and if the authorities of the TNPCB are not satisfied with the explanation offered, there would be no impediment in law to pass an order.

Therefore, the Tribunal was of the considered opinion that it was sufficient to set aside the impugned order and accordingly it was set aside. While the impugned order was set aside,

it was made clear that since it was a case of alleged violation of the conditions attached to the Consent Order and also the orders of the High Court of Madras, the authorities of the TNPCB could make an inspection afresh by following strictly the procedures and pass suitable orders in accordance with law. In view of the above orders, the 4th and 5th respondents were directed to restore the electric supply to the appellant's unit on or before 31.03.2015.

The appeal was allowed accordingly with no order as to cost.

Environmental Clearance
Limitation
Plural remedies

V. Sundar
Vs.
Union of India & Ors.

Appeal No. 95 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Environmental Clearance, pollution, limitation, plural remedies
Decision: Appeal dismissed
Dated: 25th March 2015

The appeal application was filed challenging the grant of Environmental Clearance (EC) to the 10th respondent, namely, M/s. Vicoans Infrastructure and Environmental Engineering Private Ltd., Raja Annamalipuram, Chennai by the 3rd respondent, i.e. State Level Environment Impact Assessment Authority (SEIAA), Chennai dated 15.07.2014 for construction of a building measuring 43,755.90 sq.m of the total built up area at D.No. 19, Lattice Bridge Road, Adyar, Chennai.

In the year 2004, the appellant and other tenants of the property learnt that the said property along with the adjacent property of Mrs. Meera Bai Dawson at No.19, Lattice Bridge Road was sought to be illegally grabbed by certain third parties through a Bank auction in enforcement of a mortgage allegedly created with Global Trust Bank, later amalgamated with Oriental Bank of Commerce. It was successfully thwarted by the Welfare Association through a Writ Petition filed in the Madras High Court under W.P. No.17736 of 2004, and the sale certificate issued in 2002 was set aside by the High Court on 21.03.2005 as illegal. The appellant filed C.S.No.270 of 2012 before the Madras High Court, seeking perpetual injunction, restraining respondent Nos. 10 and 11 herein from in any manner interfering with the appellant's peaceful possession and enjoyment of the property bearing Door No.15, Lattice Bridge Road. While the respondents had accepted the partial relief in favour of the appellant, the appellant preferred an appeal before a Division Bench of the Madras High Court as against the partial rejection of relief sought for by him and the same was yet to be listed.

In addition to the above, the construction of building undertaken by respondent Nos.10 and 11 in the Subject Site was in serious violation of various environmental laws. For the purpose of constructing the building on the Subject Site, respondent Nos.10 and 11 had been harming the environment around the property bearing Door No.15, Lattice Bridge Road which was in the possession of the appellant, with the aid and assistance of the respondents 4, 5, 7 and 8 herein. That apart, respondent Nos. 10 and 11 had been actively proceeding with the construction of the building comprising of about 43,755.90 sq.m of built up area on the Subject Site in brazen violation of the Environment Impact Assessment Notification dated 14.09.2006 issued by the 1st respondent (EIA Notification, 2006), presumably with the aid and assistance of the respondents Nos.3 and 6 herein.

The State Level Expert Appraisal Committee ("SEAC") had approved and/or recommended the grant of the EC to the project of the 10th respondent without proper appraisal and without assigning any reasons and without following the procedure as

contemplated under EIA Notification, 2006. The SEAC failed to apply their mind while undertaking the appraisal of the project of the 10th respondent and their recommendation for grant of EC was in clear violation of the principles governing the administrative decision, i.e., duty to give reasons and application of mind to relevant consideration. Though the SEAC was clothed with the power to undertake site visits/inspection, the SEAC has failed to exercise the same.

At this juncture, the appellant pressed for an interim stay of the impugned EC, Office Memorandum of the Ministry of Environment and Forests (MoEF), New Delhi dated 12.12.2012 and also the grant of interim injunction restraining the 10th and 11th respondents from in any manner proceeding with the construction of the building and for other interim reliefs. The same was opposed by the 10th and 11th respondents on the basis that the appeal itself was not maintainable since it was barred by Limitation. The appellant had asked for plural remedies on two different causes of action and thus the appeal had to be dismissed in view of the bar under rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011 (NGT Rules, 2011). Hence, at that stage the following two questions were formulated for consideration by the Tribunal:

(1) Whether the appeal is barred since it is filed beyond the period of limitation as prescribed by the NGT Act, 2010 and
(2) Whether the appeal is liable to be dismissed in view of the joinder of two different causes of action seeking plural remedies.

Without any hesitation, it had to be held that the appellant had filed the appeal beyond the time prescribed under the NGT Act, 2010. Equally, on the question of joinder of causes of action, the Tribunal had to necessarily agree with the legal plea put forth by the counsel for the 10th and 11th respondents. The Western Zone Bench of the NGT at Pune had an occasion to consider the question of maintainability of the application in a composite form of application-cum-appeal filed in view of the availability of the plural remedies in accordance with rule 14 of NGT Rules, 2011 in *Vikas K. Tripathi Mumbai Vs. The Secretary, MoEF reported in 2014 ALL(I) NGT Reporter (3) (Pune) 95*.

In view of the above, the Tribunal held that the appellant on two distinct and independent causes of action could not maintain the present appeal. The appeal was dismissed as not maintainable on the grounds of limitation and also on joinder of causes of action.

Miscellaneous

Mathur Grama Kudiyiruppor Podu Nala Sangam
Vs.
District Collector, Thiruvallur

Application No. 283 of 2013 (SZ)

Corum: M. Chockalingam, P.S. Rao
Keywords: Extraction of Water, illegal, bore well, inspection
Decision: Disposed of with direction
Dated: 31st March 2015

This application was filed seeking relief regarding extraction of ground water for commercial purposes done by respondents 3, 5, 6 and 8; and against the illegally dug bore wells in the villages of Mathaur and Manjambakkam done by the 3rd to 6th respondents, where they were also transporting the water outside the area. Pursuant to the representations made by the villagers, the concerned Revenue Divisional Officer (RDO), Ambattur made an inspection of the Units in question and sealed them. It was made clear that the action of RDO was not taken on the grounds urged by the applicant herein but on other grounds in violation of law.

The respondents, against whom the allegations of over extraction of water were made in this application, stated that it was true that they got the bore wells but they never extracted water therefrom, and they had been carrying on their Units in view of the interim order granted in their favour. Furthermore, they stated that they had been fetching the water from an outside source by transportation, and thus the case of the applicant that there was extraction of water was unfounded and hence the application had to be dismissed.

The Tribunal issued a direction to the District Environmental Engineer (DEE) concerned to make inspection of the aforesaid units. The concerned DEE filed a report which clearly indicated that the Units of respondent no.'s 3, 5, 6 and 8, who had been carrying on the water packaging business, got water from an outside source by transportation and hence the ground on which the application was brought forth seemed to be unfounded.

The District Environmental Engineer, Tamil Nadu Pollution Control Board and the concerned Chief Engineer, PWD, Groundwater wing, Chennai were directed to monitor the above Water packaging units to ensure that they shall not extract any water from the bore wells, which were kept under seal. It was also made clear that the action initiated by the RDO on some other grounds in accordance with law would not in any way be affected by the above order.

With the above direction, the application was disposed of with no order as to cost.

Pollution
Restitution

Mrs. Harubai Jagganath Sable & Ors.
Vs.
Shradha Stone Crusher & Ors.

Application No.41 of 2014(WZ)

Coram: V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Mining, excavation, stone crusher, environmental degradation, restitution
Decision: Application allowed (with costs)
Dated: 27th March 2015

The application was filed since Respondent No.2 had extracted excessive minor minerals from the land where he had not been given permission for excavation by the District Collector, Pune. Excessive stone mining by Respondent No. 2 had caused environmental degradation and adverse impact on the agricultural land.

The Joint Director of MPCB, Mumbai had issued a consent letter to Respondent No.1 at subsequent date, in spite of illegalities noticed. The emission standard and various norms had been breached by Respondent No.1, i.e. Shradha Stone Crusher. Not only did Respondent Nos.1 and 2 extract excessive minor minerals, mining material but they had also caused serious environmental damage, including violations of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981.

The respondents submitted that they did not excavate more minor minerals than the permission granted to them. They submitted that the order dated 26.9.2014, passed by the Tehsildar Haveli, went against the principles of natural justice.

The District Mining Officer (DMO) stated that Respondent No. 2 had extracted excessive minor mineral material and caused environmental damage to the area in question. His further contention was that stone crusher was operated without taking due care.

The Tribunal allowed the Application and directed that the impugned order of granting consent to operate the stone crusher by Respondent No.1 shall be revoked/ cancelled immediately, which could be reconsidered only after provision of necessary air pollution control arrangements by the concerned Regional Officer of the MPCB. Further, the Tribunal directed that amount of Rs.2 lakhs be recovered from M/s Shradha Stone Crusher (Respondent No.1), through the operator i.e. Respondent Nos.1 and 2 by the Collector, Pune, within period of four (4) months for remedial measures, for restitution like filling up the ditch and afforestation/plantation etc. Apart from that M/s Shradha Stone Crusher shall pay an amount of Rs.20,000/- (Rs. Twenty thousand) as costs of litigation to the Applicants. Thus, the Application was partly allowed and accordingly disposed of with cost.

Miscellaneous

Sarang Yadwadkar & Ors.
Vs.
State of Maharashtra

Appeal No. 25 of 2014(WZ)

Coram: V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Govt. Resolution, flood, irrigation, RRZ Policy, precautionary principle
Decision: Disposed of with direction
Date: 27th March 2015

According to the applicant, by Govt. Resolution (GR) dated 2nd March, 2015, a previous Resolution dated 8.8.2014 stood amended and the ambiguity/vagueness regarding certain words which gave leverage for construction of any building or like activity within the area, near embankment of the River and implementation of RRZ policy could have been done, was claimed to be removed. Hence, this application was filed by the applicant. The GR dated 2nd March 2015 showed that the 'blue line' had to be drawn by the Irrigation Department after a demand was received from the Collector of any other department in the city/Taluka/village area, where it was found that there was a possibility of danger of flood like situation near the river zone.

It was determined that the GR itself showed that purpose of the Resolution dated 2nd March, 2015, was to ensure that 'blue line' needed to be determined and drawn for the purpose of avoiding possible damage of flood and possibility of illegal construction within No Development Zone (NDZ) area. Thus, it was manifest that GR itself was issued with an intention to avoid any kind of environmental damage, as a result of flood in the flood prone area. In other words, it was intention of the State Govt. to adopt the 'Precautionary Principle' in this regard.

Having regard to purposive interpretation of GR dated 2nd March, 2015, the Tribunal was inclined to give following directions:

- In all areas where there is reportedly excessive raining and where there is probability of endangering human life or properties, due to floods caused by the rains, the Irrigation Department on its own, shall prepare DPR of the cities/villages and other places prone to floods.
- The Irrigation Department may call for information by email from all the Collector offices, immediately, which can be collected within two (2) weeks from all the districts, particularly situated on the coastal stretches where rains are likely to occur before early Monsoon, in comparison that of other districts and thereafter from other collectorates.
- The Irrigation Department, on its own, shall identify flood prone areas, including the cities like Pune, Mumbai, Lonawala, Wai, Sangli, Karhad, Nashik, Nanded etc. whichever are known due to peculiarity of heavy river flows, the stock of water and population, where the bank of river, including old constructions adjoining to river, which were constructed much earlier to the GR.
- The Geo-mapping of such rivers, which are possibly likely to endanger environment due to probability of causing floods, shall be carried out within reasonable period, through authentic agency, but shall not detain the Irrigation department from completing the work of preparing DPR on priority basis, where the city area,

Talukas and the places are already known or commonly identified as notorious for being probable to cause environmental damage due to floods from drawing of further line and preparing DPR in this regard.

- The Authenticate sketch of such 'blue line' and DDPR, shall be submitted to the Divisional Commissioner of each region, The DPR and 'blue line' shall be prepared within period of twelve (12) weeks' hereafter and be indicated at the website of Govt. Environment Department / Irrigation Department.

With above directions, the Appeal was disposed of with order as to costs.

APRIL

CRZ

Quilon Education Trust
Vs
State of Kerala and Ors.

Application No. 262 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Coastal Zone Management Plan, Coastal Regulation Zone II (CRZ II), public hearing
Decision: Application disposed of
Dated: 1st April 2015

This Application was filed by the Applicant with the prayer that the Tribunal directs the Respondents to prepare a new Coastal Zone Management plan in respect of the land in question in Adichanellore Village, Kerala state; categorize the submerged land and its nearby areas under Coastal Regulation Zone II (areas close to the shoreline and falling within municipal limits) and send the same for approval from the Ministry of Environment and Forest (MoEF).

The counsel appearing for MoEF clearly stated that the Ministry had not received any coastal zone management plan from the Coastal Zone Management Authority as regards the land in question and that as soon as such draft application is received, the proceedings under the Coastal Regulation Zone Notification would be followed including the public hearing prior to the issuance of the final notification.
The Tribunal accepted the fact that the application was premature given that no draft notification regarding the plan was sent to MoEF for approval but also ordered that before passing the appropriate final Notification, the objections raised the public during the public hearing should be considered by the Ministry in a way that protects their interests. In view of the above, the application was disposed of.

M/s. Eugene Rent
Vs.
Karnataka State Pollution Control Board & Ors.

Application No. 188 of 2013 (SZ)
And
M.A.No.61 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao.
Keywords: Consent to Operate, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981
Decision: Application disposed of
Dated: 7th April 2015

ORDER

The application was filed before the Tribunal to grant permanent injunction against the respondent which would prevent them from running any industry at the premises in question and to direct the State Pollution Control Board to initiate proper proceedings against the respondent for violating provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

In the present case, the applicant had filed this application challenging the Consent to Operate that was granted in favor of the respondent. The applicant had submitted that the application was filed before the Consent to Operate was granted in order to run any industry in violation of the aforementioned legislations. The Tribunal agreed that though the application seeking Consent to Operate was filed before the filing of this application, in view of the request made in the application, the applicant was given the opportunity to appropriate forum, that is, the Appellate Authority- Karnataka State Pollution Control Board for appropriate relief. In view of the above, application no. 188 of 2013 was disposed of. No costs.

Miscellaneous

M/s. Shree Ramachandra Aqua Products
Vs.
The Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 71 of 2015 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Pollution Control Board, Packaged Drinking Water Unit, Consent to Operate
Decision: Application disposed of
Dated: 7th April 2015

ORDER

The Applicant had filed this application against the State Pollution Control Board seeking from the Tribunal an order directing the Board to grant Consent to Operate in favor of the Applicant. The Applicant had set up a new packaged drinking water manufacturing unit. The application to establish was granted by the Respondent Board and is valid for two years. The Applicant had also successfully obtained a license from the Tamil Nadu Food Safety and Drug Administration Department which again is valid for two years. Also, the Public Works Department (PWD) granted a No Objection Certificate (NOC) to the Applicant's unit.

Such an NOC was a mandatory requirement because the unit is located in an 'Over-exploited, safe area'. The certificate allowed the Applicant to get water for the unit from outside by transportation because the bore-well in the premises of the Unit had been closed down on the suggestion made by the PWD and the Board. Following this, the Applicants filed for Consent to Operate before the Board but it was not considered. The applicant contended that a huge amount of money had been invested in the establishment of the Unit and that the delay would not only cause hardship but also financial loss.

The Tribunal found that the statements made by the Applicant were true but the Respondent Board could not be directed to issue Consent to Operate. Instead, the Tribunal directed the Board to consider the application filed by the Applicant in accordance with the law, taking into their consideration all the material facts and circumstances. In view of the above, application no. 71 of 2015 was disposed of. No cost.

Miscellaneous

M/s. Sivakumar Blue Metal and Ors.
Vs.
The Appellate Authority, Tamil Nadu Pollution Control Board and Anr.

Appeal No. 3 to 14, 24 to 38 and 41 of 2013 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Order of Closure, Consent to Operate, Appellate Authority- Tamil Nadu Pollution Control Board, Interim Order
Decision: Application disposed of
Dated: 8th April 2015

The Appellants in all these appeals are different stone crushing units. In appeals 3 to 14, the Appellants have challenged the closure order served upon them. These units had also filed appeals on rejection of their applications for obtaining Consent to Operate before the Appellate Authority, Tamil Nadu Pollution Control Board. Therefore, these former appeals before the Tribunal had been filed when the decision on the latter appeals was still pending. The Tribunal stated that it has been clearly established that closure orders served on these units cannot be challenged before the Tribunal but before the Appellate Authority. Hence, the Tribunal held that the Appellants could not be allowed to challenge the orders in this manner. Hence these appeals were disposed of with permission to approach the Appellate Authority for appropriate relief.

Similarly, appeal nos. 24 to 38 and 41 were also filed challenging the order of closure by the Tamil Nadu Pollution Control Board alleging violation of certain statutory provisions. These appeals were also filed without consideration to the statutory remedy available of Appellate Authority being the appropriate forum of appeal against such orders by the Board. Therefore, these appeals were disposed of with permission to approach the Appellate Authority, Tamil Nadu for appropriate relief.

Another issue that needed consideration was that an interim order granted by the Tribunal to the units to continue work. If this order was not continued, then the Board was going to take immediate action against the units to stop the work. So, the Appellant pleaded for continuation of the interim order. The Tribunal accepted the prayer and gave a time period of two months to the Appellate Authority, Tamil Nadu Pollution Control Board to hear and dispose of all these appeals during which period, the interim order was to be in force. In view of the above, the appeal nos. 3 to 14, 24 to 38 and 41 of 2013 were disposed of. No cost.

Compensation & Restitution

Shri Satish Kamalakant Navelkar and Ors.
Vs.
State of Goa and Anr.

Appeal No. 45 of 2013 (WZ)

Coram: Justice Mr. VS R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Agricultural tenants, mining reject disposal, silt accumulation, restitution of agricultural land, compensation
Decision: Application disposed of
Dated: 8th April 2015

The Applicants in this case are the farmers and agricultural tenants of the property in dispute. They had filed an application before the Tribunal under Section 18 (1) read with sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 alleging that the one of the Respondents was a mining industry which had damaged the agricultural land and the nearby environment dumping of mining waste and discharge of untreated waste water generated in the mining operations.

The Applicants contended that they had approached many government authorities and it was only in 2008 when the Mamlatdar or the executive officer in charge of the Taluka issued certain compensation to the Applicant. However, no such compensation was actually paid. Following this, in 2009-11, polluted water containing huge amount of silt was discharged in the disputed property and by 2011-12 the property was badly damaged. The Tribunal directed the Collector to visit the site and make inspection on the following points:
(i) Whether the waste discharge from the mines had been disposed of in a way that it entered the boundary limits of the land of the Applicants?
(ii) Whether the untreated water from the mines was being discharged in the paddy fields of Applicant?
(iii) Whether the traditional water source in the perennial stream had been obstructed or interfered with due to such mining activities?
(iv) Whether the water retention capacity of the agricultural property of the Applicant had been impaired due to silt deposited from the mining activities of the Respondent?
(v) Whether any loss had been caused to the property in dispute and if yes, then to what extent?
(vi) Whether such loss caused can be quantified in terms of compensation and if so, what would be the amount?

The Respondents on the other hand contended that the Applicants had no *locus standi* or ground to file the application because they had no legal right over the suit property. They submitted that the ancestors of the Applicants had entered into an agreement with the mining industry whereby they had surrendered their rights over the disputed property; they had not been doing any factual cultivation over the disputed land since 1980. Moreover, the Respondents further state that they had deposited a cheque of Rs. 10075/- with the concerned executive office who had ordered the compensation but the amount was returned to them since the Applicants had refused to accept that amount.
Another contention made by the Respondent is that no waste had been disposed of in any part of the disputed property of the Applicants since 1980 which was later included in the mining plan approved by the competent authorities. Also, the water from the mining

operation was being pumped out into settling ponds constructed for the purpose with filter beds in between them. Therefore, there is no question of the waste water from the mining operation spoiling the land of the Applicants. One other submission made by mining industry was that the application was barred by limitation becauseaccording to the allegations made by the Applicants, the dumping of the waste had started from 2000 onwards.

The Respondent, Goa State Pollution Control Board contended that there was no specific allegation against them. The report submitted by the officials of the Board stated that the processing plant of the mining industry was partly located within the lease and partly outside. It was also indicated that no surface dumping was being carried out in the mine. The Report mentioned certain voluntary measures taken by the unit in order to minimize the run off from the mine like establishment of settling ponds for surface run-off during monsoons; construction of an arrestor wall to hold the wash-off from the mines; constructing a garland trench to divert surface run-off into the mining pits during monsoon; and installing concrete filter beds into the mining lease.
The Tribunal drew up the following as the relevant questions in the present case:
a) Whether the Applicants have any *locus standi*?
b) Whether the Application is barred by limitation?
c) Whether the mining and related activities degraded the quality of the agricultural land?
d) If yes, whether the Applicants are entitled to any compensation for the damages or restitution of property?

a) Whether the Applicants have any *locus standi*?
The Tribunal answered the question in the affirmative, stating that the Applicants had *locus standi* to file this application before the Tribunal because most of their prayers were related to restitution of the damaged land, restoration of the environment and compensation for such agricultural loss. These prayers are covered under S. 15 of the National Green Tribunal Act which empowers the Tribunal to provide relief and compensation to victims of any kind of environmental degradation, restitution of damaged property and restitution of the environment for the area. Regarding the contention of the Respondents wherein they alleged that the ancestors of the Applicants had surrendered their lease in favor of the mining industry back in 1980 was rendered immaterial by the Tribunal because it was not a matter that was to be decided by the Tribunal. The only question they needed to determine was whether agricultural activities were being undertaken in the disputed land. Since the land was under cultivation, the Tribunal decided that the Applicants had *locus standi.*

b) Whether the Application is barred by limitation?
The Respondent mining industry had contended that the dumping of the mine rejects had initiated somewhere in the 1980s and the Applicants knew about it which is proved by affidavits and compliant applications filed by the Applicant since 2000. The Applicants rebutted that S. 14 and S. 16 of the NGT Act have a clear mention that the words first cause of action needs to be read with the term ‘such disputes’ while determining compensation and relief. Therefore, in the present case, the cause of action needs to be reckoned from the year 2010-11 because the unauthorized discharge of untreated water containing significant quantity of silt started from about the same time. Section 15 states that such an application should be filed within five years from the date of which the cause for such compensation or relief arose.

The Tribunal held that the Application was well within the period of five years because the claims of the Respondents were not supported by any evidence and that any references made to the damages caused to the land prior to this period will not be considered. The Tribunal upheld the contention of the Applicants that the complete loss of agriculture was first reported in 2012 and the cause for such damages was claimed to be only after 2010.

c) Whether the activities of the Respondent degraded the agricultural quality of the Applicant's land and what would be the appropriate compensation and relief for the applicants in such a case?

The Tribunal referred to the report of the Collector in order to determine this issue. The report confirmed that the Respondent had disposed of certain waste material from the mining activity outside the boundaries and particularly in the area of the paddy fields. The report also indicated that since the mining had stopped, it could not be ascertained whether waste water containing silt is still being discharged or not. The nallah as well as the natural storage tank that was used to irrigate the paddy fields was however found to be filled up with mining rejection silt. Such high concentration of silt increases density of the soil and makes it non-porous, thereby rendering it unfit for cultivation.

The report had also quantified the amount of compensation payable to the applicants which was challenged by the Applicants stating that the cost of cultivation was higher than that computed by the report. The Respondents challenged the report itself, stating that there was no scientific analysis and no procedure followed in order to reach to such a conclusion. The Tribunal came to the conclusion that there were no glaring inaccuracies in the report made by the collector. The Tribunal relied on the case of *AP Pollution Control Board Vs Prof. MV Nayudu and ors.* wherein it was held that the uncertainties in environmental matters need to be accepted based on the precautionary principle. Therefore, the findings in the report of the Collector were upheld. Only some changes were made in the assessment of the amount of damages. The loss of agriculture was held to be considered in a holistic manner involving remediation measures, additional requirement of fertilizers to bring the agricultural land back to its original status and also adequate drainage of the agricultural lands. The compliance report was directed to be submitted by the collector within three months. In view of the above, appeal no. 45 of 2013 was disposed of. No cost.

Miscellaneous: Limitation period

Cavelossim Villagers Forum and Ors.
Vs.
Village Panchayat of Cavelossim and Ors.

Miscellaneous Application no. 17 of 2015 in
Application no. 61 of 2014 (WZ)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Goa Irrigation Act of 1993, Water (Prevention and Control of Pollution) Act of 1974, No Development Zone (NDZ) and Coastal Regulation Zone (CRZ), limitation
Decision: Miscellaneous Application disposed of
Dated: 8th April 2015

The present application was an object petition filed by one of the original respondents in the Application no. 51 of 2014. In the original application, the applicants had reported that due to the activities of the original respondents, the course of the water bodies like fishing ponds, channels and nullahs was being changed. An inspection revealed that the complaint was true and that such irregularities were taking place. The respondents were directed to stop their work by the authorities but they paid no attention. Therefore, the continuation of the work was in total violation of provisions of Goa Irrigation Act, 1993 and Water (Prevention and Control of Pollution) Act, 1974. Moreover, the site under construction fell under the No Development Zone (NDZ) and was in violation of the Coastal Regulation Zone (CRZ) Notifications thereby causing loss of natural biodiversity.

Consequently, the original applicant had filed an application for restoration of damaged properties and to settle the other environmental issues that arose in this issue. This object petition was filed by the respondent according to whom the cause of action first arose in December 2010 when the construction activity began. If not then, it definitely arose when the original applicant had first made a complaint to the Village Panchayat about the illegalities in the construction back in 2013. Under S. 14 (3) of the National Green Tribunal Act 2010, an application cannot be filed beyond a period of six months from the date of the cause of action for such dispute. Another 60 days delay would be acceptable only when the applicant successfully establishes sufficient cause for the delay. Computing the maximum limitation period that would be allowed, the application should have been filed by March 2014. Since it was filed in May, 2014, it was barred by limitation. It was also pointed out that the wife of president of the applicant forum was a member of the Village Panchayat and therefore, her knowledge could easily be shared with the applicant.

The Original applicants submitted that mere knowledge of construction activity would not give rise to cause of action. Moreover, cause of action will not arise until and unless there is existence of 'substantial environmental dispute'. Therefore, proper verification of the illegalities observed by the applicant forum was necessary before an application was filed. The applicant filed this application only when they received information on account of an RTI application filed in April 2014, wherein it was provided that change in the course of the water bodies was done without any permission from the concerned authorities. Though the construction started in 2010, it was not before April 2014 when the applicant could establish substantial loss to the environment.

The Tribunal held that mere violation of some municipal laws or some very minor irregularity due to a large scale project would not be substantial environmental dispute. The contentions of the original applicant were upheld stating that cause of action arose only when the applicant became sure of the illegality and of the environmental damage being caused to the biodiversity. The application was within the limitation period. The Tribunal also relied on some case laws like *Aradhana Bhargav Vs MoEF* wherein it was held that the concept of continuous cause of action is outside the scope of the National Green Tribunal Act; and *Kehar Singh Vs State of Haryana* wherein it was held that condoning the delay beyond 60 days was not covered under the jurisdiction of the Tribunal. In view of the above, the miscellaneous application 17 of 2015 in the original application was disposed of.

Environmental Clearance

Arvind V. Aswal and Ors.
Vs.
Arihant Realtors and Anr.

Appeal No. 77 of 2013 (WZ)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Environmental Clearance (EC), RG area, Slum Rehabilitation Authorities (SRA), Sewage Treatment Plant (STP), Green belt, National Building Control (NBC) rules
Decision: Application disposed of
Dated: 8th April 2015

The appellants in this appeal had requested the Tribunal to declare the Environmental Clearance granted by the Environment Department of State of Maharashtra in favor of the respondents for construction of residential-cum-commercial project under Slum Rehabilitation Authorities (SRA) scheme as void. The appellants were dwellers in the slum area in question. The EC was challenged on the ground that construction activity had commenced even before the clearance was granted and that the respondents had violated many conditions of the clearance and had caused environmental damage. The work was directed to be stopped but the respondents did not pay any head to it.

Moreover, the parking area that was allotted to them originally had been reduced by the respondents. The open spaces around the buildings, i.e., the RG area is not contiguous and has led to non-availability of fresh air and passage of light. Moreover, providing a sewage treatment plant and a green belt in the area was also mandatory. For the purpose of remodeling the project when the respondents first took over, they began the construction work without complying with the National Building Construction (NBC) Norms and completed it up to the plinth level even when the EC had not been granted. Even the discussion with the state Environmental Impact Assessment Authority (SEIAA) did not yield fruitful result because the EIAA did not apply any deduction, permutation or combination of its own but accepted whatever the respondent had to say. The parking issue was also not discussed.

The appellant also contended that though the EC did not provide for a parking area, it was obligatory for the respondent to follow the Development Control (DC) Rules. Moreover, failure to provide STPs, septic tanks and soak pits and maintain them would amount to environmental degradation.

The main contentions of the respondent were that these buildings were initially taken up by another builder till 2009 and that the respondent had taken over the project at a later stage in 2013. Moreover, according to the respondent, parking was not provided for. Out of the five buildings, buildings B, C and D were transit accommodations and that there was no legal obligation to provide any parking for these buildings. The RG area had already been planned by the previous developer and approved by the competent authorities. Hence, the respondent could not be made liable to provide more RG area. The prayers of the appellants if fulfilled would cause financial loss to the respondents as well as to the poor people who are the beneficiaries of the scheme.
The Tribunal had appointed two Court Commissioners in the present case who noted that buildings B, D and E were complete and that A and E were scheduled to get over in 2015.

Thereafter, occupants of B, C and D would be shifted to A and E and the three evacuated buildings would be handed over to the government for use of PAP. Also, the revised EC did not contain any provision regarding parking slots in accordance to NBC norms. The sewage in the buildings B, C and D was found to be partly treated in septic tank and the rest collected by the Municipal Corporation for final disposal. The respondents had assured the commissioners a fully commissioned sewage treatment plant (STP) would be installed in a short span. Moreover, the RG area was found to be less than that originally provided for. This had taken away the recreational right that the residents of any locality acquire along with endangering the environment. The Tribunal held that it would not entertain any objection regarding the capability if the two court commissioners.

The Tribunal ultimately held that the respondent cannot take shelter under the argument that he had taken over the work at a later stage from some other developer. He was supposed to take over the scheme with liabilities as well as with benefits as per the Transfer of Property Act and other common law principles. Therefore, the defense set up by the respondent was rejected. Moreover, the EC was declared to be improper and without application of mind because it did not provide for any parking area, an STP or a green belt and provided for only a small RG area. However, since the buildings were ready for occupation and would be against the principles of natural justice to those who did not get the opportunity of being heard, it would be hard to quash and set aside the EC.

The parking was held to be provided for those claiming it at stilt and first floor. The respondent was directed to provide RG area, an STP and a green belt once the EC was revised. The construction work was stayed for three months so that the EC could be revised. Further EC was not allowed to be granted unless the aforementioned conditions are satisfied. The RG area would also include facilities like community hall, library, gym, etc. In this manner, the appeal was partly allowed and in view of the above, the appeal no. 77 of 2013 was disposed of.

Miscellaneous: Jurisdiction

D.V. Girish and Ors.
Vs.
Secretary to Government (Environment and Ecology) and Ors.

Application no. 154 of 2014 (SZ) and
Miscellaneous Application no. 284 of 2014 (SZ);
Appeal No. 5 of 2015(SZ);
R.A. No. 1 of 2015 in Appeal No. 5 of 2015 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Global Biodiversity Hotspot, Ecologically Sensitive Zone, Environment Impact Assessment, Buffer Zone, jurisdiction
Decision: Appeal and Applications dismissed
Dated: 9th April 2015

The applicants in application no. 154 are environmental activists in the State of Karnataka and they had filed this application seeking direction against the respondents/ administrative authorities to take appropriate action with regard to encroachment and illegal constructions being made in Bababudangiri and Mullayanagiri hill areas in Karnataka. These hills are located within 10 km boundary of the Bhadra Tiger Reserve and have been declared a global biodiversity hotspot being located in an Ecologically Sensitive Zone. These mountains are home to a number of endangered and rare species of fauna and are an important catchment area for several perennial streams.

The case of the applicants was that a number of unauthorized and illegal constructions were being carried out in these hills affecting the biological nature and the environment. These constructions blocked streams or diverted their course in a way that the slope was destabilized. These complaints and representations when sent to the respondents were neither considered nor replied to. Another application was filed by one of the original applicants to cancel the permit granted to the construction companies before the Secretary of the Revenue Department. This application got transferred to the Member Secretary of the Karnataka Pollution Control Board and the Board gave an order against the applicant. The aforesaid order was appealed against before the Tribunal in the form of Appeal no. 5 of 2015.

A miscellaneous application was filed in the original application to change the wordings of the prayer that was made in the original application. The prayer was changed from "…restrain…from further proceedings with the construction of resorts…" to "…take appropriate action… with regard to the encroachment and illegal constructions…" Another review application no. 1 of 2015 was filed in the appeal no. 5 of 2015 by the Respondents. The issues as determined by the Tribunal boiled down to the following:

i) Whether the applicants are entitled for a direction to the respondents to consider their representation as regards the encroachment and illegal constructions within a time frame?

ii) Whether the application seeking an amendment to the prayer in the original application be allowed?

iii) Whether the appeal no. 5 of 2015 and the subsequent review application no. 1 of 2015 maintainable?

i) The only grievance of the applicants under this application was that their representation and objections sent to the respondents were not considered as regards the encroachment and illegal construction in the two aforementioned mountains and had sought for a direction to the respondents to take proper action. The applicants had submitted the same contentions that have been mentioned earlier and stated that it is necessary to protect the sensitive and fragile Western Ghat ecosystem. The respondents were alleged to be in violation of the Forest Act and many other laws and regulations since they had been carrying out the construction work without any proper license or without obtaining any permits from the appropriate authority.

The respondents contended that the application should be dismissed since it was barred by limitation according to S. 14 (3) of the National Green Tribunal Act. They stated that the land under construction was earlier a coffee plantation. Permission to convert it was taken from the appropriate authority. The Karnataka State Pollution Control Board had granted Consent to Establish and the executive engineer had granted sanction for electric power connection. The Pollution Control Board had granted consent to expand and the concerned development officer had granted business license to the respondents. The resort was being constructed on private land and was in conformity with the Environmental Impact Assessment Notification. Moreover, the location has been approved by all the competent authorities as not being within the buffer zone of the tiger reserve and that ecotourism is a regulated activity and not a prohibited one. Since the respondents had abided by all the statutory requirements, have adduced evidence to prove the same and had undertaken to adhere to all the conditions imposed in future.

They added further that the applicants had failed to raise any substantial question on environment or made any specific violation of any environmental law or norm by the respondents. Though allegations had been made that the construction was illegal, unauthorized and by encroachment within the tiger reserve, no evidence was produced to support the allegations. On the other hand, the respondents had produced evidences of all permits and licenses that had been obtained in the course of undertaking the construction.

The Tribunal stated that the averments made by the applicants were very generic. No specific allegation or complaint was made nor any specific incidence of violation of any law pointed out. Regarding the question of the application being barred by limitation, the application was filed long beyond the limitation period in 2012. The applicants contended that the application could still be maintained since no action had been taken and therefore the cause of action would continue. The tribunal reiterated its findings and held that the concept of continuous cause of action is not recognized in such cases.

ii) Herein, the respondents contended that once it was made clear that they had taken all steps to ensure that the construction work was not encroaching on the tiger reserve or was in any way illegal or unauthorized, it became necessary for the applicants to change the relief prayed for to restrain the respondents from proceeding further with the construction of the resorts. The application could not be allowed since no specific allegation was made and no evidence was adduced to support the generic accusations. Moreover, the amendment sought for was for substitution in the relief clause of the prayer and on an altogether different cause of action. This cannot be allowed according to S. 16 (7) of the NGT (Practices and Procedure) Rules, 2011. Therefore, the miscellaneous application was dismissed.

iii) Clauses (a) to (j) of S. 16 of the NGT Act list down orders against which an appeal can be preferred before the Tribunal. The said order that had been appealed against was not

among one of the orders enumerated under the section. Therefore, the Tribunal held that the appeal no. 5 was beyond scope, powers and jurisdiction of the Tribunal and hence not maintainable. Similarly, the review application no. 1 was disposed of accordingly. In view of the above, application no. 154 of 2014 and the miscellaneous application no. 284 of 2014 were disposed of.

Miscellaneous

M/s. GJ Multiclave Pvt. Ltd. and Ors.
Vs.
M/s. Roma Industries and Anr.

Miscellaneous Application Nos. 164, 167 and 168 of 2014 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Consent to Establish Common Biomedical Waste Treatment Facility, Condonation of Delay, Leave to Appeal, and Production of Judgment
Decision: Application disposed of
Dated: 13th April 2015

The miscellaneous applications have been filed against the Respondent whereby an order by the Appellate Authority- Andhra Pradesh State Pollution Control to the Pollution Control Board of the state to consider application of the Respondent for Consent to Establish Common Biomedical Waste Treatment Facility has been challenged. The Applicants have raised three points in their applications: one for condonation of delay; another for leave to appeal and one for production of the judgment of the Appellate Authority.

It was contended by the Applicants that they were third parties who received knowledge about the aforesaid order by means a Right to Information application. However, the applicant could not receive a copy of the judgment due to which they were delayed and the other two applications were filed. The Respondent on the other hand contended that the Appellate Authority in the order that has been challenged under the Applications had already given consent to establish the facility with conditions attached therewith and hence it would be considered to be in force. Hence, nothing survived in the appeal.

The Tribunal held that such an appeal at such a late stage could not be admitted. However, the Tribunal allowed the Applicant to take appropriate action before the Appellate Authority- Andhra Pradesh State Pollution Control. In view of the above, miscellaneous application nos. 164, 167 and 168 were disposed of.

Pollution
Compensation

M/s Varuna Bio Products and Ors.
Vs.
The Chairman, Tamil Nadu Pollution Control Board and Anr.

Appeal No. 84 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Consent to Establish, Consent to Operate, Seaweed Dry Processing Unit, Polluters Pays Principle
Decision: Appeal disposed of
Dated: 15th April 2015

The Appellant had filed this appeal challenging the order passed by the Board by invoking its power under S. 33 A of the Water (Prevention and Control of Pollution) Act, 1974 wherein the Board had ordered closure of the Appellant unit as well as disconnection of water supply with immediate effect. The Appellants had obtained Consent to Establish from the Board under the name of M/s. Gomathi Ram Chemicals in 1997 for the purpose of carrying business in seaweed dry processing unit. However, no Consent to Operate was obtained from the Board. The Respondent had contended that the Appellants had been carrying on the industrial activities without obtaining any such consent since 2008.

The Board stated that though the process of fermentation of the seaweed by pulverizing sodium alginate in a dry state such that it becomes a semi solid jelly generated no effluent yet, the activity had been going on without the consent to operate from the State Control Board and hence cannot be allowed to continue without paying any compensation for the same. It was also brought into light that the Appellants had filed a fresh application to obtain consent to establish and the same was pending.

The Tribunal held that because of the unauthorized activity from 2008 to 2014, the Appellant was liable to pay under the 'polluter pays' principle. Since no effluent was released and the quantity of production of this small scale industry was very meager, the Tribunal directed payment of a token amount of Rs. 25000/- within one week. The Board was directed that in the event of the amount being paid by the Appellant, the Electricity Board was to be directed by the Board to restore electricity supply of the Appellants. With the above directions by the Tribunal, the appeal was disposed of.

Hindustan Engineering and Industries Limited and Ors.
Vs.
Gujarat Pollution Control Board and Anr.

Miscellaneous Application Nos. 31, 32 and 40 of 2015
Appeal No. 7 of 2015 (WZ)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Effluent Discharge, Water (Prevention and Control of Pollution) Act, Effluent Treatment Plant
Decision: Appeal and Applications disposed of
Dated: 16th April 2015

The Appellant industry in this appeal had challenged the order passed by the Gujarat Pollution Control Board wherein it had invoked its power under S. 33 A of the Water (Prevention and Control of Pollution) Act, 1974. Under this section, the Board had a power to order closure of an industry if it is found that hazardous effluents are being discharged by the industry. the Board had received a number of complaints from inhabitants of localities surrounding the industry stating that waste water discharged from the industry was resulting into pollution and causing problem to the health of members of the nearby residential area.

The Tribunal found that the order was passed by the Board without giving an opportunity to the Appellant to present its case. Moreover, a copy of the judgment was not served upon the appellants which would have given them an opportunity to make a representation within a period of 15 days as provided under S. 33 A of the aforementioned act. It was held that the Board had acted merely upon the grievances of the residents without analyzing or verifying the actual quality, quantity and standard of effluents that were being discharged. The norms of load of pollution discharge, the type of pollutants so discharged, water quality, the presence of hazardous elements in the water and other factors ought to have been mentioned in the closure order or shown in the Report of the Technical Expert Committee.

Therefore, the Tribunal decided to quash the order of the Board and allow the appeal. The industry was directed: to furnish a bank guarantee following which the order to restart had to be issued; to make necessary pollution control arrangements including the installation of an Effluent Treatment Plant (ETP) and be made functional within eight months and this was to be verified by Board through its Regional Officer; to bear the costs of such inspection; and to submit a time bound action plan with clear milestones to be achieved every month in order to comply with the directions issued by the Tribunal. The Tribunal also directed that either of the parties had to submit monthly compliance report before the Tribunal. In view of the above, the miscellaneous application nos. 31, 32 and 40 of 2015 and appeal no. 7 of 2015 were disposed of.

Mr. Sunil Shetye
Vs.
M/s. Leading Hotel Ltd. and Ors.

Miscellaneous Application Nos. 185 of 2014
in
Application No. 97 of 2014 (WZ)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Environmental Impact Assessment (EIA), Coastal Regulation Zone (CRZ), Environmental Clearance (EC), No Development Zone (NDZ)
Decision: Appeal conditionally pending; Application disposed of
Dated: 16th April 2015

The Applicant had challenged the project of the Respondent of the establishment of "M/s. Leading Hotel Ltd." on the ground that it is in violation of a number of environmental norms, regulations and notifications. An Environmental Impact Assessment Notification dated September 14, 2006 provides that all such projects located within 10 km from the common boundary of two states or within 10 km of Protected, Eco-Sensitive or Critically Polluted Areas as notified by the Central Pollution Control Board under the Wildlife (Protection) Act of 1972 would be considered to be category 'A' projects. The Mandrem Beach and the areas of Sindhudurg Talukas have been notified as eco-sensitive areas and the project fell within 10 km of both these places.

Despite the construction activity at such a site being illegal, the Goa State Environmental Impact Assessment Authority recommended the grant of Environmental Clearance (EC) to the project. Moreover, the project had not received Coastal Regulation Zone (CRZ) clearance and yet the construction work had begun. Therefore, the application had been filed. The project proponent/ Respondent contended that the application had been filed without indication of any public interest and that the Applicant had resorted to black-mailing the project proponent.

The Respondent also contends that the application was barred by limitation because the remedy available under S. 16 (h) of the National Green Tribunal Act, 2010 was not resorted to wherein the Tribunal has been granted the power to grant environmental clearance subject to the provisions of the Environment (Protection) Act, 1986. Also, the application was alleged to be barred under S. 14 (3) NGT Act wherein the application is required to be made within six months from the date on which the cause of action first arose and that the notification regarding environmental clearance was first published in 2013. It was also contended that since the Wildlife (Protection) Act was not covered under the seven enactments listed under the NGT Act, the Tribunal cannot look into this issue.

The Tribunal held that it was not possible to decide the appeal in entirety since the Tribunal could not determine whether the project fell within the No Development Zone (NDZ) as prescribed under the Coastal Regulation Zone, 2011. The Tribunal ultimately decided that the clearance cannot be treated as legal and valid unless the conditions appended to the EC could be shown to be complied with. One condition was obtaining CRZ clearance and second one was that the project should not be located within 10 km of the National Parks, Sanctuaries, and Migratory Corridors of Wild Animals, etc.

The Tribunal rejected the contention of the Respondent and held that just because Wildlife (Protection) Act was not one of the enactments covered under NGT Act; this does not mean that the Tribunal cannot look into it. Moreover, the Applicant's contention was accepted that the project did fall under the category 'A' and had not received CRZ permission, the project activity could not be started. However, the appeal was declared to be premature and the Appellant was directed to elect proper remedy only after the CRZ permission is granted. In view of the above, the Tribunal deemed it proper to keep the proceeding pending for such response of original Applicant for three weeks. In case, no such response is received, the original Application be deemed as premature and, therefore, disposed of, with no order as to costs.

M/s. Champ Energy Ventures Pvt. Ltd.
Vs.
Central Pollution Control Board and Ors.

Miscellaneous Application no. 160 of 2014
Appeal no. 30 of 2014 (WZ)

Coram: Justice Mr. V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Environment Protection Act (EPA), Type Approval, Duel Fuel Generator Set, Ministry of Environment and Forest (MoEF) Notification, air and noise emissions
Decision: Application and Appeal disposed of
Dated: 16th April 2015

The appellant was a manufacturer of petrol and LPG driven generator sets. The case of the appellants was that the Officers of the respondent, CPCB visited the industrial premises of the appellant on account of investigation a complaint received against the industry for verification of compliance of environmental norms. Subsequently, the Chairman of CPCB directed the appellant to stop the manufacture and sale of the gen-sets under S. 5 of the Environment Protection Act (EPA). This order was challenged by the appellant before the Tribunal wherein the appellant was allowed to continue with the manufacture and sale while the Board was directed to reconsider the order of closure.

At a later date, CPCB informed the appellant to recall the non-type approval generator sets already sold in the market within six months with a submission of a Bank Guarantee of Rs. 2 crores. The Ministry of Environment and Forests (MoEF) has notified standards of air and noise emissions for specified types of generator sets wherein certain restrictions have been placed on manufacturing or assembling or import or sale of diesel, petrol and kerosene driven generators by placing a mechanism of obtaining Type Approval from one of the specified testing agency. The notification also designated the CPCB to be the nodal agency in the matter.

The stand of the appellant is that they have the type approval of the sets that are exclusively run on petrol and kerosene but they did not obtain a type approval for duel fuel generator sets like petrol start/LPG run generator sets which were being manufactured by the appellant. The appellant also challenged the power of the Board to issue pecuniary penalty for non-compliance with the notification. Therefore, the issues before the Tribunal were-

1. Whether the gen-sets manufactured by the appellant were covered within the ambit of the notification by MoEF?
2. Whether CPCB had correctly concluded that the gen-sets were mainly petrol duel gen-sets and required the type approval?
3. Whether the CPCB was entitled to issue directions for recall of gen-sets and to seek bank guarantee in lieu thereof?
4. Whether the directions by the CPCB stand the test of legality, correctness and propriety?

Issues 1 and 2-
The appellant submitted that the gen-sets that had been directed to be recalled by the CPCB were in fact, bi-fuel i.e. petrol start and LPG run type of generator sets. The appellant submitted that there were no standards or restrictions or any impediment for manufacture

and sale of such gen-sets. Appellant further submitted that the other products were LPG start and LPG run gen-sets which were also outside the purview of the said notification. The appellant contended that the Automotive Research Association of India (ARAI) had been approached seeking type approval for such gen-sets. But, they were told that the approval was not prescribed for such bio-fuel gen-set. That is the reason why they went ahead with the manufacture and sale of the sets.

The appellant hinted towards high handedness on the part of the officers of the Board and a sense of vindictiveness in the order passed by the Board itself. Moreover, certain internal inquiry had been initiated against the concerned officers by the Chairman of the CPCB, though neither the final findings of such inquiry were placed on record nor the concerned officers were dissociated from handling the matter at subsequent stage. Therefore the continuation of such officers in handling the matter would be against the principles of natural justice.

It was also submitted that the concluding report by CPCB was not a result of scientific or analytical findings by the Board but of apprehensions of the officers. Even such report was not made available to the appellant industry. The respondents relied on photographic evidence stating that the fuel tanks were such that they could be used to store both LPG and petrol thereby making it necessary for appellant to obtain the type approval for petrol operation. However, the appellants contended that the CPCB should have inspected the final product and objectively evaluated the gen-sets on various technical grounds such as fuel tank capacity, switching over of the fuel, etc. CPCB had not even considered it necessary to evaluate whether such gen-sets were actually causing the pollution or not by checking emission levels in terms of the notification to prove their point.

The Tribunal came to the conclusion that according to the notification, any model without the type approval shall be prohibited from use in India. The two essentials of the notification are having a type approval and complying with emission or noise norms. The Tribunal found that though CPCB had failed to establish that the identified gen-sets sold by the appellant were covered under the restrictions imposed by the above notification and therefore, required the type approval; the findings of joint visit by ARAI-CPCB established on scientific evaluation that the classified gen-sets could be operated independently on either petrol or LPG and hence would be covered under the notification. Regarding the second criteria of compliance with emission and noise norms, even after the specific directions of the Tribunal, related to evaluation of identified gen-sets, the CPCB had not carried out the emission or noise norms compliance tests.

Issues 3 and 4-
The CPCB had issued directions to recall all the non-type approved gen-sets which had been sold in the market immediately within six (6) months with a submission of Bank guarantee of Rs. 2 crores. The Tribunal held that Section 5 of Environment Protection Act is very explicit which even empowers the CPCB to close, prohibit or regulate any industrial operation or processes or even order disconnection of electricity and power. On the other hand, S. 15 of the EPA contemplates penalty for contravention of the provisions of this act. Therefore, a plain reading of S. 5 does not give power to the authority to take any penal action nor does it confer any power to levy any penalty. Only Courts can take cognizance of offences under the Act and levy penalty whether by way of imprisonment or fine.

The Tribunal held that the power to issue directions do not confer the authority on CPCB to take disciplinary action without approaching the Courts/Tribunal, on ‘polluter pays principle’. Therefore it was found that the directions to issue recall for the machines and taking a Bank guarantee from the appellant could not be sustained in the eye of Law. The appellant industry was directed to obtain a type approval from the competent authority and the CPCB was given the power to issue specific directions if the gen-sets were found to be causing pollution or in violation of the notification. In view of the above, miscellaneous application no. 160/ 2014 and appeal no. 30/ 2014 were disposed of.

R. Parameswaran
Vs.
Amrish Pal Singh Narak and Ors.

Application No. 50 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Effluent Treatment Plant (ETP), Reverse Osmosis (RO), Solar Evaporation Pans, Encroachment
Decision: Application disposed of
Dated: 17th April 2015

In this application filed before the Tribunal against the operation of the Respondent in handling, storing and transporting the sludge/ treated effluents/ toxic chemicals in a reserve forest, the Respondent contended that a writ petition was filed by another person before the High Court of Madras on the exact similar issue and that this application and the petition were filed with mala fide intentions. The Respondent had brought this to light that the petitioner and the applicant were associated with each other and that there had been a police complaint and investigation followed by the arrest of the applicant on account of damaging the respondent's compound wall.

The petition was disposed of by the High Court and the following observations were made:
a) The unit was carrying out wet operation;
b) All units of the Effluent Treatment Plant (ETP), Reverse Osmosis (RO) system and solar evaporation pans were in operation;
c) The ETP sludge had been stored in a closed shed, on an impervious platform;
d) The reject from processes was made to evaporate through accelerated solar evaporation pans;
e) No discharge of trade effluents was being done outside the industry's premises; and
f) A log book had been maintained regarding all operations.
The High Court, therefore, dismissed the petition on the grounds that there was no instance of violation of any of the directions issued by the pollution control board.

The Tamil Nadu Pollution Control Board filed a similar report after further inspection before the Tribunal. The Applicant on the other hand contended that the Respondent had encroached upon various portions of the reserve forest which was causing environmental hazard.

The Tribunal held that encroachment does not fall within the domain and jurisdiction of the Tribunal. As regards environment-related aspects of the application, the Tribunal did not find any reason to conclude that the respondent is causing environment degradation because there is no evidence of any kind of effluent discharge from the industry. The applicant was held to be not entitled to any relief in the application no. 50 of 2013 and accordingly, it was disposed of.

Miscellaneous: cutting of tress

P. Dhakshinamoorthi
Vs.
District Collector, Villupuram and Ors.

Application No. 58 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Restraining Order, Paramboke Land, cutting trees
Decision: Application disposed of
Dated: 20th April 2015

The applicant had filed this application for obtaining a restraining order against the respondents from cutting the trees in the disputed property. Though the land is a government Paramboke land, the applicant contends that he had planted and grown the existing trees of coconut, mango, guava, etc. and that he had installed a drip irrigation system using his own fund. A restraining order was requested since the applicant apprehended that the respondent intended to cut down the trees in order to construct a hostel for backward class students.

The respondent contended that they did intend to construct such a building but it was because there was no adequate alternate place other than the disputed land available near the private school. Though there is another land available but since it is far away from the school and the government cannot spend money on transportation, that land is not suited for the purpose. The applicant also filed an affidavit stating that the land did not belong to him and that he cannot assert his right over any part of the land.

The Tribunal held that the application and the affidavit, when read together had no meaning. However, since the practice of constructing hostels for students in all such private schools was not being followed by the state government, the Tribunal directed that neither the government, nor any private individual was allowed to cut any standing trees in the land. Therefore, the application was allowed and the respondents were restrained from cutting any trees. In view of the above, application no. 58 of 2013 was disposed of.

Oil and Natural Gas Corporation
Vs.
Ramdas Kohli and Ors.

Review Application No. 5 of 2015
in
Original Application no. 19 of 2013 (WS)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: 'Interim Order', Mahul Creek (Extinguishment of Right) Act of 1922, 'Coercive Action', 'Disbursement to affected families of fishermen', interim payment
Decision: Application disposed of
Dated: 21st April 2015

The appellant had filed a review application before the Tribunal, seeking to review an interim order made by the Tribunal for the appellant, ONGC and for NGPT to deposit a sum of Rs. 10 crore and Rs. 20 crore respectively. The appellant brought into light the interim order passed by the High Court wherein it had been stated that the State had power to award compensation for any threat that is being caused to the coastal areas. In the present case, there was a potent threat to environment due to expansion of port activities of JNPT and other development activities by ONGC. This power has been given under S. 3 (2) of the Mahul Creek (Extinguishment of Right) Act, 1922 whereby the Collector can determine the compensation in accordance to the Land Acquisition Act, 1894. However, the collector did not exercise the right. The High Court directed the State Government to initiate any appropriate proceeding in this regard provided no coercive action is taken.

Therefore, the case was brought before the Tribunal whereby the Tribunal granted interim relief, directing ONGC and NGPT to deposit the aforementioned sums of money for disbursement to the families of fishermen. The order was challenged by the appellant before the Supreme Court wherein the court held that since both- ONGC and NGPT had undertaken to make the deposit in terms of the final order, the order of the Tribunal was set aside, and the Tribunal was further directed to give the final order regarding the matter.

The Tribunal, therefore, held that there was no need to ask ONGC and NGPT to furnish an interim payment or to ask for a Bank Guarantee when the appellant had agreed to deposit the amount if so directed. However, on account of the undertaking, the appellant could not shy away from the liability once such an order was made. In view of the above, review application no. 5 of 2015 was disposed of.

Jawaharlal Nehru Port Trust
Vs.
Ramdas Kohli and Ors.

Review Application No. 6 of 2015
in
Original Application no. 19 of 2013 (WS)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: 'Interim Order', Mahul Creek (Extinguishment of Right) Act of 1922, Coercive Action, interim payment
Decision: Application disposed of
Dated: 21st April 2015

The appellant had filed a review application before the Tribunal, seeking to review an interim order made by the Tribunal for the appellants, JNPT and for ONGC to deposit a sum of Rs. 20 crore and Rs. 10 crore respectively. The appellants brought into light the interim order passed by the High Court wherein it had been stated that the State had power to award compensation for any threat that is being caused to the coastal areas. In the present case, there was a potent threat to environment due to expansion of port activities of JNPT and other development activities by ONGC. This power has been given under S. 3 (2) of the Mahul Creek (Extinguishment of Right) Act, 1922 whereby the Collector can determine the compensation in accordance to the Land Acquisition Act, 1894. However, the collector did not exercise the right. The High Court directed the State Government to initiate any appropriate proceeding in this regard provided no coercive action is taken.

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The Tribunal, therefore, held that there was no need to ask NGPT and ONGC to furnish an interim payment or to ask for a Bank Guarantee when the appellant had agreed to deposit the amount if so directed. However, on account of the undertaking, the appellant could not shy away from the liability once such an order was made. In view of the above, review application no. 6 of 2015 was disposed of.

Miscellaneous: EP Act

K.G. Mohanaraman
Vs.
Tamil Nadu Pollution Control Board and Ors.

Application no. 33 of 2014 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: High Tension Transmission Lines (HTTL), Poromboke land, Patta land, Reserve forest, Maintainability, Sustainable Development
Decision: Application dismissed
Dated: 22nd April 2015

The present application had been filed by the applicant seeking an order from the Tribunal to restrain the M/s. Gammon India Private Ltd. from laying high transmission lines through the agricultural lands of the applicant and other agriculturists in the village thereby destroying the ecological balance of the village. The scheme involved lying down of Super High Tension Transmission Lines (HTTL) passing through Vembedu and Kayar without informing the people of the locality or the respective village Panchayats. Four 20 feet foundation pits had been proposed to construct towers for the purpose of the scheme which was to be covered with concrete and which would obstruct and cause damage to underground water streams. Even the shallow percolation wells that serve as source of irrigation would dry up. Moreover, no notice had been given to those farmers whose lands were being encroached.

The applicants also submitted that the respondent was duty bound to study the environmental impact caused by the project and should have taken steps to ensure that the impact was minimum. But it was found that no such assessment was done and no steps taken. Also, an alternate route to connect the two villages was also available through poromboke and government land thereby avoiding the patta land and the private land. The scheme was alleged to be against the national policy and principles of the State Government whose aim is to safeguard the poor farmers of the State and also to maintain the ecological balance by safeguarding agricultural lands.

The respondent, i.e., the Pollution Control Board submitted that the project was awarded after only after inspection of the site by the Board officials. Moreover, the erection of High Tension Transmission lines to transmit electricity does not come under the provision of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Air (Prevention and Control of Pollution) Act, 1981(Air Act) and hence it does not require consent from the Board under the provisions of the said Acts. Therefore, the issue would not fall within the jurisdiction of the Tribunal since it is not enlisted as one of the ten orders against which an appeal can be made under S. 16 of NGT Act. It was also submitted that this scheme was widely published in the Tamil Nadu Government Gazette and local newspapers in November, 2011 under the provisions of Electricity Act, 1948. The application would not be maintainable according to S. 14 of the National Green Tribunal Act since the project was challenged after a delay of over two and half years when it should have been within six months. Also, no notice was required to be given to the owners before laying the poles nor any consent required from them, as empowered by the Electricity Supply Act and Indian Telegraph Act, 1885. So, the action of the 4th respondent was not illegal.

It was also contended that the towers would not be a hindrance for the free flow of water and that there would not be any environmental impact or degradation by implementing this project. Instead, it would be beneficial to the public. The alternative route that was suggested by the applicant could not be considered since it passes through the reserve forest. The entire project was proposed and approved by the government on account of the deficit in electricity. The long growing trees would only be cut to maintain electrical clearance and the respondents assured that necessary crop compensation would be paid to the farmers.

On the pleadings put forth by the parties, the following questions were formulated for decision by the Tribunal:

1. Whether the application was maintainable since it is barred by Limitation?
2. Whether the application was maintainable since it is outside the jurisdiction and powers of the Tribunal?
3. Whether the applicant was entitled to get an order restraining the respondents for laying a HTTL as sought for by him?
4. To what relief the applicant was entitled to?

The Tribunal established that before an application is filed, two criteria should be met- first, that a substantial question arises out of implementation of the acts that are covered under the NGT Act and second, that it should be filed within 6 months from the date when cause of action first arose. The Tribunal agreed with the respondent on the point that the application was brought after two and a half years from issue of notification in the newspaper but still it was held to be maintainable since the name of the Vembedu village was not mentioned in the notification, the cause of action would arise only when the residents of that village came to know about the scheme. As regards the other question on maintainability on grounds of the project falling in the ambit of the Electricity Act and the Indian Telegraph Act which are not covered under any of the statutes mentioned in schedule 1 of the NGT Act, the Tribunal held that the notifications were not challenged. The applicant was seeking directions to restrain the respondents from laying the HTTL.

The applicant had specifically pleaded that the interest of poor farmers had to be safeguarded and also the ecological balance had to be maintained by safeguarding the agricultural lands. Specific averments were made in the application that if the project was allowed to be carried out it would have an adverse impact on the agricultural lands and plantations by loss of surface soil fertility, water depletion, loss of ecology, fire hazards, electric shock and safety and economic insurgency. The Tribunal upheld the contentions of the applicant that the factual situation would attract the provisions of E P Act, 1986 which is an enactment that finds place in Schedule I of the NGT Act, 2010. The application was held to be maintainable before the Tribunal.

The Tribunal ordered the district collectors of both the villages to conduct a joint inspection whereby it was found that out of the location of the proposed 14 towers, 12 were found vacant. Only a few were found with paddy crop or vegetables. More than 80% of the lands in aggregate in both the villages of Kayar and Vembedu were found vacant. Moreover, cultivation could be carried out even after erection of towers as opposed to what the applicants contended. The Tribunal stated that one has to strike a balance between the larger public interest and the interest of smaller number taking into consideration the concept of Sustainable Development and the other circumstances when a project is proposed.

The Tribunal finally held that held that the application made by the applicant though within the jurisdiction of the NGT under the provisions of the NGT Act, 2010 and it also not barred by time; it was devoid of any merits since there is nothing in the project that would cause degradation to environment and damage to ecology. In view of the above, the application was dismissed.

Miscellaneous: Cutting of trees

Shahpura Jan Jagran Evam
Vs.
Shri Santosh Jain and Ors.

AND

Shri Rajkumar Maheshwari
Vs.
Shri Deep Jain

Original Application nos. 19 and 25 of 2015 (CZ)

Coram: Justice Mr. Dalip Singh, Mr. Ranjan Chatterjee
Keywords: Indiscriminate cutting, Noise pollution, Jan Bhagidari Yojna, Unauthorized use of park
Decision: Application disposed of
Dated: 22nd April 2015

The two applications had been filed before the Tribunal alleging that Parshvanath Digambar Jain Committee in the colony was to organize a function at the park in the colony. For that purpose, it was alleged that the committee had indulged in indiscriminate cutting of trees in the park without any prior permission and were intending to use loudspeakers for religious enchantments and sermons thereby causing noise pollution and disturbance to students in the locality. Therefore, the applicants prayed that the respondents be directed not to organize the said function and also be made liable on account of cutting down the trees.

The Respondents submitted that in order to allow easy movement for those who would be attending the function, they had taken permission from the municipal authority and trimmed down the branches under the surveillance of the authority. They contended that the other residents of the colony had no objection with the function and it was only on account of the applicants using the park to store the material used in tent business that the application was filed.

It was brought to light that once the permission to organize the function in the park was granted, the residents sent in their complaints and requests to revoke the permission. The respondents were sent a show cause notice but they did not reply within the given time. Once the reply was sent in, the Sub Divisional Magistrate (SDM) granted conditional permission thereby restricting decibel levels and timings of use of the loudspeakers and directed that the entire function be monitored. The Tehsildar was also directed to conduct an enquiry and submit a report on whether the trees in the park were actually damaged due to the negligence of the organizers or not. It was found by way of the report and by looking at various photographs that many of the trees were damaged and that the park was in a dire state and needed renovation and betterment.

At a later stage, the organizers decided not to hold the function at the park and hence, directions regulating the organization of the function were declared to be infructuous. However, the trees were damaged by the indiscriminate pruning and cutting of the branches

by the respondents, and the park still remained in a bad state and needed improvement, following directions were passed by the Tribunal:

a) The park was being used by the applicant for storage of tent material for the last 15 years without any permission from the appropriate authority, he was held liable to deposit Rs. 5 lakh with the Municipal Corporation towards the unauthorized use and occupation by way of damages to the park;

b) The organizing committee had to be made liable for causing damage to the trees in the park and therefore, with a view to improve the present condition of the park, they were directed to deposit an amount of Rs. 2.5 lakh;

c) Other residents of the colony were directed to pay and amount of Rs. 2.5 lakh for the betterment of the park because such open spaces and parks are deemed to be lungs of a colony and that they are for the recreational benefit of the residents themselves;

d) As per the Jan Bhagidari Yojna of the Municipal Corporation, wherein the corporation gives an equal amount if the residents are contributing towards the improvement of a park in a colony, the Corporation was directed to deposit an amount of Rs. 10 lakh for the improvement of the said park.

This amount of Rs. 20 lakh was directed to be used by the Municipal Corporation in improving the park by fencing it properly; planting trees, shrubs and flower beds; catering to the needs of children by installing swings and slides; installing a tube well as a source of water and providing electricity in the park. The Commissioner of the corporation was directed to carry out the order and secure the aforementioned amount to complete the development of the park. In view of the above, the application nos. 19 and 25 were disposed of.

The matter was further listed in Court for reporting compliance of the above mentioned directions.

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Miscellaneous

K. Mari
Vs.
Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 23 of 2014 and
Miscellaneous Application No. 21 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Rent control proceedings, sealed premises, State Pollution Control Board
Decision: Application closed with directions
Dated: 27th April 2015

The application was filed by K. Mari along with other residents of the area where the concerned industrial unit is situated in order to oppose the activities of the 4th respondent that were reportedly causing pollution and damage to the environment. It was found that the generator that was used by the 4th respondent had been removed from the premises in August, 2014 and out of the three entrances, two had been sealed as per the directions of the Tribunal. One was kept unsealed for purpose of use by the 4th respondent for his office activities which too was subsequently sealed. It was not possible to carry in or out heavy generators or other machinery through the small space available. It was also found that power supply of the unit had also been disconnected.

The 4th respondent contended that the premises had been leased to him by the 3rd respondent in order to carry out the industrial activity. It was contended that the landlord had initiated certain rent control proceedings and that all the other tenants except the 4th respondent had been vacated. The Tribunal held that since entries to the premises had been sealed, no industrial work could be conducted by the respondent. Therefore, there was no reason to continue the case. Issues regarding rent control proceedings were to be dealt by the concerned authority. However, if an application was filed in the future by the respondent to obtain consent to operate, the Tribunal directed the State Pollution Control Board to inspect the unit and check whether all pollution related norms were satisfied. Till then, the Board was directed to ensure that the premises were not used by the 4th respondent. In the event of the 2nd respondent deciding to permit the 4th respondent to use the office premises, the said portion alone shall be unsealed and if any application made for providing electricity service for the office, the same may be directed to the concerned department.

With the above directions, the application stood closed as no further orders were required. In view of the final order having been passed, the M.A. No. 21 of 2014 also stood closed.

Miscellaneous

Mr. Rajaram
Vs.
The Commissioner, Corporation of Chennai and Ors.

Application no. 59 of 2015 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Pipe line diversion, Residential area
Decision: Application disposed of
Dated: 27th April 2015

ORDER

The application was filed by the applicant to request the Tribunal to direct the respondents to divert the laying of the pipe line from their residential area and to the Government barren land. The respondents contended that work had already started in this regard even before the application was filed. They had assured the Tribunal that the work would be complete within ten days and that the water drain pipe lines would be covered and would not cause any hardship. As contended, the work was finished within the stipulated time frame. Photographs to this effect were also produced and affidavits submitted by the respondent.

The applicant submitted that there was a damage that had been caused to the compound wall belonging to the applicant but was not visible in the photographs. The Tribunal held that since the respondent had complied with the time frame and had submitted in this regard, the application did not survive for further consideration. And as regards the damage to the wall, the applicant was directed to approach the proper forum in this regard since it did not require any consideration from the Tribunal.

Environmental Clearance

M.P. Muhammed Kunhi and Ors.
Vs.
State of Kerala and Ors.

Miscellaneous Application no. 102 of 2015
in
Application no. 440 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Sand mining, Environmental Clearance, Kerala Protection of River Banks and Regulation of Sand Act of 2001, State Environmental Impact Assessment Authority
Decision: Application disposed of
Dated: 27th April 2015

The application had been filed to request the Tribunal to take appropriate action against the respondents to ensure that large scale removal of sand in and around Pamburuthi Island be stopped and safety of the island and that of its inhabitants. On coming to know that the respondents lacked environmental clearance (EC) and were yet indulged in illegal removal of sand from the coast like issuing passes to mine the sand, the Tribunal issued an injunction against the activity. Despite the restraint order, the respondents did not take any action to curb the illegal activities of sand mining. In fact, it was brought to light that the District Collector issued passes facilitating mining of river sand on February 25, 2015 and March 7, 2015. Therefore, it was submitted that the District Collector had blatantly and willfully disobeyed the Tribunal's order and hence was liable for action under S. 26 and S. 28 of the National Green Tribunal Act, 2010.

In his affidavit, the District Collector has tendered his apology and stated that the order of the Tribunal did not reach him before February 25, 2015 and that all mining activities had been stopped from February 27, 2015. It was also stated that all river sand mining was done in accordance to the Kerala Protection of River Banks and Regulation of Sand Act, 2001. According to the Act, an online system of pass distribution is followed wherein, 85 % of the san available is distributed to individual house holders and 15 % distributed through Panchayat quota. It was further contended that the pass issued on 25th February was done before the order of the Tribunal reached the District Collector and the one issued on March 7 was not issued by the Collector but under the 15% Panchayat Quota. Moreover, it was cancelled later.

Therefore, the respondent submitted that there was no willful disobedience of the Tribunal's order because the temporary environmental clearance (EC) for sand mining granted by the Environment Impact Assessment Authority (EISAA) which was ending in November, 2014 was extended for three months till March, 2015 by way of a Government Order when scarcity of sand was realized.

The Tribunal held that though it was clear through the affidavit submitted by the District Collector that there was no willful disobedience of the order of the Tribunal, but there was sufficient evidence to prove that some negligence had been present on account of the Collector. Merely because the passes were not issued by him but by the Panchayat, he cannot be exonerated from the liability since he was the authority to issue such passes. It was directed that such a slackening attitude was to be avoided in the future and that any

such violation was to be reported to the Tribunal immediately. In view of the above, the Miscellaneous Application no. 102 of 2015 was disposed of.

FC

Mr. Prashanth Gururaj Yavagal
Vs.
Principle Secretary, Forests, Ecology and Environment and Ors.

Miscellaneous Application No. 10 of 2015 and
Application No. 279 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Stage I Forest Clearance, Stage II Forest Clearance
Decision: Application dismissed as withdrawn
Dated: 28th April 2015

ORDER

The main application filed by the applicant related to the challenging of grant of Stage I Forest Clearance to the respondent. In a miscellaneous application, it was required that the Ministry of Environment and Forests (MoEF) had granted Stage II Forest Clearance as well. The State Government was directed to pass appropriate order regarding Stage II Forest Clearance.

Since the orders were passed by the government subsequently, the Tribunal held that the application no. 279 of 2014 and the miscellaneous application no. 10 of 2015 did not survive and were dismissed as withdrawn.

Miscellaneous

Mr. K. Murugesan
Vs.
Tamil Nadu Pollution Control Board and Ors.

Application No. 302 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Water Service Station, District Environment Engineer, Show cause Notice, Consent to Operate
Decision: Application disposed of
Dated: 28th April 2015

ORDER

The application was filed by the applicant contending that the 5th respondent, a Water Service Station had been issued a show cause notice by the Municipality of Dharmapauri stating that the station could not be run without obtaining permission from the Municipality as well as the State Pollution Control Board and without paying the necessary license fees on the ground that it was not in the interest of the public. The 5th respondent neither replied nor appeared for the proceedings before the Tribunal.

The Tribunal held that the Water Service Station was being run illegally without any permission. Therefore, the Tribunal directed the District Environment Engineer to effectively implement the immediate closure of the unit and not to grant consent to operate unless the necessary permissions were obtained. In view of the above direction, application no. 302 of 2014 was disposed of.

Pollution
Polluter Pays Principal (compensation)

Shri N. Selvaraj
Vs.
District Collector, Kanyakumari District and Ors.

Application No. 156 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Air pollution, Wet Scrubber, Consent to Establish, Consent to Operate, Oil Separation Tank and Settling Tank, Polluter Pays Principle
Decision: Application disposed of
Dated: 28th April 2015

The applicant complained about the functioning of the unit of the 5th respondent on the ground that the unit was causing enormous air pollution. The facts of the case are that one Baba Cashew Company had filed for consent to manufacture roasted cashew nuts on large scale for export before the State Pollution Control Board in 2002. The Board required the company to provide for a wet scrubber in the unit before the application was considered. Subsequently, it was taken over by the fifth respondent in the case in around 2009 while a complaint was lodged that the unit was running without any consent to establish or operate. A show cause notice was issued but the respondent did not reply. When the Board recommended a closure order for the unit, the respondents wrote that they had installed a wet scrubber.

On inspection, it was revealed that a wet scrubber had not been installed. Instead, only a temporary arrangement had been made without any provision for collection and treatment of scrubbing effluent, its disposal, etc. However, the fifth respondent was again taken over by one SreePadmanabha Cashew after this application was filed. A show cause notice was issued to the unit stating that it was running in violation of Water (Prevention and control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981. On inspection, it was observed that-

i) The 5th respondent was operating in the name of SreePadmanabha Cashew and carrying out roasting process;
ii) A wet scrubber had been provided in the unit;
iii) An oil separation tank followed by a percolation tank and settling tanks had been installed for the treatment and disposal of waste water;
iv) However, no application to obtain consent had been filed before the Board.

The application was filed against the 5th respondent requesting to order the closure of the unit, complaining about the functioning of the unit on the grounds that it was causing air pollution stating that the workers in the unit were suffering from many occupational diseases and that it was also affecting the health of the residents in the nearby locality.

The Tribunal held that though unit had complied with various requirements that are essential to obtain consent from the Board, the 5th respondent would be held liable for not filing for consent and hence not following the provisions of the law. The project proponent agreed that the manufacturing activity had been carried on since 2002 and that all the three units were one and the same. The Tribunal decided to apply the Polluter Pays Principle and imposed an amount of Rs. 5 lakh to be deposited within two weeks. Since the unit was functional, the Tribunal directed it to be closed down immediately till the consent was

granted by the Board. The Application for consent could be filed only when the amount of Rs. 5 lakh was deposited and till then the unit could not operate. In view of the above, application no. 156 of 2013 was disposed of.

M/s. Balmer Lawrie & Co. Ltd.
Vs.
Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 172 and 173 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Total Dissolved Solids (TDS), Effluent Treatment Plant (ETP), Sewage Effluent Pumps (SEPs) and Central Leather Research Institute (CLRI)
Decision: Application disposed of (with directions)
Dated: 29th April 2015

The application was filed by the applicant, a manufacturer of leather chemicals and having Government undertaking supplying to the leather chemical division which manufactures chemicals required for leather industry. The application challenged the closure order of the Tamil Nadu Pollution Control Board under S. 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 and S. 31(A) Air (Prevention and Control of Pollution) Act, 1981 wherein power has been granted to the Board to issue appropriate orders in case it is found that an establishment is against any of the provisions of the two acts.

The respondents contended that the levels of total dissolved solids (TDS) in water bodies located near the industrial unit had been very high. Though it had reduced when inspection was done the second time, but since water was not absolutely free from TDS, the respondents contended that the requirement had not been met. Other defects found after inspection were:

i) Increase in the production quantity more than the consented quantity.
ii) Unit had provided combined ETP (Effluent treatment plant) for the leather Chemicals Division and Grease division.
iii) ETP was not in operational condition due to high TDS in the effluent.
iv) Unit had not revamped the ETP for the treatment of low TDS and high TDS effluent.
v) Entire trade effluent from the collection tank was being disposed through SEPs (Sewage Effluent Pumps) which were inadequate and in dilapidated condition paving way for seepage into the ground.
vi) Unit had not provided for high TDS effluent treatment system with modernized evaporation technologies, so as to achieve zero discharge of trade effluent.

The applicant contended that they had approached the Central Leather Research Institute (CLRI) in order to be informed of the methods to be followed for remediation and reclamation for the damages that had been caused because of high levels of TDS. Moreover, it was for the rectification of the aforementioned defects in the unit that the applicants shifted from Solar Evaporation Process to Mechanical Evaporation Process and it had been proved from inspection reports that the level of TDS had decreased. It was also submitted that as far as both these approaches are concerned, it would take some time to implement these in a practical manner. Therefore, the applicant should have been given reasonable time instead of an immediate closure order. Assurances were also given that the applicant would comply with all the suggestions of the Board that they may provide from time to time on inspection.

The Tribunal held that there definitely was an improvement in the mechanism adopted by the applicant industry and therefore, directions were given to the industry to restore its functioning subject to the condition that the CLRI recommendations as well as the requirements pointed out by the Pollution Control Board were followed. in case of non-compliance, the Board was directed to give reasonable time to the applicant to rectify the defect and if the defect persisted, the Board was granted leave to pass any order in the manner allowed by the law. In view of the above, application no. 172 & 173 were disposed of.

Mr. S. Manoharan
Vs.
Secretary to Government of India, Ministry of Environment and Forest and Ors.

Application No. 184 of 2015 (SZ) (THC)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Noise Pollution, marriage hall
Decision: Application disposed of
Dated: 30th April 2015

The applicant had filed the application challenging the running of a marriage hall adjacent to his house stating that marriage ceremonies organized in the hall were causing noise pollution, thereby affecting his peace and quiet. Moreover, food waste generated from the hall was thrown into the vacant land in the backyard of his house which produced bad smell and caused pollution. Apart from this, activities in the marriage hall also caused water pollution and since the street in which the hall and the house of the complainant are located was a very narrow one, the road became congested due to parking whenever a marriage took place in the hall. The respondent contended that when applications for consent were filed before the State Pollution Control Board, they had been directed to dispose the solid waste properly and prevent the use of cone-type speakers during ceremonies. Since these conditions were complied with, the consent was granted till September 2012.

Application for renewal of consent was filed in May, 2014 but because of the present pending application, the Board was not able to process it. The respondents contended that there was a dispute between the applicant and respondent regarding the land and that was the reason why such an application was filed in order to harass the respondent. The Tribunal disposed of the application no. 184 of 2015 stating that the State Pollution Control Board should process the application to renew the consent in accordance with law and unless such application was not granted, the respondent was directed not to carry on any kind of activity in the hall.

MAY

Pollution

M. Manickam
Vs.
Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 132 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Effluent Treatment Plant (ETP), Soak Pit/ Dispersion Pit, Septic Tank
Decision: Application dismissed
Dated: 5th May 2015

The application was filed challenging the closure order passed by the Tamil Nadu Pollution Control Board under S. 31 (A) of Air Act 1981 and S. 33 (A) of Water Act 1974. The irregularities found in the functioning of the unit on inspection by the Board in February, 2012 were-

a. The unit was under operation without the valid Consent under Water Act and Air Act.
b. Even after several letters, reminders and show cause notices, the unit did not take any action to apply for Consent under Air Act.
c. Indiscriminate dumping of solid waste inside the premises was giving out foul odor and was not removed.
d. The Effluent Treatment Plant was not in operational condition and was choked with solid waste and vegetation growth.
e. The untreated trade effluent was being discharged on land for open percolation.
f. The unit had increased the production more than the consented quantity without the Consent for operation of the Board
g. For the treatment and disposal of sewage generated there was no Soak Pit/Dispersion Trench provided for the Septic Tank.

When the matter was brought before the Tribunal, the CPCB (Board) was directed to inspect the unit and give a report on functioning of its ETP and other safeguards for environment stated to have been made by the applicant. The report stated that-

a. Generation of process wastewater was more than the permissible quantity.
b. The present ETP was inadequate for treating the generated pollution load and the faulty operation of ETP had resulted in poor maintenance of biomass and dissolved oxygen in the aeration tank.
c. The ETP units and channels were not concretised; they had been constructed using bricks and black granite stones
d. No proper gardening/green belt had been developed; the treated wastewater from the outlet of ETP was discharged on the land, where it was stagnating.
e. It was informed by the unit that the lagoon constructed by black granite stone beside the ETP was planned to be utilised as a fish pond, but was not properly lined/cemented.
f. The seepage from the side walls was observed in the lagoon, which was due to the stagnation of treated wastewater on the land. Since the treated wastewater was not meeting the discharge norms, the storage in lagoon and stagnation on land might have led to groundwater pollution.
g. No proper sludge management system had been adopted and no storage facility for solid waste had been provided.

h. No records that were required to be maintained in order to regulate the activities of the unit had been maintained in any form.

The applicant contended that these were merely formal findings and that they should be given a chance to rectify them. But the respondents stated that non-compliance with such important technical grounds should be strictly dealt with. The Tribunal stated that the unit had not followed a single environmental norm during the operation of its unit. The Tribunal left it for the Board to decide on merits whether a future application to obtain consent would be entertained or not. Unless such consent was not granted, the Tribunal ordered the unit to remain closed. The Board was directed to dispose of such application expeditiously within a period of six weeks.

With the above direction, application no. 132 of 2013 was dismissed.

Miscellaneous: Illegal sand mining

Shri V. Chandrasekar
Vs.
The Union Territory of Puducherry and Ors.

Application No. 269 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Illegal sand mining, Special Task Force, Monitoring Committee, Check Posts and Tank and River Bunds
Decision: Application disposed of
Dated: 5th May 2015

The application stated that in a communal liaison group meeting held in Soriyakuppam Village of Pudducherry in March, 2015, it was decided that a case of criminal prosecution would be initiated against anyone found to be illegally mining and transporting sand. Subsequently, complaints were filed at Bahour and Ariyankuppam police stations and the matter was taken before the Judicial Magistrate, Puducherry. The applicants contended that despite such measures taken by the government authorities against illegal mining of sand and its transport, such activities were still going on and certain immediate measures were required to be taken in order to preserve the Ponnaiyar river. Following were the suggestions proposed in the application:

1) A special task force comprising officials of Revenue, Police, and PWD etc. be set up, comprised of officials working out of the Bahour region.
2) A monitoring committee comprising officials of Agriculture Department, Local village people, social activists, civil society organisations, police, PWD and Tahsildar be formed and the committee to file reports every fortnight to the District Collector.
3) Check posts be set up at Nagammal Koil and Graveyard Road of Cherikuppam Revenue Village.
4) To order the PWD to immediately set right and repair the tank and river bunds, and submit a report to the Tribunal in this regard.

The Tribunal disposed of the application no. 269 of 2013 with the following directions:

1) A special task force as suggested by the applicant be formed which will effectively supervise the river basin and take all measures to prevent the illegal mining and transportation. The task force shall be composed of various government officials (spelt out in the judgment) of the region, whose activities shall be supervised by the Regional Director, Ministry of Environment and Forests, Chennai (South) periodically.
2) The two check posts to be created shall monitor such illegal action (transportation of sand) and take suitable action when such violation is found, and proper prosecution is to be initiated through the police agencies.
3) The Public Works Department (PWD) was directed to set right the damages that had already been caused to the river bed and to repair the tank and river bunds within four months – reporting the progress on the same to the Regional Director, Ministry of Environment and Forests, Chennai (South).

M/s. Yesuraja
Vs.
District Collector, Nagercoil, Kanyakumari District and Ors.

Application No. 321 of 2013 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Consent to Establish, Consent to Operate
Decision: Application disposed of
Dated: 6th May 2015

The applicant in this case had filed an application against acitivities of the cashew nut processing unit owned by the 4th and 5th respondents. It was found that the emissions from the unit were found to be polluting the air, and the water and effluents discharged therefrom were causing health hazards and environmental degradation of the surrounding area, including a tank. It was also found that the unit had been running without obtaining consent to establish or to operate. When served with a show cause notice, the 4th respondent replied that the unit had been functional since a decade but without any consent. The 5th respondent, his wife (who was subsequently impleaded in the matter), was the one who had bought the unit in February 2011 and filed an application for consent to operate.

A communication was sent by the Pollution Control Board in reply informing about absence of consent to establish and directions to present land classification certificate from the concerned authorities. But because of failure of the respondent to reply to the notice, the Officer of the Board (respondent no. 2) was directed by the Tribunal to order immediate closure of the unit and terminate electricity service. The Tribunal directed that the 5th respondent be permitted to resubmit the application for consent after complying with all conditions and formalities as required under law, and that the 2nd respondent consider the said application and pass suitable orders within 4 weeks of the resubmission.

Mr. Aman Sethi
Vs.
State of Rajasthan and Ors.

Appeal No. 61 of 2013
And
M.A. No. 896 of 2014

Coram: Justice Swatanter Kumar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Condonation of Delay, Stone Crushing Industrial Units
Decision: Appeal dismissed
Dated: 7th May 2015

The Government of Rajasthan, in exercise of the powers conferred upon it under Section 5 of the Environment Protection Act, 1986 and Section 18 of the Air (Prevention and Control of Pollution) Act, 1981 issued directions in September, 2012 directing the Rajasthan Pollution Control Board to close down all stone crushing industrial units located in District Bharatpur, Rajasthan and not to allow establishment and operation of new stone crushing units in the nearby villages. These directions were passed in order to prevent and control air pollution, restore environment and to save it from further degradation, to protect the places of religious and ecological importance and to safeguard the life and health of people inhabiting the locality.

The appeal had been filed by an owner of one of the stone-crushing units that were closed down, following the orders dated September 11, 2012 and November 6, 2012. Initially, the applicant had filed a writ petition before the High Court in January, 2013. However, when the matter came before the court in April, 2013, the writ petition was withdrawn stating that the petitioner would seek the alternative remedy available to him according to the law. An application was then filed before the Tribunal challenging the order of the Government but the application was not accompanied by any application for condonation of delay.

The respondents opposed this and contended that according to S. 16 of the National Green Tribunal Act, an appeal should be filed within a period of thirty days of communication of the order/decision/direction/communication. However, if sufficient cause is shown, an extension of thirty days can be awarded. The respondents contended that the application before the Tribunal had been filed 175 days after the communication of the orders in question. They opposed the appellant's contention that the time during which petition was pending before the High Court should be excluded as per S.14 of the Limitation Act, 1963, and that the delay in filing before the Tribunal was thus only 51 days. It was argued that in view of the express provisions of S. 16 of the National Green Tribunal Ac, 2010, the provisions of the Limitation Act were excluded by necessary implication (as held by the Supreme Court as well), and the appeal was therefore barred. Moreover, there still existed a delay for 51 days for which the appellant had not provided any sufficient cause. It was also submitted by the respondents that absence of the application for condonation of delay was a threshold requirement and since it was not filed by the applicants along with the appeal, the appeal was liable to be rejected at the outset and held non-maintainable.
The Tribunal relied on a number of decisions of the Tribunal as well as the Supreme Court and High Courts of the country. The Tribunal referred to the case of *Sudeep Srivastava v. Union of India* [All India NGT Reporter (3) Delhi 43] wherein it was held that an appeal

which is filed beyond the prescribed period of limitation has to be accompanied by an application for condonation of delay in terms of proviso to Section 16 of the NGT Act and that such an application was a mandatory requirement. The Tribunal held that the Tribunal will have no jurisdiction to condone the delay at all if the appeal is filed beyond the period of 90 days.

In view of the body of statutory and case law on the point, the Tribunal upheld the contention that the application had been filed after a delay of 175 days. Even if, for the sake of argument, the contention that filing was delayed by 51 days only was accepted, the Tribunal stated that sufficient cause as to the delay had not been shown. Therefore, there was no merit in the arguments by the appellant and Appeal no. 61 of 2013 was accordingly disposed of.

M/s. Jai Hanuman Ent. Udyog
Vs.
U.P. Pollution Control Board

Application No. 74 of 2014

Coram: Justice Mr. Swatanter Kumar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Retrospective Application of Rules, Consent to Establish, No-Objection Certificate (NOC), Air Act
Decision: Application dismissed
Dated: 7th May 2015

The appellant was a brick kiln unit at Kastooripur, Allahabad. The 2nd respondent herein had previously contended - in complaints made to government authorities as well as twowrit petitions before the High Court of Allahabad - that the unit had been running without consent from the State Pollution Control Board and that an order of its closure should have been issued. Disposing of the most recent writ petition, the High Court found that the matter required factual verification, and permitted an appeal to be filed before the Appellate Authority under the Water Act. The Appellate Authority, after hearing the matter, quashed the earlier consent order of the Regional Officer, UPPCB. In its order, the appellate authority stated that the UP Brick Kilns (Siting Criteria for Establishment) Rules, 2012 would have been applicable when the application for consent was filed before the Regional Officer. This order of the appellate authority was impugned by the appellant in the present appeal. The contention of the appellant was that the unit was established in the year 2010 after taking clearance from the Zila Parishad. The Rules of 2012 had been promulgated on 27th June, 2012; therefore, they could not be applied to the case of the appellant. The main issue was whether the Rules of 2012 could apply to the unit of the appellant with retrospective effect.

The Tribunal stated that it was clear from the records that when the brick kiln was established in 2010, it had taken an NOC from the Zila Parishad but it had not obtained the consent of the UPPCB under Section 21 of the Air Act, 1981. In terms of Section 21 (6) of the Air Act, no person shall, without the previous consent of the SPCB, establish or operate any industrial plant in an air pollution control area. Even the units which were operative at the time of commencement of the Act were granted period of three months from the date of commencement of the Air Act, within which they were required to take the consent of the Board. Thus, there was a statutory obligation on the part of the appellant to seek consent of UPPCB for establishing and operationalizing its unit. Admittedly, the appellant did not take consent of the Board till the show cause notice was issued to it in January 2013. It is only after issuance of this show cause notice that the appellant had filed an application for grant of consent. Thus, for the first time when the unit applied for obtaining consent of the UPPCB was in August, 2013, that is, when the Air Act and all the laws framed thereunder, including the Rules of 2012, were in force. The application for grant of consent ought to have been considered by the UPPCB in accordance with the laws in force, when the application was moved and not when the unit claims to have been established or the time since when it was running.

The Tribunal held that this would be the position of law, in all cases wherein following a procedure is mandatory and only adds to additional obligation, but does not take away any

existing rights; such laws would have to be treated retroactively, i.e., having an effect on units and industries established before the law in question came into force (not taking away vested rights, but imposing certain restrictions on their operation). About the purpose of the legislation, the Tribunal stated that it, like other environmental legislations, was socio-benficial and intended to serve the greater cause of public health and environment and ensure that people residing in the vicinity were not affected by the units. It was held that the appellant could not take advantage of his own wrong conduct of not obtaining consent and hence his appeal was non-maintainable. Appeal no. 74 of 2014 was dismissed accordingly.

Miscellaneous: Illegal Sand Mining

Mr. P.K. Ellappan
Vs.
Government of Tamil Nadu and Ors.

Original Application no. 240 of 2013 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: Sand Mining, Sand Quarrying, Ground-water Depletion
Decision: Application disposed of
Dated: 7th May 2015

The applicant – a resident of Pinayur Village, Kancheepuram District – was aggrieved by that though the Palar river in the village had been declared as prohibited area for carrying out sand mining and quarrying by the Tamil Nadu and State Government, and though the villagers had been carrying out protests against such activity, no action had been taken to prevent the illegal quarrying either by the Panchayat administration or by the Revenue officials. The applicant alleged that water from the river was used for irrigation purposes and if the mining was not stopped, the drawing of water from the river would lead to depletion of ground water levels thereby posing a threat to all kinds of agricultural activities.

The respondents contended that a ban had been imposed by them on mining in the river beds of the Palar River and the ban was in force from November, 2013 for a period of one year. In November, 2014, it was further extended for a period of one year and hence, the ban stood extended till 12.11.2015. The Tribunal held that it had become necessary to issue a direction to the Revenue Officials of the District to see that the ban order was implemented effectively and if there was any breach, the Tribunal directed that the concerned authorities would initiate action if necessary with the assistance of District Police against the wrong doers. In view of the above, application no. 240 of 2013 was disposed of.

Miscellaneous

M/s. Manimalar Food Products (P) Ltd.
Vs.
District Collector, Tirrupur

Application no. 92 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Public Interest, Jurisdiction
Decision: Application disposed of
Dated: 8th May 2015

The 2nd respondent in the case, Avinashi Panchayat Union, had refused to grant permission to the applicant to run a water packaging unit – against which order the present application was filed. The applicant contended that for the purpose of getting the permission from the Panchayat or PWD, he was being directed to approach various authorities and such action was not in accordance with the law. He relied on the case of *Anil Kumar Gupta v. Municipal Corporation of Delhi* [CDJ 2003 DHC 1107], wherein the Delhi High Court held that there was no purpose in two authorities scrutinizing the same norms for a premises where packaged drinking water had to be manufactured and the more stringent norms as prescribed by the Pollution Control Committee were liable to be followed.

The Tribunal did not agree with the contentions of the applicant, In its opinion, the High Court of Delhi had not held that different authorities would lose their jurisdiction but had observed that the decision must be taken under one umbrella for the benefit of the public at large. The Tribunal, therefore, directed the 2nd respondent to consider the application on merit in accordance with law and pass appropriate orders, and in view of the above, disposed of application no. 92 of 2015.

Environmental Clearance

Shri Thamme Gowda and Ors.
Vs.
Union of India and Anr.

Appeal nos. 21 of 2013 and 56 of 2013 (SZ)
Application no. 152 of 2014 (SZ)
and
Appeal no. 21 of 2013 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Environmental Clearance (EC), Environmental Assessment Committee (EAC), Terms of Reference (ToR), Consent for Establishment (CFE)
Decision: Application disposed of
Dated: 12th May 2015

In the present appeal, the appellant had challenged the order of the Tribunal wherein the environmental clearance granted to for the project (consisting of a distillery, a cogeneration plant and a power plant) had been suspended for a period of six months on account of objections raised by the original applicants. The Tribunal opined that in view of the fact that the project was a Category 'A' industry as per the schedule to the EIA Notification, 2006, the EIA had to be carried out in a comprehensive and scientific manner. The Tribunal then proceeded to enlist the various improprieties and irregularities that had occurred in the process of granting the EC, including the inadequate Terms of Reference framed by the Environment Assessment Committee (EAC) and the illegal manner in which the public hearing was conducted. The factual discrepancies within the EIA report have also been discussed at length in the judgment. On these grounds, the EIA stood vitiated.

Considering that the EC had been improperly granted, and also considering the history of the project proponent in causing environmental pollution, the Tribunal – instead of quashing the EC altogether -directed the Ministry of Environment and Forests (MoEF) to call for additional information and clarifications in respect of all concerns and objections even if minor in nature, to consider the same at the time of meeting to be convened and conducted for the said purpose after giving an opportunity to the project proponent to be present at the time of that meeting. EAC was directed to consider each and every issue separately and independently and record the reasons either for rejecting or accepting the concerns and objections and also the response by the Project Proponent so as to understand both the Project Proponent and Objectors, ensuring transparency in the process of recommending either for acceptance or for rejection of the clearance. The EC granted to the impugned unit was directed to be kept in suspension for six months.

The KSPCB was also directed to reconsider the consent to establish that was granted to the 3rd respondents in April 2013 for expansion of the industrial unit which was under challenge in the original application. As a result, the respondents were directed to stop all the work until the clearance was under suspension and would continue only when it was granted by the MoEF after the considerations mentioned above. In the above terms, appeal nos. 21 of 2013 and 56 of 2013 and application no. 152 of 2014 in the matter of appeal no. 21 of 2013 was disposed of.

Dr. Abraham Paul and Ors.
Vs.
State of Kerala and Anr.

Application no. 445 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Noise Pollution (Regulation and Control) Rules of 2000
Decision: Application disposed of
Dated: May 13, 2015

The application had been filed by the office bearers of the Indian Medical Association, Cochin Branch, stating that the place where their hospitals are situated were the places where noise pollution was at its peak, which disturbed and interfered with the health of the patients staying there. The applicants sought a direction from the Tribunal against the respondents to ensure that noise pollution levels were reduced in the region. For this, they relied on the case of *K.N. Namboodiri & Ors. v. State of Kerala & Ors.*[CDJ 2004 Ker. HC 26] wherein it was held that according to Rule 3 of Noise Pollution (Regulation and Control) Rules, 2000, the State Government has the power to categorize areas like industrial, commercial, residential and silence zone, etc.; to regulate the vehicular movements, blowing of horns, bursting fire crackers, use of loud speakers etc. in order to maintain the standard of ambient air quality in terms of noise levels.

The Tribunal held that in an area like the present one wherein hospitals were situated, it was the duty of the government and the executive authority (Traffic Police) to see that air horns and other nuisance by the vehicles were totally avoided in the interest of the patients who were taking treatment there. Therefore, the government was directed to implement Rule 3 of the aforementioned rules within a period of 4 months and file a report of compliance. In view of the above, application no. 445 of 2013 was disposed of.

Mrs. Rosa Maria Fernandes
Vs.
Goa Coastal Zone Management Authority

Miscellaneous Application nos. 41 to 50 of 2015 with
Appeal nos. 9 to 18 of 2015 (WZ)

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Small Inquiry Committee, Goa Coastal Zone Management Authority (GCZMA), Natural Justice
Decision: Application disposed of
Dated: 14th May 2015

A complaint was made by one, Betty Alvares, regarding illegal construction in a CRZ area of Candolim. Due to paucity of time and manpower, the Goa Coastal Zone Management Authority (GCZMA) was not able to inquire into the complaint. The Tribunal ordered the establishment of a Small Inquiry Committee (SIC) to look into the matter. The committee called for due records available and heard both the parties involved in an open court and accordingly submitted its conclusions to the GCZMA. Based on these findings, the GCZMA passed orders of demolition of structure which was illegal to the appellants in this case without giving an opportunity to them to present their case, stating that there was no need to give further hearing since the small inquiry committee had already heard both the parties.

The only question that needed consideration was whether the procedure followed by GCZMA was proper, legal, correct and according to the principles of natural justice The Tribunal held that the function of the Small Inquiry Committee was like that of Court Commissioners, but the ultimate decision was to be made by the GCZMA which could not have abdicated this responsibility in any manner. Moreover, the Tribunal had not, by means of any order, delegated the powers of the GCZMA to the Committee. Since, there exists no embargo on second hearing; the Appellants should have been heard by the Authority even though it would have amounted to a repetition or a second hearing. Therefore, the Tribunal directed the Authority to hear the appellants again and pass an order accordingly. In view of the above, miscellaneous application nos. 41 to 50 of 2015 with appeal nos. 9 to 18 of 2015 were disposed of.

Environmental Clearance
Sand Mining

Mr. Paramjeet Singh Kalsi
Vs.
Ministry of Environment and Forests and Ors.

Application no. 44 of 2014 (WZ)

Coram: Justice Mr. V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Illegal sand mining, Mechanical Mining, Manual Mining, Bombay Mining and Mineral Rules, Environmental Impact Assessment (EIA) Notification, 2006, Environmental Clearance (EC)
Decision: Application disposed of (with directions)
Dated: 15th May 2015

The applicant had filed the application under Sections 14, 15 and 17 of the National Green Tribunal Act, 2010 alleging environmental damage caused in the village Rajola in district Nagpur due to illegal sand mining by heavy machinery. It was found that no permission had been granted by the Groundwater Survey and Investigation Department allowing mining with heavy machinery. As a result, such excessive sand mining using suction pumps and mechanical blocks in the blocks reserved for manual mining was affecting the river beds, banks and groundwater circulation. The following was what was prayed before the Tribunal:

1) Appropriate orders to be issued against illegal mechanical mining without proper permissions from the concerned authority.
2) A report released by the Government of Maharashtra regarding grant of permits for mining, the amount of sand mined and whether the grants were for manual or mechanical excavation.

The Tribunal held that the first respondent, Ministry of Environment, Forests and Climate Change did not have a direct role in enforcement of local laws. However, the Ministry was directed to frame regulations or guidelines for the proper and effective implementation of the Environment Impact Assessment Notification of 2006. Respondents 3, 4 and 5 were the main contesting parties. They contended that the District Mining Officer and the Revenue Officer had released a notification in November, 2013 which included a list of equipment that was allowed to be used for the purpose of sand mining. Use of a suction pump had been expressly forbidden except when it was in public interest. They contended that though there were some cases where certain illegalities had been committed by individual contractors, they had initiated stringent actions under the Bombay Mining and Mineral Rules and such action was in accordance with the principle of sustainable development.

The respondents submitted that two Environmental Clearances had been granted under the EIA notification in the name of the collector and that it was the duty of the collector to see that all conditions in the EC had been complied with. The Tribunal came to the conclusion that there were two issues that needed consideration:

i) What was the enforcement mechanism of the ECs granted for sand mining activities including verification, legal action and assessment of environmental damages by the authorities?
ii) Whether any objective parameters had been defined in the ECs like restriction on area of mining or volume of sand excavated in order to initiate legal action?

However, it was mentioned that the ECs were granted in the name of the District Collector. Moreover, the District Collector was entrusted with the responsibility to ensure compliance and that in case of non-compliance, the District Collector and the District Mining Officer would be held personally liable for the non-compliance. In other words, the responsibility to enforce the EC as well as the compliance of the EC had been placed on the District Collector. This proposition was declared as unrealistic and against the basic principles of governance by the Tribunal stating that if the Collector was the project proponent himself, he was not expected to reasonably regulate the operation himself.

The respondents further stated that the District Collector was not the project proponent, only the EC had been granted in his name, while the lease deeds had been signed in the name of the mining industries. The Environmental Department in the District further submitted that District Collector had been entrusted with the compliance due to lack of sufficient man power for enforcement of the EC. The Tribunal stated that violation of conditions of the EC need to be attributed to the project proponent, in this case to the mining lease holders.

Regarding the second issue, the Tribunal held that there was a significant policy gap for setting up a mechanism for enforcement and for ensuring compliance of the EC conditions as far as sand mining was concerned. As a result the Tribunal held that there was no enforcement mechanism for conditions of the EC and that no parameters had been mentioned in the EC as to when legal action could be initiated against the project proponents. The Tribunal gave the following directions guided by the precautionary principle and by the power conferred on it under S. 20 of the NGT Act:

i) The Secretary of the Environmental Department, Govt. of Maharashtra was directed to formulate enforcement mechanism for compliance of Environment Clearance conditions in respect of sand and other minormineral mining activities within a time frame of 2 months;

ii) The mechanism was to clearly outline the enforcement protocol including the criteria for assessment of violations, officers and their roles and responsibility including taking legal action under the Environment (Protection) Act along with guidelines for assessment of damages;

iii) A copy of the mechanism was to be submitted before the Tribunal and that until the guidelines were drafted, the District Collector was to submit reports regarding compliance and actions against non-compliance to the State Environment Impact Assessment Authority and to the Environmental Department.

In view of the above, application no. 44 of 2014 was disposed of.

Water & Air Pollution
Polluter Pays Principle

M/s. Manjunath Dyeing Works
Vs.
Member Secretary, Karnataka State Pollution Control Board and Ors.

Application no. 225 of 2014 (SZ)

Connected matters:
Application No. 20 to of 2015(SZ), Application No. 21 of 2015 (SZ), Application No.22 of 2015, Application No. 23 of 2015, Application No. 24 of 2015, Application No. 25 of 2015, Application No. 26 of 2015, Application No. 27 of 2015, Application No. 28 of 2015, Application No. 29 of 2015 & Appeal No. 02 of 2015.

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Common Effluent Treatment Plant (CETP), Polluter Pays Principle, Effluent Collection Line, Bangalore Water Supply and Sewerage Board (BWSSB)
Decision: Application disposed of (with directions)
Dated: 15th May 2015

The applications were filed along with an appeal, against the orders of closure issued by the Karnataka State Pollution Control Board against the appellant and the applicants. The applicants and appellant were units engaged in silk fabric dying and washing activities in Cubbonpet, Bangalore and were alleged to be in violation of Water Act, 1974 and Air Act, 1981. The first time applications were filed in the matter by residents living near these units, closure orders were given on grounds that there was a threat to their health and to the quality of the environment. An appeal was preferred before the Karnataka State Appellate Authority, which stayed the closure orders and directed the Board to give directions after hearing both parties to the dispute. The second time these applications were filed, the Board gave the same decision after hearing both the parties, i.e., gave closure orders. The application and appeals have been filed before the Tribunal challenging the order of the Board.

While the applicants and the appellant contended that orders by the Board had been given without any application of the mind, the respondents, who were the residents of the colony, contended that effluent from the units was directly being discharged into the drain without any treatment and that these units had been established without obtaining any consent from the Board or without any renewal of the consent if it had expired at a certain date Moreover, the chimneys provided in the units were not sufficient to regulate air emissions. These units being situated in a residential area were likely to cause damage to the health of other residents. Subsequently, the Tribunal appointed Court Commissioners to prepare a report regarding nature of the units, manner of operation, storage and disposal methods, effluent discharge, alternative remedy and other environmental impacts.

The issues that needed consideration according to the Tribunal were:
1) Whether the applicant units running were authorized following the pollution norms?
2) Whether the impugned orders of the State Pollution Control Board in directing closure of the units were valid in law?
3) To what relief the applicants/appellant were entitled to?

4) What other orders to be passed in the interest of maintaining proper environment in the Area?

Regarding the first two issues, the Tribunal held that following the assessment of air and water samples in the locality where the units were running, it was found that the quantities of various contents of the samples exceeded the maximum levels set according to pollution norms. Sections 25 and 21 of the Water Act and Air Act respectively state that an industrial unit cannot run without obtaining consent to establish and to operate from the Pollution Control Board. Therefore, these units were held to be unauthorized and the contention that the applicant and appellants were not heard was rejected. The closure order would not be lifted unless the Board granted consent to establish and operate to the units and such consent could only be granted of all directions and requirements by the Board were followed. As far as the last issue was concerned regarding the relief, the report of the commissioners was accepted and the units were directed to deposit a sum of Rs. 15000/- each guided by the Polluter Pays Principle and which would be used in the future to set up a Common Effluent Treatment Plant (CETP) for the units as a long term measure.

The Tribunal held that no unit shall dispose of the trade effluent with or without treatment into the public sewer network of the BWSSB. As a short term measure, the units were directed to collect the effluents in a common tanker which would be transferred by a vehicle to a CETP. The units using coal or firewood were directed to use Liquefied Petroleum Gas (LPG) in order to reduce air emissions. As a long term measure, the concerned governmental authorities along with the Board were directed to make arrangements to relocate the units keeping in mind pollution control measures and sustainable development of this economically important industry. The long term measures were to be implemented within two years. The Tribunal also directed the Board not to grant consent to those units that did not deposit the amount under the Polluters Pay Principle or did not implement the short term measures recommended by the Tribunal. In view of the above, application no. 225 of 2014 was disposed of.

M/s. Sai Exports
Vs.
Shri N. Selvaraj and Ors.

Miscellaneous Application no. 132 of 2015
in
Application no. 156 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Polluter Pays Principle, Consent to Establish
Decision: Application disposed of
Dated: 15th May 2015

The miscellaneous application was filed by the respondent in the original application, Sri Padmanabha Cashew, a manufacturer of roasted cashew which was ordered to deposit an amount of Rs. 500000/- according to the Polluter Pays Principle and only then would an application for consent was to be granted. Till that time, the unit was ordered to be closed. The said order was issued on April 28, 2015.

The respondent contended in the miscellaneous application that a copy of the order was received on May 12, 2015 by the respondent and it would be very difficult for him to arrange for the amount within the stipulated period. Therefore, the respondent had filed for extension of time for payment. The Tribunal thereafter allowed the extension and ordered the respondent to deposit the said amount by May 25, 2015. In view of the above, the miscellaneous application no. 132 of 2015 was disposed of.

Miscellaneous

M/s. Kuberan Aqua Industries
Vs.
Chairman, Tamil Nadu Pollution Control Board and Ors.

Application no. 95 of 2015 (SZ)

Coram: Justice Shri M. Chockalingam, Shri P.S. Rao
Keywords: No-Objection Certificate (NOC), Consent to Operate
Decision: Application disposed of
Dated: 15th May 2015

The applicant in the present case was a packaged drinking water unit. The unit was situated at Mudivaithanendal, Tuticorin District in 'over-exploited' category area. The unit had been closed down in July, 2014, electricity connection to the unit was disconnected, an application seeking a No-objection certificate (NOC) before the Public Works Department (PWD) was rejected and the application for renewal of consent to operate was not accepted by the Tamil Nadu Pollution Control Board.

The application had been filed seeking restoration of electricity connection only to the extent of maintaining the membranes and machineries of the unit. The Tribunal held that since the aforementioned permissions had not been granted, the Tribunal could not direct continuation of commercial work in the industry. However, in order to avoid financial hardships that would be faced by the applicant if the membranes and machineries were not kept in proper condition, the Tribunal allowed restoration of electricity connection but only to the extent that would be necessary to maintain the equipment. The District Environmental Engineer was ordered to monitor the unit and ensure that it was not used for regular commercial work. In view of the above, application no. 95 of 2015 was disposed of.

Miscellaneous

Dr. Chandrabhan Rajpurohit
Vs.
State of Rajasthan and Ors.

Original Application no. 18 (THC) of 2015

Coram: Justice U.D. Salvi, Dr. D.K. Agrawal
Keywords: Common Effluent Treatment Plant (CETP), Sustainable Development, Reverse Osmosis Plant, Environmental Clearance
Decision: Application disposed of
Dated: 15th May 2015

The applicant had filed this application requesting the Tribunal to direct concerned authorities to stop construction of the Common Effluent Treatment Plant (CETP) on the Bandi river alleging that such construction would affect the free flow of water and would pose a threat to the citizens residing near the bank of the river. The applicant also filed a writ petition before the High Court of Rajasthan with similar pleadings but it was dismissed when the High Court found out that the installation of the CETP was necessary for treatment of water discharged by the textile industries situated in the locality and also that the construction was not being done in a manner that would affect the flow of water in the river. The High Court also found that such cases involved taking of a holistic and comprehensive view keeping the principle of sustainable development as a guiding principle. Subsequently, the Court transferred the application to the Tribunal to decide on the issue of limitation in the application.

The Tribunal held that the mandate of the Tribunal under the National Green Tribunal Act was to examine the substantial questions related to the environment while in the present application the applicant had not disclosed any environmental concern. The respondents had even contended that the plant in question would also include the Reverse Osmosis Plant which would make it possible to reuse the treated water discharged from nearby industrial units, thereby attaining zero discharge. Therefore, the Tribunal held that the allegations of the applicant were not maintainable. Moreover, they had not challenged the grant of Environmental Clearance (EC) given to the project proponent. Even if they had, it was too late to file an application against a clearance given in 2011 since S. 16 of the NGT Act allows a six month time frame to appeal against such orders from the concerned authority. In view of the above, application no. 18 of 2015 was disposed of.

Miscellaneous

Department of Environment, Government of Kerala
Vs.
K. Savad and Ors.

M.A. No. 133 of 2015
in
Application No.01 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Forest area, Physical verification
Decision: Application disposed of
Dated: 18th May 2015

The miscellaneous application was filed by the State of Kerala for extension of time granted to them by the Government of India to a period of six months on the grounds that carving out actual forest area for 142 villagers would require physical verification.

The Tribunal granted an extension of three months to the State Government to complete the entire exercise and stated that no further extension would be granted. In view of the above, miscellaneous application no. 133 of 2015 in application no. 1 of 2015 was disposed of.

K.M. Subramanian
Vs.
District Collector, Dindigul District and Ors.

Application No.185 of 2013 (SZ) (THC)
and
M.A.No. 87 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Tamil Nadu District Municipalities Act of 1920, Noise Pollution (Regulation and Control) Rules of 2000
Decision: Application dismissed
Dated: 18th May 2015

The application was filed against the respondents who were owners of a Marriage Hall seeking orders to close down the hall since it had been operating without obtaining necessary consent Tamil Nadu District Municipalities Act, 1920, Water Act, 1974 and Air Act, 1981 and also because the activities were in violation of Noise Pollution (Regulation and Control) Rules, 2000.

The marriage hall had been closed down and the respondents submitted that it would not start functioning unless they had duly obtained consent from the concerned authority and were acting in compliance with the environmental laws of the country. In view of the above, the Tribunal dismissed the application directing the Board to consider such an application for consent on merit as and when it is submitted and to ensure that the marriage hall does not function unless such consent has been granted. The Board was also directed to take into account not only air and water pollution, but also to take into account waste management, noise hazards and other environmental protections while imposing restrictions.

Aam Aadmi Lokmanch
Vs.
State of Maharashtra andOrs.

Application No. 4 of 2014

Coram: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Land grabbing, illegal hill cutting, National Highway Authority of India (NHAI)
Decision: Application disposed of
Dated: 19th May 2015

The applicant is an organization concerned with environmental issues and the application had been filed under Sections 14, 16 and 18 of the National Green Tribunal Act seeking injunction against the 5th and the 6th respondents stating that illegal cutting of a hill at Wadachiwadi, Pune district. A general relief had been sought asking for directions to other respondents to take necessary actions for protection of hills from destruction. There were large number of newspaper reports as well as electronic media reports, which showed destructionof hills around city of Pune for the purpose of landgrabbing and illegal construction of buildings. The hill cutting could give rise to landslides, loss of humanlife, floods and like calamities and, therefore, it isnecessary to protect terrain of hills.Due to such illegal activities, a huge landslide had taken place during heavy rainfall and as a result had crushed a woman and her daughter to their deaths.

Respondents No. 5 and 6 submitted that the Application is not maintainable for the reason that it did not fall within the jurisdictional domain of the NGT Act. They pleaded that the Applicant ought to have approached a Civil Court concerned, seeking suitable relief. According to them, they had not done any illegal act. They submitted that they were occupiers of plots situated near the service road. They had obtained due permission for extraction of a minor mineral (soil) from the Govt.authorities on payment of royalty. They further submitted that the debris had collected due to heavy rainfall on that day followed by media reports stating that the incident occurred due to illegal hill cutting. They alleged that the Application was only based on media reports and hence not maintainable.

The main issues that were subsequently framed were-

i) Whether any illegal hill cutting had taken place at Katraj, somewhere between April to June 2014, which narrowed down passage of available entry or exit to Pune and outside?
ii) Whether the Respondents No. 5 and 6 were issued permit to extract minor mineral by the office of Collector and it was under the garb of such permit that they committed illegal hill-cutting?
iii) Whether the then Tehsildar, Bhor was aware of and could have probably stopped the illegal activity of hill-cutting with the help of Respondent No.9(NHAI) or other officials and could have also stopped illegal construction of building, which was being constructed by the Respondents No. 5 and 6 at the hill-top, which he could have noticed at any cost?
iv) Whether the Respondents No. 5 and 6, in support with Tehsildar, Bhor and the Respondent No. 9 caused extensive irreversible and uncontrolled environmental loss due to hill-cutting at Katraj, which resulted in the death of an innocent girl and her mother?
v) Whether Respondents would be liable to pay compensation, restoration charges and restoration? If yes, in what manner and to what extent?

A report dated September 15, 2014 was submitted by the Tehsildar. This report showed that a large number of violations and extraction of minor mineral by the villagers was being done. The Tribunal stated that hill-cutting was adopted by the villagers to earn easy money at the bidding of developers/contractors of buildings, and some of the builders which projects might have been without permission. This had made the area of hill fragile, susceptible to danger to the ecology and devoid of any support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure.

The destruction of hill could not have occurred without involvement of the Project Proponent i.e. NHAI. It was responsibility of NHAI to persuade concerned authority to act to avoid such accidents. The Respondent No. 9 (NHAI) had been silent for about two (2) years, in spite of knowledge that the work of hill cutting was going on. The Tribunal opined that NHAI was likely to be benefited in some way due to the illegal act of hill cutting because of availability of murum, stones and soil for the work forits project.

The Tribunal gave the following directions:

i) Respondents no. 5, 6 and 9 were directed to pay amount of Rs. 50 lakh as joint penalty imposed on them for causing environmental damage in the areas of Katraj, due to the hill-cutting activities.

ii) This amount was to be deposited with Collector (Pune) within 6 weeks and was to be spent for environmental protection and conservation activities in the district.

iii) Respondent nos. 5, 6 and 9 were to jointly and severally pay amount of Rs.15 lakh towards compensation to the legal representatives of deceased persons.

iv) Respondent nos. 5, 6 and 9 were also to deposit amount of Rs.10 lakh with the office of Collector for plantation of trees in order to restore damage caused to environment.

v) The concerned authorities were directed to look into any cases relating to illegal hill cutting in the area in the future.

In view of the above, application no. 4 of 2014 was disposed of.

Compensation & Restoration
Environmental Clearance

Forward Foundation, Bangalore & Ors.
Vs.
State of Karnataka & Ors.

Original Application No. 222 of 2014

Coram: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Professor A.R. Yousuf
Keywords: Commercial projects, water pollution, Agara and Bellandur Lakes, cause of action, Principle of res judicata, ecological restoration, restitution, compensation
Decision: Disposed of with directions and cost
Date: 7th May, 2015

The application was filed with a common prayer that a direction to be issued to respondent no. 1, i.e. the State of Karnataka to take cognizance of the Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further, the applicants also prayed for issuance of a direction that the valley land was to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area was not disturbed.

Their principal grievance was in relation to certain commercial projects that were being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage.

The State Level Expert Appraisal Committee (for short the 'SEAC') which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone.

According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submitted that the conversion of land from 'Protected Zone' to 'Residential Sensitive' area was in violation of the law.

The Lake Development Authority (for short 'the LDA'), i.e. respondent no. 6, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013

confirmed that the project would have a disastrous impact, including deleterious effect on the Bellandur Lake. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014, in which the High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013.

The following questions were for consideration and determination of the Tribunal:

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, was barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclosed a cause of action over which this Tribunal had jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the application was barred by the principle of res judicata and / or constructive res judicata?
4. Whether the application filed by the applicants should not be entertained or it was not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the High Court of Karnataka?
5. What relief, if any, were the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

Sections 14 and 15 of the NGT Act, 2010 to a large extent are self-contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, was within the prescribed period of limitation.

A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark.

It was determined that the applicant may not challenge the grant of Environmental Clearance per se, but upon commencement of the project and in view of there being definite documentary evidence supported by data, that the Project Proponent had committed breaches. Thus, implementation of the project was bound to have a serious adverse impact on the ecology; environment and particularly the water bodies would give an independent 'cause of action' to him de hors the grant of Environmental Clearance. The

averments in the application and the record fully satisfied the ingredients of Section 14 of the NGT Act.

The plea raised by the respondents that the application did not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal was, therefore, liable to be rejected. The respondent could raise such a plea only while on the assumption that the allegations made in the application were correct.

It was further contended that the issues in the application were directly and substantially in issue before the High Court of Karnataka and therefore, the present proceedings were barred by the Principle of res judicata and/or constructive res judicata. Neither the applicant nor respondent nos. 11 and 12 disputed the filing of these Writ Petitions before the High Court, but vehemently contended that neither the parties were common nor the issues in both the applications were directly and substantially the same. According to them, there was no commonality of cause of action or likelihood of a conflict between the judgments. It was therefore, their contention that the application was not liable to be rejected on that ground. However, it was held that the Tribunal essentially related to the environment, ecology and its restoration and was a civil proceeding; while the proceedings before the High Court related to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings were neither substantially nor materially identical. Both jurisdictions operated in different fields governed by different and distinct laws. The objection taken by the Respondent did not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondent no.9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent no.9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects were under initial stages, i.e. only levelling and excavation works are going on.

In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case could be divided into two parts: first, what were the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 committed; and secondly, the likely impacts of these projects upon the environment and ecology of the area in question, particularly on the water bodies.

In light of the above scope of the project and records before the Tribunal, and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before the Tribunal could be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance. The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
2) Revenue Map images showed multiple Rajakaluves flowing through the project(s) in question. The images further showed encroachment on Rajakaluves.
3) Digital images of the land available on Google satellite images showed encroachment on two major Rajakaluves.
4) Google Satellite images retrieved from Google archives clearly reflected two distinct features: firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010; and secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance. Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
5) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved.

There was sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the High Court of Karnataka which has granted stay on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

The Tribunal declined to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, a Committee was constituted to inspect the projects in question and submit a report to the Tribunal *inter alia,* specifically on the issues stated in this order. This Committee comprised of advisor in the Ministry of Environment and Forest dealing with the subject of wetlands; CEO of the Lake Development Authority, Karnataka State, Chief Town Planner of BBMP, Bangalore; Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question; Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore; Dr. Siddharth Kaul, former Advisor to MoEF, a senior officer from the National Institute of Hydrology, Roorkee; and Member Secretary of the Karnataka State Pollution Control Board, who shall act as the Convenor of the Committee and would submit the final report to the Tribunal.

Furthermore, respondent no. 9 was held liable and was directed to pay a sum of Rs. 117.35 crores, while respondent no. 10 was directed to pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The Tribunal ordered

that the said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non–compliance to law by the Project Proponent in that area, after taking approval of the Tribunal. The Tribunal further made it clear that the said respondents would not be entitled to pass on the amount onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

The application was disposed of in the above terms while leaving the parties to bear their own costs.

Environmental Clearance

Om Dutt Singh
Vs.
State of UP & Ors.

Original Application No. 521 of 2014
And
M.A. NOS. 902 of 2014 & 14 of 2015

Coram: Justice Swatanter Kumar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Kanhar Irrigation Project, Environmental Clearance, Forest Clearance, water pollution, limitation, sustainable development
Decision: Disposed of
Date: 7th May, 2015

The application was filed seeking direction with respect to the construction of the "Kanhar Irrigation Project". It was the specifically pleaded case of the applicant that project was likely to have large scale adverse impacts on the environment and ecology of the area, particularly, if the same were permitted to continue its activity and become operational without prescription of appropriate safeguards in the interest of environment, ecology and the persons living in that area.

The Ministry vide its letter dated 14th April 1980, had granted Environmental Clearance to the project. The Forest Clearance had also been granted, though the letter granting Forest Clearance was not available, the copy of the letter dated 27th February, 1982 was been placed on record, subject of this letter relates to transfer of forest land in the district in question. A common rejoinder had been filed by the applicants, stating that there was no operation from the year 1989 to 2014 and thus, it was not an ongoing project.

The following questions arose for consideration:

(i) Whether or not this application should be entertained by the Tribunal in view of pendency of two Writ Petitions on similar issues before the High Court of Allahabad?
(ii) Whether the present application was barred by time and therefore liable to be rejected?
(iii) Whether it was obligatory upon the Project Proponent to seek Environmental Clearance afresh, in terms of the EIA Notification, 2006?

Thus, the Tribunal had to determine whether seeking of Environmental Clearance for the project afresh would be necessary or not and whether any directions needed to be passed for restoration of the pristine environment of the area to its natural state.

On the first issue, it was decided that this petition was squarely covered under Sections 14 and 15 of the NGT Act, subject to the decision on other issues by the Tribunal. Since neither the parties were common nor the issues were directly and substantially similar, the reliefs even claimed by the parties in their respective petitions/applications fell in different fields of law and there was hardly any possibility of passing of the conflicting judgments
Coming to the question of limitation, it was established that the Environmental Clearance had been granted to the project in 1980. However, the applicants did not file an appeal under Section 16 of NGT Act challenging the Environmental Clearance. They raised environmental issues falling within the ambit of Sections 14 and 15 of the NGT Act.

Undoubtedly, limitation prescribed under Section 14 is of 6 months from the date when the 'cause of action first arose', while under Section 15, it is of 5 years from the date when the 'cause of action first arose'. The NGT Act, 2010 itself came into force in the year 2010 and the period of 5 years was not over. Prior to 2010, the question of filing the petition as contemplated under Section 14 and 15 of the NGT Act would not arise and the applicant could not have invoked such jurisdiction. From the date above-mentioned, it was clear that the consent of the States, which would be an advantage precedence for commencement and carrying on of the project itself, was granted in the year 2010. The project reports showed that in the year 2010, scope of the project was expanded and/or modernized which was cleared by the Central Water Commission only on 16th September, 2010. If 5 years was even computed there from, the petition had been filed on 22nd December, 2014 which was well within the period of 5 years. Another relevant aspect that would call for discussion was the fact that the Forest Clearance of the project was not available and in any case had not been placed on the record of the Tribunal. After coming in to force of the Environment Protection Act, 1986, particularly the notification of 1994 and 2006, it was expected of the project proponent to put both the Forest and Environmental Clearances on its website and inform the State Government as well, and none of this kind had been done to trigger the prescribed period of limitation under the provisions of the NGT Act. In light of this discussion, the Tribunal was unable to find any merit in the plea of the Respondents that the present application was barred by limitation.

Coming to the merits of the case, the Tribunal stated that in the application, there was no prayer for setting aside of the Environmental Clearance dated 14th April, 1980. There was no Forest Clearance placed on record by any of the parties before the Tribunal. The Tribunal refused to accept the contentions of the applicant and grant prayer that the project work should be stopped and it should not be permitted to continue till the Project Proponent seeks fresh Environmental Clearance. It would neither serve the interest of the environment or ecology nor would it serve public purpose. Huge amounts had been spent on this project. Stoppage of work would further enhance the cost of construction and would be unnecessary burden on public exchequer. Applying the principle of sustainable development, while giving due regard to the protection of environment and while ensuring that no irreversible damage and degradation of environment would be permitted in terms of Section 20 of NGT Act, the following directions were passed by the Tribunal:

1) It constituted a Committee which shall submit the report to the Tribunal on the issues stated hereinafter and in light of this judgment.
2) The Committee shall specifically report whether the conditions imposed in the consent order dated 14th April, 1980 and 27th February, 1982 of the Forest Department have been strictly complied with or not, in all respects.
3) The Committee while examining the compliance of the conditions, as noticed above, shall specifically report whether the conditions have been complied with in its entirety or not.
4) Whether there is complete and comprehensive Resettlement and Rehabilitation Policy in place in relation to the project.
5) Modifications in execution of the project, if any, required to ensure protection of environment and ecology in the execution of the project in question.
6) The Committee was required to make its general recommendations, measures and the conditions that should be imposed upon the project proponent to ensure that further progress of the project does not have any adverse impacts on ecology, environment, rivers, hydrology, biodiversity and on all the surrounding forests, villages and tribes.

7) The Committee shall assess and examine the present status of the compensatory afforestation done by the forest department during 1984, 85 and 86 over an area of 666 hectares and 80 kms on the road side. The Committee shall make assessment of the survival percentage and the present status of compensatory plantation through random sampling.
8) The Committee shall examine the proposal of Project Proponent with reference to the forest area that was required to be diverted in terms of the note prepared by the Administrator of the project while seeking clearance for the project.
9) The Project Proponent shall not take up any new activity on the additional forest area of 441.07 hectares proposed to be acquired.
10) The Committee shall study the impact of loss of 980 hectares of forest area which is comprised of wild life habitats with specific reference to the elephant corridor, rich floral and faunal diversity.
11) The Committee shall examine whether social forestry for ameliorative measures against air pollution and adverse impact on local ecology and environment has been taken up and to what extent. The committee shall also suggest measures as to how the resettlement colonies particularly, if located close to the industrial clusters of Sonbhadra, can be protected from the adverse effects of thermal power plants, coal and bauxite mining, aluminum and cement industries, particularly, form the air and water pollution and health impacts due to Mercury, Arsenic and Fluoride contamination and as a consequence of the presence of large number of industries in the District of Sonbhadra in particular and Singrauli in general.
12) In the light of the fact that the Kanhar River flows through to a drought prone area where water is a critical input for the life supports systems, both on land and within the aquatic ecosystem, the Committee should examine maintenance of certain minimum environmental flow downstream of the Dam.
13) The Committee while preparing the comprehensive report shall take into consideration, if there is any adverse impact of the works already executed, on the environment and ecology of the areas and the remedial steps that should be taken.
14) The Project Proponent shall complete the construction or activity that is under way and would not commence any new activity or construction without specific recommendations of the Committee in that behalf.
15) The Committee shall pay specific attention in regard to the conditions that should be imposed upon the project proponent for conservation, protection, reforestation, restoration of environment and ecology wherever any environmental damage or degradation has occurred as a result of this project.

In view of the above facts, the Tribunal disposed off the Original Application, M.A. No. 902 of 2014 (praying for interim stay on the further progress and construction of the project) and M.A. No. 14 of 2014 (praying for taking of action against respondents for violating the orders of the Tribunal on 24th December, 2014 The Petition was disposed of with the above directions while leaving the parties to bear their own cost.

Miscellaneous: Soil Mining

Rajeev Suri
Vs.
Ministry of Urban Development

Original Application No. 142 of 2014

Coram: Justice U.D. Salvi, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf, Mr. B.S. Sajwan
Keywords: Soil mining, redevelopment, environment clearance
Decision: Application dismissed
Dated: 28th May 2015

The application was filed seeking ban on the work of redevelopment of the existing Central Government Housing project, Kidwai Nagar (East) New Delhi, particularly, on the work of digging deep basements in course of such redevelopment on the ground as such work causes damage to the environment within the meaning of Section 2(a) of the Environment (Protection) Act, 1986 and virtually amounts to soil mining without obtaining necessary clearances.

The applicant submitted that though the Environmental Clearance makes reference to the height of the buildings above ground, it remained silent about the depth of the basements and excavation of the soil for its construction. He further submitted that the Environmental Clearance made no mention about the crucial aspect of storage, utilisation and transportation of the excavated soil. According to him, the EIA report also made no reference to the massive excavation of soil.

The respondent no. 2, i.e. NBCC countered the application with its reply dated 25-08-2014 with various grants and reports.

The Tribunal opined that it could be seen, that the purpose for which excavation of soil was carried out gave meaning to the act of such excavation, so to answer whether it was soil mining or not. Admittedly, the excavation was being done for the redevelopment / construction of buildings in the project in question. In absence of any material to the contrary, the purpose of such excavation was obvious and could not be said to be soil mining as sought to be depicted by the applicant. It was not disputed that the High Court was seized of the issue of the construction of the project in question in W.P. No. 3236/2014, *Aman Lekhi & Ors Vs. Union of India & Ors*. In the result this application must fail.

Therefore, the Tribunal dismissed the application with no order as to cost.

Mrs. Marie Christine Revillet & Ors.
Vs.
Goa Coastal Zone Management Authority

Appeal No.18 of 2014

Coram: V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Illegal property, demolition, CRZ Notification, remediation, compensation
Decision: Appeal disposed of
Dated: 29th March 2015

The application was filed against orders dated April 25th, 2014 and May 28th, 2014 passed by Respondent No.1, i.e. GCZMA, in the matter of their complaint for demolition of structure of M/s Sham Hotels Pvt. Ltd., filed against Respondent No.2. By the impugned Orders, GCZMA decided to drop the proceedings initiated against Respondent No.2, with directions only to remove compound wall, and tiles laid around the house, within fifteen (15) days of issuance of directions. Thus, the main complaint of Appellants was that entire construction of house property standing on the land Survey No.139/1(Part) of village Calangut, Bardez Taluka, was illegal, inasmuch as it had been constructed in breach of the CRZ Notification, 1991 and as such, was liable to be dismantled. This came to be dismissed. Both the Appellants were, therefore, aggrieved by dismissal of the complaint.

Being dissatisfied with the aforesaid order, both Appellants preferred the instant Appeal. The following questions arose for consideration:

i) Whether the impugned orders passed by Respondent No.1 (GCZMA), were legal, proper and correct?
ii) If the orders were found to be improper and illegal then what consequences ought to follow in the circumstances of the present case?

The Tribunal opined that undisputedly, the land in question was within CRZ-III area (NDZ). Reference was made to Sub-clause (ii) of CRZ Notification Clause (iii) (a). The Sub-clause, in any manner, did not permit repairs or reconstruction over so called plinth area for using the construction to undertake activities which were not permissible under the CRZ Notification. The construction of hotel is not 'essential activity' and, therefore, would call outset the sub-clause (ii) of the CRZ Notification. According to the Tribunal, the construction carried out by Respondent No.2, was totally illegal. Further, respondent No.1 (GCZMA) failed to consider the record in its proper and perspective, did not apply its judicial mind and overlooked many important documents.

The Tribunal could not be oblivious to the fact that there was business rivalry between the parties. In light of the above, Respondent No.2, was directed pay Rs.five (5) Crores to the State of Goa on account of the environmental degradation, within period of six (6) months which shall be deposited with the office of the Secretary Environment Department. The amount, if so deposited, shall be utilized for remediation of the degraded beaches/environment, afforestation and like activities. If the said amount was not deposited in the given period of six months from the date of judgment, the structure in question standing on Survey No.139/1 (part) of Respondent No.2's Hotel shall be demolished by the GCZMA, without any further orders.

The Appeal was accordingly disposed of. No costs.

Kashinath Shetye & Ors.
Vs.
Shrinet Kotwale & Ors.

Application No. 51 of 2014

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Demolition, Panjim city, commercial premises, No Development Zone, CRZ Notification, costs of degradation
Decision: Application allowed (with costs)
Dated: 29th March 2015

The application was filed seeking restoration of environment, demolition of construction done of commercial premises by Respondent No.3 – Anil bearing house No.345 in CRZ-III area, (NDZ), without following due procedure, encroachment, as well as by use of political power under guise of sale-deed dated 3.8.1992.

Further, the application sought the following reliefs:

1. Order for forthwith stay of all commercial activities like Restaurant, wine shop, lubricant shop and any other commercial activities in the Panjim city and in Merces Panchayat, which was done by filling the salt pans in No Development Zone (NDZ) of CRZ-III.
2. To hear the Applicants complaint and pass necessary orders thereof.
3. To produce the sale-deed dated 03.08.1992, a conclusive proof of Built up area which was suppressed to avoid action.
4. To demolish the construction done after 19.02.1991 without taking permission of CRZMA and GSPCB of Panjim city and Merces Panchayat in No Development Zone (NDZ) of CRZ-III area by ANIL HOBLE 7 MERCES GOA.
5. To remove the mud put on the stream which flows from Panjim to Ribandar on the side to make entrance for vehicles by filling.
6. To bring the mangroves cut to their original position.
7. To bring the salt pans filed back to original position.

The inspection report submitted by the Enquiry Committee of GCZMA revealed that the suit property fell within an area of 100m from bank of river Mandovi. The report showed that no construction activity was permissible within NDZ area, except for repairs/reconstruction of structure with existing plinth (platform) area. It was stated that the existing property was situated within NDZ. The report showed that Respondent No.3 – Anil claimed that business of repairs of motor-vehicles was being carried out by him in the name and style of "Khapro Garage /Workshop" since 2.3.1967. The Respondent No.3 Anil carried out the business of liquor vending, which he was doing earlier in 1967 by obtaining necessary permissions due to change of business and extended it by commencement of restaurant activity for which permission was granted by the authority on 8.12.2008. Therefore, there was no destruction of mangroves and hence, the complaint of the Applicant was directed to be filed.

During the course of argument, it was gathered that originally there was no structure of house property/residential premises in Survey No.65/1-A, prior to CRZ, 1991. Thus, the subsequent construction of Restaurant, Bar and other commercial units in the area had been

illegally constructed, notwithstanding directions of the Hon'ble High Court in Writ Petition No. 422 of 1998 and Writ Petition No.99 of 1999, as well as though CRZ Notification, 1991, which prohibited construction activity, except repairs of dwelling units, owned by traditional residents, which had existed before coming into force of the said Notification. The illegal and unauthorized constructions were, therefore, liable to be demolished as they were in violation of CRZ Notification, 1991, 1994 and 2011.

Hence, the Tribunal allowed the Application and gave the following directions:

a) All the structures, including Restaurant and Bar/Pub and allied structures standing in land Survey No.65/1, or in Survey No.83/2-A, of village Morambio Grande, shall be demolished by Deputy Collector, South Goa, within period of six (6) weeks.
b) Respondent No.3- Anil to pay amount of Rs.20 (Twenty) Lakhs as costs of degradation of environment and violation of CRZ Notification, 1991, within six (6) weeks to the Environment Department, Govt. of Goa along with costs of Rs.5000/-,(five thousand) as litigation costs, which be equally disbursed in favour of all the Applicants.
c) The GCZMA, was directed to hold an enquiry regarding all such illegal structures in CRZ area about which permission might have been obtained without following due procedure and to take appropriate action against the violators of CRZ Notifications.
d) The compliances regarding demolition of illegal structures of Respondent No.3 and payment of costs shall be reported to the Tribunal within six (6) weeks from the date of this judgement.

The Application was accordingly disposed of.

Mrs. Marie Christine Perdriau & Anr.
Vs.
GCZMA & Ors.

M.A. No. 111/2014
Application No. 12(THC)/2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Statutory permission, CRZ Notification
Decision: Application Disposed of
Dated: 29th March 2015

The Application was filed after transfer of Writ Petition No.872 of 2012 by the High Court of Bombay at Goa. The High Court of Bombay at Goa, transferred the matter to this Tribunal vide order dated 2nd December, 2013. The Tribunal heard the matter for final disposal and reserved it for Judgment. The relief claimed by the Applicants was demolition of construction put up on Survey No.139/1 (Part), which was the subject matter of the Appeal No.18 of 2014. The other relief sought in the Application was regarding mandamus against holding of 'Sun-burn' festival at the site, i.e. property Survey No.139/1 (Part).

The orders passed in the Writ petition showed that 'Sun-burn' festival was directed to be disallowed unless and until statutory permission as well as permission from GCZMA, as per the Judgment of Hon'ble Division Bench in PIL (W.P. No.30 of 2012), was granted. This specific order was passed on December 26th, 2012.

After a perusal of relevant provisions of the CRZ Notification, it was noted that seasonal and temporary activity in the CRZ area could be permitted. It was observed that GCZMA had the powers to permit such temporary activity, in view of Regulation 5(x) and 8(i)(V)3; Clause (iii). Apart from permission of the CRZ authority, organizers of "Sun-burn" festival had also obtained permission dated 13-12-2013 which showed that such permission was granted on payment basis and under various conditions.

The Tribunal held that considering the statement made by the Advocate General, at the stage of interim hearing of the Application that due care would be taken to ensure non-violation, of the conditions of the permission granted to organizers of the "Sun-burn" festival, and in view of the fact that the issue regarding legality of construction standing in S.no.139/1 was separately decided in Appeal No.18 of 2014, by this Tribunal, nothing survived in the Application.

The Application along with M.A. No. 111/2014 was accordingly disposed of. No costs**.**

Environmental Clearance

Wireless Co-operative Housing Society
Vs.
Chaitrali Builders Ltd.

M.A. No. 151/2014 and M.A.No. 154/2014
in
Appeal No. 28/2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Environment clearance, extension, condonation of delay
Decision: Application Disposed of
Dated: 26th March 2015

The Appeal was filed by the original Appeallant challenging the extension granted on 11-6-2014 by Respondent No.5 for an Environment Clearance originally granted to project of Respondent No.1 by the MoEF i.e. Respondent No.2. This Environmental Clearance (EC) had certain specific conditions as well as general conditions and the Communication clearly recorded that the Environmental Clearance was accorded subject to the strict compliance of the specific and general conditions stipulated in the communication.

The Application filed by the original Appellant against the project proponent was under consideration of the Tribunal in the form of Application No.48/2014. Based on such various grounds, the Appellant had challenged the impugned order, whereby the validity of the original EC was extended by way of this Appeal.

Considering this limited compass of the dispute involved in this matter, the following points were necessary to be determined for deciding the preliminary issue:
1) Whether the extension of environmental clearance could be challenged before the Tribunal under provisions of Section 16 of the National Green Tribunal Act?
2) Whether the condonation of delay as prayed by the original Appellant could be considered and granted?

The only question which the Tribunal could really determine was whether the extension of validity of environmental clearance was- (a) a part and parcel of the original EC process; (b) a separate activity though linked to earlier EC; or (c) an independent activity than the original EC. Under these circumstances, the Tribunal could not allow Misc. Application No. 154/2014 filed by the project proponent and direct that the Appeal would be heard only to the limited points related to propriety, correctness and absence of arbitrariness of the process. Furthermore, the procedure adopted for extension of validity of original EC and the original EC could not be directly or indirectly challenged or litigated at the present stage.

It was an admitted fact that the extension of validity was not published in the newspaper and Appellant got the knowledge through the MPCB Affidavit on 17-7-2014. Therefore, considering the reasons submitted by the original Appellant, the Tribunal was of the opinion that the delay of 18 days could be condoned under the powers conferred upon Tribunal under Section 16 of the National Green Tribunal Act and accordingly, delay was condoned by allowing M.A. No. 151/2014.

Accordingly, both the Misc. Applications were disposed of. The main Appeal i.e. No.28/2014 was admitted.

Compensation & Restoration

NAB Lions Home for Aging Blind
Vs.
Kumar Resorts & Ors.

Application No.99 of 2014

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Hill cutting, environmental degradation, minor mineral, Precautionary Principle, pay, restoration/remediation
Decision: Application Disposed of
Dated: 26th March 2015

The application was filed seeking injunction against construction activities of Respondent Nos.1 and 2, restitution and compensation on account of hill-cutting by latter, which was likely to cause not only environmental degradation, but was potent danger to the property of Applicant.

Respondent Nos. 1 and 2 acquired an adjoining plot which was on upper level of Applicant's double storied building. At the hill-top, Respondent Nos.1 and 2 intended to construct a resort and a big hotel. Applicant noticed movements of large boulders within that property. They also found that work of leveling of land by flattening of the hill area was going on. Applicants apprehended that many trees could have been felled and soil erosion could have been resulted of alleged activity undertaken by Respondent Nos. 1 and 2. Applicant made complaints to various authorities, when they noticed construction activity was being speedily undertaken day and night.

The questions that arose for determination were:

i) Whether Respondent Nos.1, 2 and 7, had illegally removed minor mineral from the site situated on eastern side of the building of Applicant from described plot by cutting hill under clandestine and hurriedly, though LMC issued stop-work order and this Tribunal also gave direction that such activity shall be stopped, as well as the pits shall be filled up, in order to restore the land?
ii) Whether above named Respondents caused degradation of environment and committed illegal acts by proceeding with alleged activity of proposed construction, by preparing land without permission of LMC?
iii) Whether the acts of Respondents named above, were required to be prohibited by applying the 'Precautionary Principle' as contemplated under section 20 of the NGT Act, 2010?
iv) Whether above Respondents were liable to pay costs of restoration and environmental damage, if yes, to what extent and to whom?

It was held that within period of six (6) months of knowledge of illegal removal of minor mineral, Applicant approached the Tribunal and, therefore, the Application under Section 14 of the NGT Act, 2010, was maintainable. The Tribunal further opined that the dispute implied uncontrolled, unbridled and illegal removal of soil from top of the hill, which partly had fallen on top side of the building occupied by Applicant- (NAB). Further the Respondent Nos.1, 2 and 7, did not show as to when cause of action first triggered beyond six (6) months of filing of the Application. Consequently, objection regarding bar of limitation to file the present Application stood rejected.

In order to know true facts, an Expert Committee was appointed under auspices of Shri. T.C.Benjamin, Chairman of State Expert Appraisal Committee-I, (SEAC). The report of said Committee dated 4.12.2014 (Ex.IX), shows that said Committee visited Survey No.122 (Khandala) and Survey No.138 (Lonavla) on 4.12.2014. The Committee noted that the hill had been privately and clandestinely cut and, therefore, prime concern was the prevention of landslides/mudslides. It observed that for such purpose, it was absolutely essential to stabilize the slope by benching as per recommendations given by it, particularly, by construction of a retaining wall. The Expert Committee also found that the Respondent Nos. 1 and 2 committed the acts, in an illegal manner for creating buildable land. According to the Tribunal, the above findings of the Members of the Expert Committee blow away the case of Respondent Nos. 1 and 2 that they were unconcerned with activities of hill-cutting or removal of minor mineral from site in question.

The Tribunal stated that the section 20 of the NGT Act, 2010, did not require proof that nature of any activity would actually cause environmental degradation or would amount to potent danger to environment. What was required to be seen was whether "Precautionary Principle" was necessarily required to be applied, having regard to peculiar circumstances of the case, in order to avert possibility/probable environmental degradation.

Hence, the Tribunal allowed the Application in following terms:

a) Respondent Nos.1, 2, 7 and 8 and Intervener were restrained from causing any hill-cutting in the plots situated at Lonawala/Khandala and to construct Resorts and Amusement park in question, which it had undertaken, particularly, on eastern side of hill top of NAB building.
b) The Respondents shall not alter or change any kind of area of site in respect of above lands situated at Lonavala. They shall not disturb day to day activities of Institute run by NAB by causing any extraneous pressure.
c) The above named four Respondents were directed to pay amount of Rs.10Lakhs to the management of NAB, through Secretary of NAB by sending D.D, in the name of Secretary by registered post/A.D, within four (4) weeks or otherwise, amount would carry interest @ 18% p.a. The compliance of this direction be reported after four (4) weeks along with copy of D.D and acknowledgement receipt by the Secretary of NAB, in order to avoid coercive action, for recovery.
d) The Revenue Officers like Collector and Commissioner, may call report from the local Municipal Council of Khandala and Lonavala and like places such as Satara, Kolhapur etc. where existence of hills ordinarily are noticeable in order to avoid instances of hill-cutting, being undertaken under guise of obtaining extraction permission for minor mineral and direct them not to issue permissions for construction on top of the hills, except for Bamboo huts/cottages.
e) Respondents named above shall pay Rs.5Lakhs to the Office of Chief Officer of Municipal Council, Lonawala for restoration/remediation of environment caused due to the hill-cutting, within four (4) weeks.
f) Compliance report be submitted to NGT (WZ) within four (4) weeks.

The Application was accordingly disposed of.

Water & Air Pollution
Compensation & Restoration

Ashok Kajale & Ors.
Vs.
M/s. Godavari Bio-Refineries Ltd & Ors.

Application No. 68/2014(Wz)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Water pollution, air pollution, compensation, remediation
Decision: Application Disposed of
Dated: 19th March 2015

The application was filed by the residents of villages Kanhegaon Sade and Vari, Tq. Kopargaon, District Ahmednagar under Section 14 and 15 read with sections 17 and 18 of National Green Tribunal Act, 2010, alleging that the industrial activities of Respondent No.1 were causing ground water pollution and thereby affecting ground water quality, pollution of river Godavari and loss of agriculture. The Applicants were seeking certain directions against the Industry and Respondent authorities including compensation and restitution of environment.

Due to incidents causing health related impacts and pollution of Godavari river water, people in the residential area started agitation against the Respondent No.1-industry at various levels. Some aggrieved persons had approached the High Court through Writ Petition No.6659 of 2004 which was disposed of as withdrawn on 13-8-2008. In the said Writ Petition, the High Court had directed 'NEERI' to submit the report and according to the report of NEERI, certain recommendations and precautions were required to be taken by the Respondent's unit. The Applicants alleged that the industry has not complied with such directions and recommendations of the NEERI Report.

The Board (MCPB) gave a personal hearing to the Applicants and industry on 29-4-2013, and during this hearing a Committee was constituted with representatives of Respondent No.1 and complainant as Members of the Committee. The report was submitted to the Member Secretary in November 2013. The Committee, while noting that the distillery unit was closed subsequent to directions of the CPCB, also observed that about 100 small and large lagoons were provided by the industry in surrounding area of about one (1) km. radius in the periphery, were spread over 54 Ha. of the land. The Committee had made certain recommendations including immediate scraping and re-claiming all the kachcha lagoons and also removal of the pacca lagoons which were located by the side of the river. Besides this, several recommendations were made related to compost plant, air pollution control etc.

In Section 14 of the NGT Act, the limitation is from the date on which cause of action for such 'dispute' has first arisen. Similarly, for Section 15 of the NGT Act, the limitation is from the date on which the cause for such compensation or relief has first arisen. The main contention of the Applicant was that their wells and lands were affected by unscientific effluent management at the Respondent No.1-industry. It was, therefore, necessary to examine when such fact was observed or established by the concerned authorities. It is natural that only when it is established by the concerned authorities that there is pollution or environmental de-gradation that is caused or observed, then only the issue of compensation, remediation or restoration, as the case may be, will arise.

It was further noted that the MPCB had issued detailed directions on 11-2-2014 based on the committee's findings wherein both the complainant as well as Respondents were given an opportunity of hearing and it was the stand of the Applicants that in spite of such directions issued, there was no improvement in the ground water quality. Subsequently these closure directions were modified while allowing the industrial operations on 25.4.2011. Under such circumstances and lack of clarity in pollution control system available and its performance from MPCB and CPCB affidavits, the Tribunal had appointed M.S. University, Baroda to conduct investigations and its detailed report is on record. The report summarised the consent conditions stipulated to industry from 1985 which indicated that even since 1990, MPCB had specified stringent BOD standards of 30, 100 and 500 for various disposal methods, though specific mention of primary, secondary and tertiary treatment systems had come in 1997 for the first time.

The Tribunal felt inclined to direct the CPCB to use its powers under Section 18(2) to take over the regulatory regime at the Respondent No.1- unit and also, deal with the remediation of the ground water in the surrounding area, till the time the entire improvement in pollution control systems at industry and ground water remediation process is complete. In view of that, presently it may not be possible to decide the exact scope and quantum of such loss/damages, however, the Tribunal opined that it may consider an approximate area within 2 km. radius of the industry that could be assessed and verified by a Committee, constituted for such purpose. It was held that the Respondent No.1- industry was also liable to pay the damages for the loss caused to the land-owners, to bear costs of remediation and to ensure the zero discharge.

In view of the foregoing discussions, the Application was partly allowed with following directions which were issued; under Section 14, 15 and 19 read with Section 20 of National Green Tribunal Act, 2010:

- CPCB shall immediately prepare a ground water remediation action plan in the area of 2 km from the industry location, including methodology cost and time bound action plan, techniques for verifying its adequacy. CPCB may take help of expert institutes, and submit within a time frame of two months, on priority basis. MPCB shall provide all necessary assistance to CPCB in this regard.
- Such program shall be executed through Collector, Ahmednagar who shall form a local level committee with representatives of GSDA, agricultural department, CPCB, MPCB and CGWB or any other agency as may be required. The committee will be responsible for executing the remediation program, CPCB shall be overall incharge.
- The said committee shall also assess the damages to agriculture (land/yield) by carrying out necessary survey by taking help of Agricultural university of Rahuri. Collector Ahmednagar shall make necessary request to Vice Chancellor for such assistance with copy of this judgment.
- CPCB shall enforce the consent management regime at the industry on adhoc basis by way of stop gap arrangement, till such time that the industry upgrades the pollution control systems.
- The chemical plants of the industry shall be closed till separate ETP and adequate disposal and reuse/recycle facilities with required data loggers/record system are provided by the industry which shall be verified by CPCB in terms of observations and recommendations made by M.S. University Baroda.

- The industry shall be liable to pay and bear all the cost of remediation of ground water and land, as may be required, including studies and actual execution of remediation works, besides compensation if any as decided by above directions. They shall initially deposit sum of Rs. 50 lakhs (Rs. fifty lakhs) with Collector in the escrow account of the Collector's office and Rs. 5 lakhs (Rs. Five lakhs) with CPCB for such purpose within next four (4) weeks, failing which the Collector shall realise the said amount under the Maharashtra Land Revenue Code, 1966, due from them. A compliance Report in this behalf be submitted by the Collector, within four (4) months to this Tribunal.
- Considering the pollution of well water, the Applicants are entitled for compensation of Rs. 2 lakhs (Rs. Two lakhs) towards each well besides the remediation and damages as directed above.
- A compliance report shall be submitted by CPCB and Collector on monthly basis, till the entire remediation exercise is complete.
- A compliance report shall be submitted by the Chief Secretary Maharashtra and SEIAA Maharashtra. We also direct the Chief Secretary to issue necessary instructions to all field level agencies for an early execution of such remediation activity.
- The Respondent NO.1 and MPCB shall pay Rs. 25,000/- (Rs. Twenty five thousand) each to Applicants as cost of this Application in four (4) weeks and bear their own.

It was necessary for the Tribunal to monitor the implementation of its directions related to remediation to ensure its time-bound and effective manner. The matter was therefore posted for on 31.7.2015 for reporting of compliances.

The Application was disposed of.

Miscellaneous: ESZ

Nizamuddin Qureshi
Vs.
State of Rajasthan & Ors.

Original Application No. 332/2014 (CZ)

Coram: Mr. Justice Dalip Singh, Mr. Ranjan Chatterjee
Keywords: Eco Sensitive Zone, Hotel, Ranthambore Industrial Estate, MoEF&cc
Decision: Application Disposed of
Dated: 26th March 2015

This Original Application was been filed by the Applicant alleging that the Applicant has a plot of land in Sawai Madhopur and applied for grant of permission to construct a hotel on the land situated in Village Alanpur, District Sawaimadhopur.

It was submitted that the land in question fell within the purview of the Rajasthan Industrial Area Allotment Rules, 1959 and the site plan of the land had also been filed before the Tribunal. The area in question was commonly known as the Ranthambore Industrial Estate. It was further submitted that in the vicinity of the land of the Applicant, sufficient similar activity in the form of hotels and lodges were in existence and in operation.

Counsel for the Applicant submitted that the Central Government and the State Government failed to reach any conclusion with regard to declaration of the ESZ despite lapse of more than four years.

When the matter came up for hearing on 24.02.2015, this Tribunal issued directions asking the Counsel for the MoEF as well as the State to clarify the position and submit the outcome with regard to declaration of the ESZ. On 08.05.2015, when the matter came up for hearing, the Tribunal again directed the Counsel for the State as well as MoEF to clarify the position with regard to ESZ and how long the respective governments were going to take in deciding the issue with regard to ESZ. MoEF&CC was directed to decide the issue with regard to determination of the limits of the ESZ within 3 months. The Tribunal held that the Applicant would be free to submit an application along with the new guidelines, if so framed, failing which, without the same along with the copy of this order to the concerned authorities for taking a decision objectively in the matter.

With the aforesaid directions, the Original Application No. 332/2014 stood disposed of. No order as to cost.

Waste Management
Water Pollution

Babulal Banjara
Vs.
State of Madhya Pradesh

Original Application No. 25/2014

Coram: Mr. Justice Dalip Singh, Mr. P.S.Rao
Keywords: Ground water pollution, solid waste, soil, agricultural crops, untreated effluents/spent wash, damages, remediation
Decision: Application partially allowed with directions and costs
Dated: 11th March 2015

This Application was filed with the prayer of protection of environment and ecology as well as their surroundings and also on behalf of all other aggrieved villagers of village Pilukhedi, Tehsil - Narsinghgarh, District - Rajgarh (M.P.) who were mainly dependent on agriculture for their livelihood. The applicants stated that the Original Application No. respondent No. 9 M/s. Vindhyachal Distilleries (Pvt.) Ltd. were manufacturers of rectified spirit, natural alcohol, country made and Indian made foreign liquor by using grain such as jowar, bajra etc. as raw material by the process of distillation. This resulted in release of large quantity of waste water and solid waste, having a considerable impact on the environment particularly in the surroundings by polluting the air, water bodies and soil and also emanating a foul odour which was a nuisance to inhabitants in the area.

The applicants contested the statement made by the respondent industry as well as the MPPCB. The applicants made a submission before the Tribunal, that to verify the claim of the MPPCB that in fact the industry had been maintaining zero discharge, a Court Commissioner may be appointed to find out the truth. Accordingly, the prayer was allowed and vide order dated 27.08.2014 a Court Commissioner was appointed to visit the disputed site including the site where the applicants had dug up an open well for irrigating their crops. It was brought to the notice of the Tribunal that there were two more industries, namely, M/s. Bhopal Glue and Chemicals Pvt. Ltd. and M/s Oswal Woollen Mills Ltd. located in the vicinity and the discharge from these two industries may also have been a source of contamination and pollution of the water, both surface as well as underground, and thus, it notices were issued to the aforesaid two units also.

The following points were required to be examined/answered to come to a conclusion:

i. Whether the industry, before switching over to grain based technology when it was using molasses as raw material, had taken all precautions to prevent discharge of untreated effluents/spent wash and what was the situation prevailing at that time and whether the water reports of MPPCB and CGWA on the analysis of the water samples collected by them from the industry and its vicinity conform and led to any pollution of the ground water and soil. If so, whether it could be attributed to the activities of the industry.
ii. If there was a possibility of pollution of ground water and soil caused by the untreated effluent/spent wash discharged by the unit for a long period of time, whether one could conclude that the agricultural and plantation crops of the applicants got affected and whether there was any reduction in the crop yield.

iii. Whether the contention of the applicants that the respondent No. 9 industry was selling untreated grain fibre as fodder causing damage to the health of the cattle was acceptable and what conclusion one could make on this allegation, and if found true how to quantify the damage and pay compensation.
iv. If any unregulated and untreated effluent discharge was attributed to the respondent No. 9 industry, then how to quantify the damage to the environment and compensate the affected persons/farmers and for restitution of the environment.
v. Though the application was filed against the respondent M/s Vindhyachal Distilleries (Pvt.) Ltd., whether the aforesaid other two industries located in the vicinity were also responsible for causing pollution, and how to quantify and attribute damage if any to a particular industry.

There was reliable evidence to draw inference about continuation of ground water pollution as a result of discharging of industrial effluent/spent wash by the respondent Distillery industry. Thus, the Tribunal concluded that the past activities of the respondent industry before it switched over to the grain based technology were causing pollution to both water and soil. Further, the agricultural lands in the proximity of the respondent industrial unit lost fertility of the soil and it was held that the industry was partially liable to pay the damages for losses caused to the applicants, to bear cost of remediation. It appeared that certain loss was caused to the fertility of the agricultural lands of the villagers in the area, yet no record was placed before the Tribunal to quantify damages.

Therefore, the Tribunal concluded that though the reports filed by MPPCB and CGWA indicated the pollution in Pilukhedi area where these 2 industrial units were located, there was no direct evidence produced before the Tribunal to conclude that they were responsible for causing pollution and the Tribunal left it to the authorities to monitor the units regularly, particularly the M/s Bhopal Glue and Chemicals Pvt. Ltd., and take appropriate action.

In view of the above, the Tribunal issued the following directions:

i) The applicants could not produce any data on damage to their crops and reduction of yield. But considering the observations made by the Court Commissioner and based on the reports of the PCB and CGWA, it was clear that the applicants' agricultural field located adjacent to the Distillery unit because of uncontrolled release of spent wash got affected with pollution and it would have a long lasting effect on the soil fertility and productivity. Therefore, under Polluter Pay Principle the respondent M/s. Vindhyachal Distilleries Private Ltd. could be held liable to compensate the loss to the applicants. However, since there was no definite material filed before Tribunal to assess the loss occasioned to the applicants, liberty was granted to the applicants to file an application under Section 15 of the NGT Act, 2010.
ii) The Collector, Rajgarh shall constitute a committee consisting of scientists from the MPPCB, CGWA and Agricultural University, Jabalpur to suggest remedial measures for ameliorating the groundwater pollution and improving the soil fertility in the Pilukhedi industrial area, particularly in the vicinity of the respondent Distillery unit and take appropriate action based on the report of the committee. The cost of inspection and finalizing the report was to be consultation with the Chairman, MPPCB. The report of aforesaid committee shall be submitted to the Collector within a period of 3 months from the date of this judgment. The Collector shall be give a copy of said report to the Respondent industries and objections invited within a period of 3 weeks thereafter followed by review with the assistance of MPPCB for securing time-bound remedial measures, as recommended by committee and also the

MPPCB which comprehensively shall be treated as part of the directions of this Tribunal for the purpose of remedial measures that should be adopted. Cost of remediation/ restitution shall be estimated by the MPPCB and that the measures are to be complied by the industrial units in prescribed time limit.

In the facts and circumstances of this case, the Respondent M/s Vindhyachal Distilleries, i.e. Respondent No. 9 was directed to pay to each of the applicants costs amounting to Rs. 1,00,000/- (Rupees One Lakh Only).

The application was disposed of.

Environmental Clearance

Ambai Taluk Tamirabarani Vivaasayigal Nala Sangam
Vs.
Union of India

Application No. 258 of 2013 (SZ) (THC)
(W.P. MD. No.11560 of 2011, Madurai Bench of Madras High Court)

Coram: Dr.P.Jyothimani, Prof.Dr.R.Nagendran
Keywords: Environmental Clearance, granite, mining, EIA Notifications 2006
Decision: Application dismissed
Dated: 29th March 2015

This application was transferred from the High Court of Judicature, Madras at Madurai Bench (*W.P.(MD) No. 11566 of 2012*). The application sought to issue a Writ of Mandamus forbearing Respondents No.1 to 6 from permitting the Respondents No.8 to 12 to quarry granite in Mela Ambasamudram Village in Ambasamudram Taluk, Tirunelveli District, in Sivanthipuram Village in Ambasamudram Talum, Tirunelveli District, in South Pappankulam Village, South Kallidaikurichi, Ambasamudram Taluk, Tirunelveli District and in Poongudaiyarkulam, Ambasamudram Taluk, Tirunelveli District for not obtaining Environmental Clearance from the 1st respondent

The said applications, in the common order dated 5th March 2015 were dismissed holding that for such activity, there was no necessity of EC from MoEF required as per the EIA Notifications, 2006. Furthermore, it was also held that as to whether the mining site was within the prohibited area, as per the EIA Notifications 2006, did not arise for consideration in these cases.

The application stood dismissed with no order as to costs.

Miscellaneous

C. Mahalingam
Vs.
TNPCB

Application No.332 of 2013 (SZ)

Coram: Dr.P.Jyothimani, Prof.Dr.R.Nagendran
Keywords: Closure of unit
Decision: Application dismissed
Dated: 27th March 2015

This application was filed pursuant to the earlier order of this Tribunal dated 26.05.2015. The Tamil Nadu Pollution Control Board (Board) had filed an affidavit stating that the Unit had been closed. The 6th respondent, i.e. project proponent submitted that the project proponent had complied with all the requirements of the Board except the online effluent monitoring analysis system which was directed to be complied with on or before 30.06.2015.

The Tribunal made it clear that it would be open to the Board to process the application and pass appropriate orders on merit and in accordance with law expeditiously

The Tribunal stated that any expression made by the Tribunal directing closure of the unit shall not be taken into consideration by the Pollution Control Board while passing such order. Further, it should always be open to the project proponent to work out its remedy in the manner known to law in the event of the Pollution Control Board passing order against them. Likewise, in the event of any order passed by the Tamil Nadu Pollution Control Board granting permission, it would be open to the project proponent to continue its operation in accordance with law.

With the above directions, the application stood disposed of with no order as to cost.

North East Affected Area Development Society
Vs.
Union of India

Review Application No. 04 of 2015 (PB)
In
Appeal No. 8 of 2011 (PB)

Coram: Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Review, natural justice
Decision: Application dismissed
Dated: 27th March 2015

The application was filed for review of the orignal application against the final decision made in the appeal dated 13-01-2015, by which the Tribunal had dismissed the appeal. In the review, the applicant had raised a preliminary submission that the brief order dated 13-01-2015 dismissing the appeal was to be followed by detail reasons and the detailed reasons dated 13-01- 2015, which was not pronounced in the open Court but uploaded in the website of the NGT on 27-02-2015, were null in the eyes of law.

The Appeal, which was one of the oldest one on the file of the NGT was heard by different Benches and ultimately it was heard in detail by the Bench consisted of the Hon'ble Judicial Members, Justice P. Jyothimani, Justice U. D. Salvi and the Hon'ble Expert Members Dr. G. K. Pandey and Mr. Ranajan Chatterjee from December 2014 till final decision was pronounced. On 13-01-2015, the arguments in the appeal concluded and as on the next day one of the Hon'ble Expert Members forming part the Bench, Dr.G. K. Pandey was to retire, after a brief consultation in the Bench, a unanimous brief order was passed. It was the preliminary case of the applicant that as Dr. G. K. Pandey retired on 14-01-2015, the reasons given by the Bench could not be that of the same Bench which heard the appeal.

The indisputable facts showed that there had been elaborate hearings of the argument by both the sides, which was conceded by the counsel appearing for the applicant and therefore there was no violation of Natural Justice. It was relevant to record at this point of time that this appeal had been pending for a long number of years, having been transferred from the National Environment Appellate Authority and heard by National Green Tribunal by itself at its different Benches on many occasions, without reaching any finality. On the factual matrix there was no prejudice caused to the applicant not only because there was an undertaking on behalf of the respondents in respect of diversion of forest land but also because of the reason that the applicant was not deprived of approaching the higher Appellate Forum.

Therefore, the Tribunal held that there was absolutely no merit in the contentions raised on behalf of the applicant regarding the preliminary submission. No costs.

Environmental Clearance

Shree Mahuva Bandhara Khetiwadi
Vs.
MoEF & Ors.

Review Application No. 9 of 2015
In
Appeal No. 4 of 2012

Coram: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: Maintainability, environmental clearance, deliberate concealment, CPC 1908
Decision: Review Application dismissed
Dated: 18th March 2015

The applicant filed the application after being aggrieved by the Judgment and order dated 14th January, 2015 passed in the Appeal 4 of 2012 on the premise that there had been no deliberate concealment and/or submission of false misleading information or data to the authorities as regards the nature of land in question by the appellant therein, the project proponent M/s Nirma Ltd. for obtaining the environmental clearance dated 8th December, 2008 to the cement plant and the captive power plant to be established and operated near village Padhiyarka Taluka Mahuva, District Bhavnagar, Gujarat, the respondent no. 4 therein had preferred this Review Application against it.

Question arose as to the maintainability of the present Review Application in the present situation when on the same day of presentation of this application i.e. 13-02-2015 before this Tribunal the Statutory Appeal against the impugned order was preferred before the Supreme Court of India. The provision in CPC 1908 Order 47 of Rule 1 was reproduced before the Tribunal to urge that the Review Application could lie only in the situations as specified in the said provision and for the limited purposes stated therein.

According to the Tribunal, the reviewing Court or Tribunal could interfere with the decree\order sought to be reviewed within limited sphere prescribed by law and principles applicable to interference in the review as enunciated in Order XLVII Rule 1(1) of CPC un-like the power of wide interference both on the issues of facts and law conferred upon the appellate court. Taking a cue from sub clause (2) of O. XLVII R.1 of CPC, it was not difficult to see that even the party who had not preferred an appeal could not maintain a review application where the appeal preferred by some other party on the grounds common to the applicant had been pending or when, the applicant being respondent in such appeal could present to the Appellate Court the case on which he applied for the review. Thus, the merger of challenges and outcome in the review petition with those in the appeal had been envisaged and the law thereby discouraged the pursuit of cause in review when the appeal in that regard has been pending.

The NGT Act, 2010 was enacted to provide for the establishment of 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. The prime issue before NGT in Appeal no. 4/2012 was whether the appellant had deliberately

concealed and/or submitted false misleading information or data to the authorities by describing the land in question as ‘wasteland’ and not as ‘wetland’.

As a matter of fact the 16 observations made by the Expert Members regarding the nature of the land outweighed all other views as such observations were designed to bring acuity to the judicial view in relation to the evidence placed before it. These observations supported the contentions of the project proponent that in given circumstances there could not have been any deliberate concealment of the fact on the part of the project proponent before the authorities granting Environment Clearance.

In the considered opinion of this Tribunal, there was no mistake or error apparent on the face of the record or any misconception of either fact or law in appreciating the said material, and to take any other view than the one taken by the Tribunal while allowing the appeal would obviously mean substitution of its view with such a contrary view which cannot be arrived at except by further struggle with the process of reasoning. Virtually, such struggle with the process of reasoning would amount to hearing of appeal in the garb of Review.

In view of the aforesaid the Tribunal did not find any merit worthy of further debate in present application. Therefore, the review application was dismissed with no order as to cost.

Environmental Clearance

Mr. Tony Thomas
Vs.
State of Kerala

Application No. 52 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Environmental clearance, quarrying, minor minerals, permission
Decision: Application disposed of
Dated: 18th March 2015

This application was filed by the applicant to set aside the Government Order dated 21.2.2014 and subsequent orders issued upto 15.11.2014 and also for a direction against the 2nd and 3rd respondents not to process any application for granting Environmental Clearance (EC) without having a valid EIA report prepared by an accredited EIA consultant.

This issue relates to mining and quarrying of minor minerals for construction activities.

In the meantime, the Principal Bench of National Green Tribunal had passed orders in August, 2013 restraining any person from removing sand from river beds anywhere in the country without obtaining EC from MoEF/SEIAA and licence from the competent authority. The aforesaid order came to be passed in consonance with the Judgment of the Hon'ble Apex Court in the case of *Deepak Kumar and Ors Vs. State of Haryana and Ors.*

The Tribunal held that the question of granting EC would arise only if such permission is granted in accordance with law. It is always open to the applicant to raise any dispute at the appropriate time. With the above direction, the application stood disposed of with no order as to cost.

JULY

Miscellaneous

A.D. Louis
Vs.
Kerala State Pollution Control Board

Application No.99 of 2015 (SZ)

CORAM: Justice Dr. P. Jyothimani, Prof.Dr.R. Nagendran
Keywords: RTI
Decision: Appeal Dismissed (withdrawn)
Date: 10th July, 2015

This application was moved before the Tribunal on 15.05.2015 on the basis of certain RTI information that the 3rd Respondent had not filed for consent from the State Pollution Control Board and could not proceed to work until such consent was obtained. The Tribunal had also granted an interim order while admitting this application.

The consent was granted to the 3rd Respondent by the State Pollution Control Board on 13.11.2014 after the RTI information was obtained.

The Tribunal was of the opinion that since consent was granted subsequently there was nothing left in the present application to decide. Thus, the application stood dismissed as withdrawn and the interim injunction granted by the Tribunal on 20.05.2015 also stood vacated.

Compensation & Restoration
Forest Clearance / EC

Ajay Kumar Negi & Anr.
Vs.
Union of India & Ors.

Application No.183 (THC) / 2013
And
(M.A. NOS. 707 OF 2013, 1056 OF 2013 & 191 OF 2014)

Coram: Justice Swatanter Kumar, Justice M.S.Nambiar, Prof.A.R. Yousuf,Mr. Bikram Singh Sajwan
Keywords: Hydroelectric project, Environmental Clearance, Forest Clearance, Principle of Sustainable Development, Precautionary Principle
Decision: Application partly allowed
Date: 7th July 2015

This matter had come before the High Court of Himachal Pradesh at Shimla by way of a Writ Petition, praying that M/s Nuziveedu Seeds Power Generation Private Limited (Respondent No. 8) or the Project Proponent should be directed to cancel the Tidong-I Hydro Electric Project on various grounds -violation of environmental laws, improperly obtained clearances etc. The Writ Petition was transferred to this Tribunal as ordered by the High Court, and was registered as the present Original Application.

Respondent No. 8 proposed setting up a Hydro Electric Projectin District Kinnaur of Himachal Pradesh on River Tadong. A Memorandum of Understanding ("MoU") was signed between the state of Himachal Pradesh (Respondent No. 2) and Respondent No. 8 on 23rd September 2004. After submission of Techno Economic Viability report by the Respondent No. 8, an Implementation Agreement was signed between Respondents No. 8 and 2 on 28th July 2006. Environmental (EC) and Forest Clearances (FC) were also granted on 7th September 2007 and 18th June 2008 respectively for the project. Respondent No. 8 began construction of a road under the project despite not having proper No Objection Certificate ("NOC") from the Gram Sabha, Rispa. It was further recorded in the enquiry report submitted by the District Panchayat Officer, Kinnaurthat the resolution passed by the Gram Sabha,Rispa as part of the EC process was null and void - being in violation of the provisions of the Himachal Pradesh Panchayati Raj Act, 1994.

It was alleged by the petitioner that Respondent No. 8 damaged forest tracts while constructing the road. It was further alleged that it violated the conditions of EC & FC and also caused harm to the Chilgoza trees (an endangered species), even though a specific mention of the same was made in the EIA Report to cause minimum damage. The residents of the village demanded for the revocation of the clearances granted to Respondent No. 8 as they were being deprived of their right to livelihood. The petitioner alleged that the debris was dumped after construction work which caused damage to the environment and ecology of that area. Further, it was alleged that Respondent No. 8 carried out the construction activity despite various orders from the authorities to stop the construction. The main contention of the petitioner was that the company violated environmental laws which adversely affected the forest.

Respondent No. 8 submitted that the consent of Gram Sabha was obtained for conversion and diversion of forest land. It was further stated that the Social Impact Assessment study was not applicable to the project as it did not affect 400 or more families in plain area and 200 or more families in tribal area. Nor did the project displace any of the families. Public hearing was fixed to be held on 21st July 2006 in Rispa village but the Gram Panchayat boycotted the hearing. It was asserted by Respondent No. 8 that all precautions were undertaken by them for excavating muck at the dumping sites which were located at the foothill by way of excavator and tippers. It was further asserted that only 460 trees would be affected by the construction activity and not 4815 trees as projected by the forest department and wrongly alleged by the plaintiff. The Respondent No. 8 disputed the allegations of the plaintiff that it had violated EC & FC.

The Tribunal rejected the plea raised by the plaintiff that no public hearing had been conducted, as the same had been boycotted by the Gram Sabha and notification about the public hearing had also been published in the newspapers. The Tribunal stated that the authorities were not able to correctly estimate the damage being made to the trees as there was a huge gap between the estimate submitted by the authorities and Respondent No. 8 and the extent to which muck would be generated from the construction activity. The Tribunal observed that at this stage it would be better for the authorities to take remedial and restitution steps as substantial construction work had already been completed by Respondent No. 8.

The Tribunal applied the Principle of Sustainable Development and the Precautionary Principle and issued directions to constitute an expert committee. The committee would report to the Tribunal within 45 days from the judgment. Further the amount paid by the Respondent No. 8 shall be utilised for the purpose of restitution and restoration of environment and ecology.

Miscellaneous

Amudha Textiles
Vs.
Tamil Nadu Pollution Control Board & Ors.

Appeal Nos. 85 and 86 of 2014 (SZ)

CORAM: Justice M. Chockalingam, Shri P.S Rao
Keywords: Consent, untreated trade effluents, principles of equity
Decision: Appeal dismissed
Date: 30th July 2015

The appeal was filed by the Appellant challenging the orders dated 22.08.2014 passed by the Tamil Nadu Pollution Control Board (TNPCB) (3rd Respondent).

The appellant M/s Amudha Textiles is located in Komarapalayam in Tiruchengodu and engaged in bleaching and dyeing of cotton yarn.

On 17.03.2010, TNPCB inspected the Appellant's unit and submitted that the unit was operating without obtaining the consent and was discharging untreated trade effluents. It was further alleged that the site of the appellant was in close proximity to Mettur Canal East and Cauvery River. Moreover, notification issued by Environment and Forest Department prohibited setting up tannery and textile dyeing units within 1 km and 5 km from the specified water resources including Cauvery River.

The Appellant had attempted to rectify the deficiencies by providing ETP and RO facilities and installing nano filtration and solar evaporation plant for treating effluents. Despite making these efforts, the Appellant was denied consent to operate, which implied that they would have to close the unit. According to the Appellant, such denial was against the principle of sustainable development.

The Tribunal observed that the Appellant had been operating the unit without obtaining consent for several years and failed to comply with the notifications issued by the Environment and Forest Department in the past. The appeal was accordingly dismissed, as it had been filed in violation of the principles of equity.

Bharat Shamrao Gajendragadkar
Vs.
Shri Theatre & Ors.

Application No. 116 of 2014

CORAM: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Noise pollution, theatre
Decision: Application disposed of
Date: 22nd July 2015

The applicant being a senior citizen approached the Tribunal to monitor noise pollution caused by Shri Theatre (Respondent No. 1) which had been functioning for the last 10 years in Osamanabad. The Applicant was residing behind the theatre.

The main allegation of the applicant was that high sound levels caused by the operation of the theatre was affecting the health of the residents living nearby, especially senior citizens. The noise pollution caused by Respondent No. 1 allegedly even made it difficult for the residents to converse amongst themselves. Several complaints were made by the residents following which the concerned Authorities directed Respondent No. 1 to carry out the necessary repairs to maintain the sound system but no action was taken to comply with these directions. He further alleged that the sound level increased when the songs were being played in the theatre

Respondent No. 1 stated that the sound levels were maintained at the prescribed limits and did not cause any noise pollution in the adjoining area. Moreover, several improvements were carried out by Respondent No. 1 as per the suggestions of Maharashtra Pollution Control Board (MPCB).

The Tribunal directed Respondent No. 1 on the basis of the Precautionary Principle to install automatic sound amplifier control system to keep the sound emanating from the theatre within the prescribed limits. Further, the Tribunal asked MPCB to ensure that Respondent No. 1 complied with the directions within the specified time frame.

Cavelossim Villagers Forum
Vs.
Village Panchayat of Cavelossim

Application No. 03 of 2015 (WZ)

CORAM: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Dumping mud, CRZ Regulation, 2011, restoration
Decision: Application disposed of
Date: 9th July 2015

This application was filed on behalf of the Cavelossim Villagers Forum against M/s Sai Champions Family Trust (Respondent No. 4) for undertaking a project which was found illegal by Goa Coastal Zone Management Authority (GCZMA) for dumping mud which was in violation of CRZ Regulation, 2011.

It was alleged by the Applicant that the Village Panchayat was not the competent authority to grant permission for construction activity to Respondent No. 4. The advocate for the Respondent was absent.

The Tribunal was of the considered opinion that construction carried out was illegal and liable to be demolished as clearances were not permissible under the CRZ Notification of 1991 or 2011. The demolition work was directed to be carried out within three weeks and Respondent No. 4 was directed to pay Rs. 10 lakh as the cost for restoration of that area. Therefore, the application was disposed of.

Miscellaneous

G. Senthilkumar
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 78 of 2015

CORAM: Justice Dr. P. Jyothimani, Professor Dr. R. Nagendran
Keywords: Air pollution, plastic lump, renewal of consent
Decision: Application disposed of
Date: 10th July, 2015

The application was filed against M/s Santhya Plastic (Project Proponent), which was engaged in the business of re-processing of plastic lump in Erode. The allegations set forth by the applicant were that the Project Proponent was manufacturing plastic lump without erecting carbon scrubber and a stack with fan blower which caused air pollution. Further, it was alleged that no building plan approval was obtained by the Project Proponent from the appropriate authority under the Town and Country Planning Act.

The Project Proponent averred that the site where his unit was located fell under the unclassified land zone and the process of manufacturing plastic lumps by melting polythene bags did not generate trade effluents. Moreover, the odour which was emitted from this process was taken out in a scrubber which was then passed out by activated carbon column through a stack.

The Tribunal observed that the height of the tank required by the Board was 15 metres and the Project Proponent has the tank of height 18 metres and was willing to raise it to 25 metres. Further, the Tribunal would not intervene when the manufacturing capacity of the unit was 174 kg per day which was in order.

Accordingly, the application stood closed and the Board was directed to pass a fresh order for renewal of consent.

Water Pollution
Polluter pays

Green Garden Residents' Association
Vs.
District Collector, Kochi

Application No. 26 of 2014 (SZ)

CORAM: Justice Dr. P. Jyothimani, Professor Dr. R. Nagendran
Keywords: Water pollution, effluents, STP, polluter pays principle
Decision: Application disposed of with directions
Date: 2nd July 2015

The application was filed against General Manager, Park Residency Hotel, Kochi (Respondent No. 5) and Chairman, Greater Cochin Development Authority, Kochi (Respondent No. 6) for causing water pollution. Respondent No. 5 which was a hotel in Kochi discharged effluents into the quarry and the stagnated water was further used by the public for bath and other activities.

Respondent No. 5 submitted that the pipeline which was laid for the purpose of discharging effluents was removed and it had also established a sewage treatment plant (STP) which was functioning within the required parameters. Though the 5th Respondent had stated that the pipeline was removed, it was alleged by the Applicant that it still existed.

The Tribunal disposed of the application with the following directions:

i. If the pipeline was identified by the Applicant to be still available then it would be removed at the cost of the 5th Respondent.
ii. It was directed to the 5th Respondent to pay Rs. 30,000 under the 'Polluter Pays" principle to Principal Secretary, Department of Environment, Government of Kerala within one month from the receipt of the judgment.

Forest Clearance
Compensation

Haryali Welfare Society
Vs.
Union of India

Application No. 269 of 2013
(M.A. Nos. 770/2013, 980/2013 & 166/2014)

CORAM: Mr. Justice U.D. Salvi, Mr. Ranjan Chatterjee
Keywords: Forest land, Aravali Forest-Manger Bani, Polluter pays, compensation
Decision: Application disposed of with directions
Date: 20th July 2015

The Applicant moved the Tribunal to bring attention to the newspaper report in Hindustan Times dated 05.09.2013, Gurgaon Edition against Directorate of Town and Country Planning, Faridabad (Respondent No. 3) and Mrs. Rajni Chawla (Respondent No. 5) allowing fencing and construction of damp proof course (DPC) in a plot located in Mangar village which is a part of ecologically fragile Aravali Forest-Manger Bani. The Applicant alleges that the area was a "deemed forest" and such activity would be detrimental to its ecology.

Respondent No. 3 submitted that fencing of land along with DPC was done on the land without violating any provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions on Unregulated Development Act, 1963.

The Tribunal after consideration disposed of the application with the following directions:

i. The State and its authorities were directed to ascertain and verify the land as forest land or not keeping in view the landmark decisions of the Apex Court such as *T.N. GodavarmanThirumulpad v. UOI* and *M.C. Mehta v. UOI* and submit a report to the Tribunal.
ii. Until the land was identified as such, no construction work including DPC or wall construction was to be carried out on it. In the event of identification of the land as forest land, the Respondent No. 5 was to remove fencing and DPC made along the boundary and efforts should be made to bring the land to its original condition.
iii. By invoking the Polluter Pays principle, Tribunal held Respondent No. 5 vicariously responsible for cutting off trees from a labourer and to pay Rs 50,000 as compensation to Environment Relief Fund.
iv. Permission for allowing barbed wired fencing vide order dated 01.04.2014 was an interim arrangement and was not to be considered as a blanket permission to erect fences in the area.
v. Leave of the Tribunal was to be taken by State Government or any other authority for fragmentation of the area which falls under Manger Gair Mumkin Pahar Disrict, Faridabad.

Miscellaneous

Human Rights and Consumer Protection Cell Trust
Vs.
State of Telangana

Application No. 118 of 2015 (SZ)

CORAM: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: encroachments, lake bed
Decision: Application dismissed
Date: 7th July 2015

The application was filed seeking removal of the encroachments from a lake bed area, and to restore the water bodies to its original size in Telangana.

The Tribunal clarified that the encroachment was a policy matter and did not fall under its domain. Since the applicant was not able to specifically point out any instance of environmental damage, the Tribunal was of the considered opinion that it would not be able to provide any remedy to the applicant. Therefore, the application was dismissed.

Miscellaneous

Hussein Khan
Vs.
Ministry of Environment & Forests & Ors.

Application No. 150 of 2014

CORAM: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Supreme Court
Decision: Application dismissed
Date: 20th July 2015

The application was moved to the Supreme Court and the interim order passed by the Tribunal on 11.06.2014 in favour of the applicant stood vacated as the matter was still pending before the Apex Court.

Iswarya Health Care
Vs.
Tamil Nadu Coastal Management Authority & Ors.

Application No. 250 of 2014 (SZ)

CORAM: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: CRZ Notification, 2011
Decision: Application allowed
Date: 6th July 2015

The Applicant approached the Tribunal challenging the order passed by the Tamil Nadu Coastal Management Authority (TNCZMA) (Respondent) stating that zones which were falling in 100 metres on both the sides of Buckingham Canal were to be treated as CRZ-II according to the Coastal Zone Management Plan (CZMP) approved by the MoEF.

The Applicant alleged that the CZMP which was prepared by the State Coastal Zone Management Authority as construed by the Respondent was impermissible in law as it was in overreach of the provisions of the CRZ Notification, 2011, thus, the order passed by the Respondent was void and should be set aside.

The Tribunal was of the considered opinion that the order passed by the Respondent should be set aside as it was not in accordance with the CRZ Notification, 2011 along with it directed CMDA to consider the matter of the applicant afresh. Therefore, the application was allowed.

Miscellaneous

K. Kandasamy
Vs.
Tamil Nadu Coastal Management Authority & Ors.

Application No. 90 of 2014 (SZ)

CORAM: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Lodge, fumes, sewage water, disposal, no objection certificate
Decision: Application disposed of with recommendations
Date: 20th July 2015

The application was filed against M.S.P Lodge which allegedly emanated fumes and sewage water without having any proper disposal mechanism in place. It was further found that the Lodge was operating without a No Objection Certificate from the Board. However, all the allegations were denied by the Respondent.

The Tribunal observed that the kitchen of the lodge was using firewood which was hazardous to the health of the people living nearby. The Tribunal was of the considered opinion that the Lodge should adhere to all the recommendations provided by the Board in the Status Report and only on such compliance by the Lodge, the Board should consider the consent application. Further, the Tribunal directed the Board to monitor the operation of nearby hotels in that area.

Therefore, the application stood disposed of with specific recommendations.

Miscellaneous: Plastic Waste

M/s Madhup Agency
Vs.
State of Rajasthan & Ors.

Application No. 50 (THC) of 2014

CORAM: Justice U.D. Salvi, Dr. D.K. Agrawal
Keywords: Plastic Waste (Management and Handling) Rules, plastic carry bag
Decision: Application allowed
Date: 31st July 2015

The application was transferred to the Tribunal from the High Court of Judicature at Jodhpur as it involved issues pertaining to the Environment (Protection) Act, 1986.

The main question involved in this application was whether plastic roll and seven plastic bags of different sizes weighing 1512 kg seized from the godown of M/s Madhup Plastic Agency (Applicant) during inspection fell within the definition of plastic carry bag or not. It was revealed in the inspection report that the plastic roll did not have self-carrying feature and did not fall under the prohibited plastic carry bag as per Rajasthan Notification dated 21.07.2010 but it could not be ruled out that the plastic material could be used as plastic carry bag.

According to Plastic Waste (Management and Handling) Rules, 2011, the plastic carry-bag has to have a particular shape and form, to make it a contraband item and as per the definition of plastic carry bag under section 3(b) of the said Rules, excludes bags that form an integral part of packaging used for sealing goods.

The Tribunal after considering the fact that the applicant was not a manufacturer but the seller of packaging material and could not convert the plastic material into carry bags, allowed the application.

Dharmarajan
Vs.
District Collector, Coimbatore

Application No. 74 of 2013 (SZ)

CORAM: Justice M. Chockalingam, Dr. R. Nagendran
Keywords: Noise pollution, air pollution, water pollution, coir business
Decision: Application disposed of with directions
Date: 31st July 2015

The Applicant was engaged in agricultural business along with his family in Kondampatti Village, Pollachi Taluk. M/s Sowthri Fibres (Respondent No. 4) started a coir business adjacent to the applicant's property after obtaining permission from the Tamil Nadu Pollution Control Board (TNPCB). The unit belonging to Respondent No. 4 caught fire, which burnt 60 coconut trees of the Applicant and caused damage to his crops. The applicant and his family members had to also undergo medical treatment. The applicant complained about the noise and air pollution caused by the Respondent No. 4 to the Board which gave them three months' time to implement pollution control measures. However, Respondent No. 4 failed to follow the directions and the Applicant approached the Tribunal.

Respondent No. 4 denied the allegations put forth on him by the applicant of causing air and water pollution and averred that all the measures to control pollution were taken by them.

The Tribunal after considering the inspection reports of the Board was of the opinion that Respondent No. 4 had taken measures to control pollution such as by having water sprinklers and construction of tin sheet wall. Therefore, the application was disposed of with directions to District Environmental Engineer to ensure that air and water pollution did not recur.

Miscellaneous

P.S. Jeyachandran & Anr.
Vs.
State of Tamil Nadu & Ors.

Application No. 239 of 2013 (SZ)

CORAM: Justice M. Chockalingam, Shri P.S. Rao
Keywords: environmental damage, consent
Decision: Application disposed of
Date: 29th July 2015

The application was filed by the applicant to restrain the quarry activities carried by M/s Sri Gokulam Blue Metals and M/s Sivasankari Blue Metals (Respondent No. 6 and 7 respectively) and to pay compensation for the environmental damage caused by them.

It was alleged by the Applicant that the units operated by Respondent No. 6 and 7 were functioning without necessary approvals from the Board. The Tribunal was of the considered opinion that the consent was eventually obtained by both the Respondents by the Board. Accordingly the application was disposed of.

Miscellaneous

T. Kanakaraj
Vs.
Tamil Nadu Pollution Control Board

Appeal No.100 of 2014 (SZ)
Appeal No. 101 of 2014 (SZ)

CORAM: Justice Dr. P. Jyothimani, Prof.Dr. R. Nagendran
Keywords: construction activity, ground water, consent to operate
Decision: Appeal disposed of with conditions
Date: 6th July 2015

The applicant challenged the validity of the order passed by the Tamil Nadu Pollution Control Board (TNPCB) allowing Respondent No. 4 to manufacture mango juice.

The allegation of the Applicant was that Respondent No. 4 stated to the Board before the construction activity that the purpose of the building was to manufacture mineral water and after the completion of the construction activity stated to the Board that the consent was required to manufacture mango or other fruit juices. Thus, that a different reason was stated by Respondent No. 4 for approval, and that such discrepancy was not given due consideration by the Board were the main grievances of the Applicant. It was further alleged that they were drawing ground water for commercial purposes and the same had not even been considered by the Board.

Respondent No. 4 submits that he never drew ground water for commercial purposes and in case it did, then the Board may cancel its consent certificate. The Tribunal was of the considered opinion that consent to establish and operate was granted to the Respondent No. 4 and there was no need for it to question the validity of the order passed by the Board.

Therefore, the Tribunal disposed of the application with the following conditions:

i. Respondent No. 4 can file an application for renewal of consent to operate and the Board shall consider the said application on merits.
ii. Respondent No. 4 shall not indulge in any manufacturing activity without the order passed by the Board.
iii. Respondent No. 4 shall not draw ground water for commercial purposes.

Maria Filomena Furtado & Ors.
Vs.
Goa Coastal Zone Management Authority & Ors.

Appeal No. 33 and 35 of 2014 (WZ)

CORAM: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: CRZ Notification, No Development Zone, Goa, illegal construction,
Decision: Appeal disposed of (with Costs)
Date: 2nd July 2015

A writ petition was filed before the High Court of Bombay by Rabindra Dias alleging that Maria and her family members violated several provisions of CRZ Notification, 1991 by carrying out certain construction activity within No Development Zone (NDZ). Upon complaint of the same by the Applicant to the Goa Coastal Zone Management Authority (GCZMA), it passed an order stating that only a retaining wall constructed by Maria was part of the illegal construction and was liable for demolition. The Applicant, aggrieved by the said order, challenged the same before the Tribunal by way of this appeal.

The Applicant alleged that Furtado family illegally constructed rooms in NDZ area without any permission which were converted into hotel and were used for commercial purposes. The Respondent denied the allegations by stating that a house was constructed in the year 1979 with the permission of the Village Panchayat. However, this permission which was issued to Maria's husband was lost after his death and she was unable to find the certified copy of the same from the Panchayat.

The Tribunal observed that the members of Furtado family could not adduce any evidence of residential accommodation or traditional place of storage prior to CRZ Notification 1991. The Tribunal observed that by not demolishing the construction activity the provisions of CRZ Notification would be further breached. Moreover, the Tribunal stated that in such a situation where Furtado family has blatantly disregarded the law by way of illegal construction, the *fait accompli* principle would not apply.

Consequently, the Appeal preferred by Mrs. Maria Furtado and others (Appeal No.33 of 2014), was dismissed with costs of Rs.50,000/- payable to Respondent No.2 Rabindra Dias and Respondent No.3- Mr. Santana Piedade Afonso, the Appellants in Appeal No.35 of 2014. Accordingly, the Appeal No.35 of 2014, was allowed. The impugned order was set aside. Instead of impugned order, the Tribunal directed that the entire construction of the house property and retaining wall, around the house property, Guest-house, called 'Furtado Guest House' as well all other constructions standing in land Survey Nos.12/1 to 12/5, within NDZ of Sernabatim village, shall be demolished

Therefore, the appeal was disposed of and the order passed by the GCZMA was set aside. It was directed that the entire construction made by the Furtado family was to be demolished within eight weeks.

Umayal Achai
Vs.
District Collector, Cuddalore

Application No. 280 of 2013

CORAM: Shri Justice M. Chockalingam, Shri P.S. Rao
Keywords: Noise pollution, flour mill
Decision: Appeal disposed of
Date: 2nd July 2015

The Applicant approached the Tribunal seeking an order against her neighbours, Mr S.D.S. Philip and M/s Balaji Flour Mills for causing noise pollution after making several attempts before the Board to take care of the situation.

It was alleged by the Applicant that Mr Philip had obstructed the free flow of air and light to the Applicant's house. Mr Philip had installed a mobile tower on the first floor of his house and a generator which ran for several hours during the day and night, which also caused a substantial amount of noise pollution. The Respondent denied all the allegations of the Applicant.

The Tribunal directed District Environmental Engineer (DEE) to inspect and submit the report before it. The report stated that by installation of mobile tower by Mr Philip did not result in injury and Balaji Flour Mills had undertaken preventive measures. Tribunal directed that operation should be carried out by the mill between 8:00 a.m. to 6:00 p.m. only. Thus, the application was disposed of.

Miscellaneous

OM Industries
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No.122 of 2015

CORAM: Justice P. Jyothimani, Prof.Dr. R. Nagendran
Keywords: electricity connection
Decision: Appeal disposed of
Date: 9th July 2015

The Applicant was a manufacturer of packaged drinking water and was aggrieved by the action taken by the Board to discontinue electric service connection for maintenance of membrane and the machineries of the Applicant's unit.

The Tribunal directed the Board to restore electricity connection to the Applicant's unit otherwise it would result in loss of commercial activity. Accordingly, the application was disposed of.

P. Sasi
Vs.
State of Kerala & Ors.

Application No.144 of 2013 (SZ) (THC)
(W.P.No. 24935 of 2013, High Court of Kerala)

CORAM: Justice M. Chockalingam, Dr. R. Nagendram
Keywords: vehicles, foul smell, pollution, action plan
Decision: Appeal disposed of
Date: 2nd July 2015

This application was transferred before the Tribunal by the High Court of Kerala for the authorities to take immediate action.

The Applicant was aggrieved by the waste water released by the vehicles that carried fish throughout National Highway-17 which resulted in foul smell. The Respondent submitted that amendments were required to be made in the Act and for which a new bill was pending before the Parliament which would take a reasonable time to be passed.

Meanwhile, an interim order was passed by the Tribunal which directed the officials of the Police and Transport Departments of the State of Kerala to prosecute the drivers of the vehicles which would emanate pollution. The Department charted out an Action Plan to address the problem.

The Tribunal was of the considered opinion that the interim directions and Action Plan would be sufficient to solve the problem until new rules came into force. Therefore, the application was disposed of.

Forest Clearance

P. Chathukutty
Vs.
District Collector, Wayanad

Application No. 201 of 2014

CORAM: Justice Dr. P. Jyothimani, Prof.Dr. R. Nagendran
Keywords: petroleum outlets, felling of trees, Petroleum Act and Rules
Decision: Application disposed of with directions
Date: 9th July 2015

The Applicant's main grievance was against the petroleum companies' decision to start new petroleum outlets in Wayanad District resulting in felling of trees and harm the environment.

The Respondent submitted that the installations of petroleum outlets were done in the manner prescribed under the Petroleum Act and Rules, 1934 and the district authorities took all the necessary steps to protect environment and ecology.

The Tribunal was of the considered opinion that the government would take necessary steps to install the new outlets. Therefore, the application was disposed of with the following directions:

i. Setting up of new petroleum outlets by the respondent shall be not be made in breach of any law.
ii. The District Collector should not grant NOC to the petroleum company unless it is satisfied that the outlets would be installed legally by carving out the hill area.
iii. In case of receipt of complaint about any illegal activity, the Revenue Divisional Officer shall take appropriate legal action.

Miscellaneous

RCS Infrastructure Private Limited
Vs.
Tamil Nadu Pollution Control Board & Ors.

Appeal No.15 & 16 of 2014 (SZ)

CORAM: Justice M. Chockalingam, Shri P.S. Rao
Keywords: stone crusher, Water Act, Air Act, consent to establish, dust pollution
Decision: Appeal dismissed
Date: 15th July 2015

The Appellant, a stone crusher unit filed the appeal against the order passed by the Board rejecting the grant of consent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

The Appellant submitted that it had started operating the unit in the year 2008 and was not aware at that time that it had to obtain prior permission from the Board. After the inspection in the year 2010, the Appellant applied for consent to establish (CTE) from the Board and it was rejected since the minimum distance between the two stone crushers should be at least 1 km to prevent dust pollution from one unit to another unit.

The Tribunal was of the opinion that the Board's decision to reject the consent application was right as the Appellant's unit was located within 1 km radius from the existing units. Therefore, the appeal was dismissed.

Miscellaneous

Rosamma
Vs.
Pallipuram & Ors.

Application No. 380 of 2013 (SZ) (THC)

CORAM: Justice Dr. P. Jyothimani, Shri P.S. Rao
Keywords: Non appearance
Decision: Application dismissed for default
Date: 22nd July 2015

The Applicant never appeared before the Tribunal. Therefore the application was dismissed for default.

Rajasthan Rajya Vidyut Utpadan Nigam Ltd
Vs.
The Cess Appellate Committee & Ors.

Appeal No.'s 09/2015 to 39/2015 (THC)(CZ)

CORAM: Justice Dalip Singh, Mr. Bikram Singh Sajwan
Keywords: Water pollution, Water (Prevention and Control of Pollution) Cess Act, 1977
Decision: Appeal disposed of
Date: 16th July 2015

The Applicant filed a writ petition before the High Court of Rajasthan against the order of the Cess Appellate Committee which was subsequently transferred before the Tribunal under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977.

According to the Applicant, the Appellate Committee as well as the Assessing Authority committed an error in holding that for carrying out the assessment of the Cess liable to be imposed under Section 3(2) A of the Act of 1977, the Assessing Authority was not under an obligation to afford an opportunity of hearing before passing assessment order holding the Appellant liable for payment of the Cess. It was submitted by the applicant that it was a settled principle of law that before passing any order by any authority which was in the nature of the judicial and quasi judicial order, an opportunity of showing cause and compliance of natural justice must be afforded to the affected party.

The Respondent on the other hand supported the view expressed by the Appellate Committee and contended that under the provisions of the Act of 1977 and the Rules framed thereunder, there is no such requirement of affording an opportunity of hearing to the affected party and as such there is no such infirmity in the order particularly in view of the fact that the Appellant has not disputed the other facts that are recorded by way of findings by the Appellate Committee in their order which would make the Appellant liable.

The Tribunal was of the opinion that it was a settled proposition of law that the principle of natural justice had to be complied with the by the authority assigned to take the decision even in quasi judicial matters and for the aforesaid purpose, an opportunity to show cause and hearing against not only the alleged violations and shortcomings but also the action proposed to be taken and the assessment order being passed ought to have been affected.

The Tribunal was of the view that even though the orders of the Assessing Authority as well as the Appellate Committee had been set aside, the arrangement made under the interim orders of the High Court shall remain force till such time as the matter was decided afresh after affording an opportunity of hearing to the Appellant by the Assessing Authority and further recovery and/or refund of the amount shall abide by the final decision in the matters by the Assessing Authority.

With the aforesaid observations, the Appeals were allowed to the extent indicated herein above with the direction of remand of the matter to the Assessing Authority for decision afresh after affording an opportunity of hearing to the Appellant and the Respondents.

Accordingly, Appeal Nos. 09/2015 to 39/2015 stood disposed of, as indicated hereinabove. There was no order as to costs.

Miscellaneous

M/s. Sri Bhavani Textiles Processors Ltd
Vs.
TNPCB

Appeal No.68 of 2014

Coram: Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Dyeing unit, pollution, consent to operate, penalty, machineries
Decision: Appeal partly allowed
Dated: 24th July 2015

This appeal was filed against the order of the Tamil Nadu Pollution Control Board dated 23.7.2014 passed under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988 in and by which the Board directed the closure of the appellant unit on various grounds.

The appellant was a dyeing unit established in the year 1983 and it is stated that they had obtained "consent to operate" from the Board for 315 KLD. According to them they have established RO and RMS system and there was no pollution created by them in their manufacturing activities. It was not disputed that in the inspection conducted by the Board, the Board had found that the appellant had not exceeded the quantum of 315 KLD, which is the consented capacity. However, taking note of the fact that there was one additional pacific jigger of 1000 kg and one additional Jigger JT 10 – 1000 and they were not removed and that the entire penalty of Rs. 97,33,500/- had not been paid apart from some other defects, the first respondents had passed the impugned order of closure.

The Tribunal was of the view that the entire issue, boiled down to the issue that the appellant was not liable to pay the penalty for 515 days as calculated by the Board at six paise per litre discharge.

The Tribunal held that imposing of penalty by the Board for the period beyond three months was totally without jurisdiction and therefore the conclusion made under the impugned order that the appellant was liable to pay penalty for 515 days at the rate of six paise per litre of discharge was not maintainable in law. Accordingly, the Tribunal set aside the said portion of the impugned order directing the appellant to pay penalty of Rs.97,33,500/-.

Further, in the event of the appellant giving an undertaking in the form of an affidavit to the second respondent that the said additional machineries shall not be used in normal circumstances except in the case of preparatory and not exceeding the consented quantum of 315 KLD, the Board shall permit the appellant to keep the said machineries in the premises. It does not prevent the Board from constantly monitoring the unit.

While the Board inspected the premises, it shall inspect all the machineries installed while in operation in their proper perspective and pass appropriate orders. With the above direction, the appeal stood partly allowed and the impugned order was set aside in so far as it relates to the imposition of penalty and the removal of machineries, as stated above. No cost.

M/s. Sri Sangeetha Dyeing
Vs.
TNPCB

Appeal Nos. 43 and 44 of 2014 (SZ)

Coram: Justice M. Chockalingam, Mr. P.S. Rao
Keywords: Pollution, dyeing unit, effluent, Bhavani River
Decision: Appeals Dismissed
Dated: 30th July 2015

The appeal was filed seeking direction against the orders dated 21.03.2014 dismissing Appeal Nos. 6 and 7 of 2012 passed by the 3rd respondent, namely, the Appellate Authority, Tamil Nadu Pollution Control, Chennai (Appellate Authority) upholding the orders passed by the Tamil Nadu Pollution Control Board (TNPCB) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 wherein the application of the appellant for granting consent to operate the dyeing unit of the appellant situated in Erode District, Tamil Nadu was rejected. The appellant's unit was a manual dyeing unit which was established by the father of the appellant in the year 1986 and subsequently operated by the appellant. The unit was the only source of livelihood for the appellant and also for all the employees working since the inception of the unit. There were no machines used in the unit for the manual dyeing process. The unit had HP motor for drawing water. As per the directions of the TNPCB and in compliance of the orders of the High Court, Madras in separate batch of cases, the appellant's unit had also set up various installations in the premises of the unit to ensure that no pollution was caused by the activities in the unit and no effluent was let out. The unit also had the requisite treatment plant to ensure no discharge.

The unit was issued with a closure order dated 25.11.2008 by the TNPCB alleging that the unit had not met the pollution control norms as per the Government orders as well as the orders of the High Court. The unit preferred to challenge the same in W.P.No. 874 of 2009 before the High Court and as per the report filed by the TNPCB in the above writ petition, the unit was required to fine tune and suitably connect the Reverse Osmosis (RO) and Reject Management System (RMS) which was subsequently done.

The TNPCB officials conducted inspection of the unit based on the application and observed that the installation of all the necessary treatment plants had been completed as required by law and as per the orders of the Hon'ble Courts. However, to the shock of the appellant, his application was rejected by the TNPCB stating that the unit was considered as a new one and thus prohibited from establishing at the present premises which was situated within 400 m from Bhavani River and thus attracted the Government order. The appellant filed a fresh application on 08.09.2010 to obtain consent of the TNPCB for his unit by enclosing a letter dated 19.10.2006 of the Junior Engineer, Tamil Nadu Electricity Board, and Profession Tax receipt for the year 1986-87 as documents in proof for its existence prior to the issue of Government Order dated 30.03.1989. The said documents were not one among the statutory requirements to establish and commence the industry. Hence, the TNPCB refused to grant consent to the appellant's unit.

From the status report it was an indisputable fact that the unit of the appellant was located within 400 m from the River Bhavani and also the date of commissioning of the unit was shown as January, 1995.

The Tribunal was unable to notice any reason to interfere in the reasoned order of the Appellate Authority, Tamil Nadu Pollution Control confirming the order of the TNPCB dated 25.11.2010 wherein closure direction along with disconnection of power supply to the appellant's unit was issued.

The appeals were dismissed as devoid of merits. No cost.

Miscellaneous: Limitation
EIA /FC

Shri. SN Somasekhar
vs.
State of Karnataka

Application No. 303 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Western Ghats, Water Diversion Project, EIA, limitation
Decision: Application dismissed
Dated: 30th July 2015

This application was filed seeking direction relating to the environment which arose out of the statutory obligation of the respondent Government authorities to take into consideration the huge impact of the Yettinahole Water Diversion Project in Karnataka upon the biodiversity in the Western Ghats and the interest of local community at large who would be affected by it and to conduct a detailed impact assessment as per the provisions of the Biological Diversity Act, 2002 and the Environment Impact Assessment Notification, 2006 (EIA Notification,2006). The Yettinahole Water Diversion Project had been proposed by the Karnataka Government at a cost of more than Rs. 8,000 crore in the biodiversity hotspot of the Western Ghats with diversion of water from east flowing tributaries of the River Nethravathi to the districts in the west. The project proposed massive diversion of water to the tune of 24.01 tmc all around the year involving submersion of land to an extent of 1200 ha including 2 villages and nearly 600 ha of forest land.

The applicant herein filed a writ petition in W.P.No. 12307/2014 before the High Court of Karnataka challenging the diversion project and by an order dated 2nd June, 2014, the applicant was allowed to withdraw the writ petition and seek alternative remedy before this Tribunal.

The following questions were formulated for consideration by the Tribunal:

1. Whether the application was maintainable or not since it had been barred by time as contended by the third respondent.
2. Whether the applicant was entitled for the interim order of stay on the construction activities of the Yettinhole Diversion Project as asked for.

The order passed by the Central Government and the recommendation of the EAC which formed basis of the order were in public domain. However, they were not questioned by the applicant either in the writ petition or in the present application. Hence, the benefit of section 14 of the Limitation Act, 1963 was also not available to the applicant.

The Tribunal opined that the reading of the averments and the grounds set out in the application were clearly indicative of the fact that the applicant was actually challenging the order of the Central Government dated 28.03.2013 pertaining to the Yettinhole Diversion Project. Being conscious of the fact that the appeal under section 16 (h) of the NGT Act, 2010 assailing the order dated 28.03.2013, which was a statutory approval for the project, would be defeated by law of limitation, the applicant had cleverly sought for a direction to stop the construction activities of the said project in order to circumvent the

Law of Limitation, 1963 which in the considered opinion of the Tribunal could not be permitted.

The application was barred by the limitation as prescribed under the NGT Act, 2010. Hence, the application was dismissed as not maintainable with no cost.

Miscellaneous

Jayaram Gouda
vs.
Union of India & Ors

Application No.110 of 2015

Coram: Dr.P.Jyothimani, Judicial, Prof. Dr.R.Nagendran
Keywords: Withdrawn
Decision: Application dismissed as withdrawn
Dated: 29th July 2015

The application was filed seeking permission to withdraw this application with liberty to file appeal against EC which was said to have been granted subsequently.

Accordingly the application was dismissed as withdrawn.

Miscellaneous: consent to operate

M/s. Holi Drop Packaged Drinking Water Company

vs.

TNPCB

Application No. 109 of 2015 (SZ)

Coram: M. Chockalingam, Mr. P.S. Rao
Keywords: Closure order, consent to operate, renewal
Decision: Application disposed of
Dated: 29th July 2015

The application was filed against the closure order and for reconnection of electricity to protect the machineries. The applicants business of packaged drinking water had been established after obtaining licence. In suo moto proceedings, the unit was ordered for closure.

The case of the applicant was that the applicant was carrying on the business of packaged drinking water and allied products from 2008 onwards. The Unit was established after obtaining a licence from the parties as required under the relevant statues, such as BIS certificate, Tamil Nadu Food and Safety Department, Tamil Nadu Pollution Control Board and Central Ground Water Authority. While the matter stood so, pursuant to the suo motto proceedings in Application No.40 of 2013 the Unit was closed by serving closure order dated 8th January, 2014.

Under these circumstances, an application was filed for renewal of the Consent to Operate on 21.8.2014 which was pending for consideration of the Board. Hence, a direction was required to the Board for consideration of the application on merits and in accordance with law.

No impediment was felt by the Tribunal to issue a direction to the Board to consider the application of the applicant for the renewal of Consent to Operate dated 21.8.2014 in accordance with law and pass appropriate orders thereon. With the above direction, the application was disposed of. No cost.

Air, Water & Noise Pollution
Polluter Pays principle

M/s. Chemical Construction Company Pvt. Ltd.
vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 126 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Pollution, closure, Air Act, Water Act, noise level, CRZ Notification, polluter pays principle
Decision: Application disposed of
Dated: 3rd July 2015

This application was filed challenging the order of the first respondent, Tamil Nadu Pollution Control Board dated 25-04-2014, by which, invoking powers under section 31 A of the Air (Prevention & Control of Pollution) Act, 1981 and section 33A of the Water (Prevention &Control of Pollution) Act, 1974, the Board had directed the closure of the applicant unit on the ground that the unit is carrying on its activities without consent from the Board and operating the steel fabrication unit in a mixed residential zone without permission from CMDA apart from stating that on survey of the noise level on the complaint of the 6th respondent Mosque, it was found that the noise level of the unit was 66.7 dB as against the permissible level of 55 dB and directed closure of the unit.

The applicants were engaged in the business of manufacturing of fabricated equipment for edible oil refineries, solvent extraction plants etc., having established in the year 1961 in the disputed premises, having taken lease from its owner under a registered lease agreement dated 28-04-1962 initially for a period of 50 years with option to renew for a further period of 49 years. According to the applicant, it had obtained the necessary permissions from the Directorate of Industries, Commercial Tax Department and obtained the Import- Export Code from the Ministry of Commerce, Government of India.

The impugned order was challenged on the grounds that, it was against the principles of natural justice as the copies of the reports on the noise level have not been supplied to the applicant, that the reasons adduced in the impugned order were untenable as the respondent Board on one occasion had taken the stand that there was a lack of approval from CMDA, and on the other occasion it had taken a different stand on CRZ clearance which are all untenable, that the noise level survey conducted was totally untenable, that from 1961 the unit had been functioning and there had been no complaint from anyone. Also, the Board had for the first time raised the objection of not obtaining consent after 50 years of the running of the unit in the same area.

By an order dated 29- 01-2015, an Advocate Commissioner was appointed who, after inspection, filed a report dated 19-02-2015. The Commissioner was to measure the distance between the High Tide Line and the applicant's unit. The learned Commissioner has identified the HTL (High Tide Line) with GPS Officer (Global Positioning Officer), Tamil Nadu Coastal Zone Management Authority. He has made measurement at three points, one, the western gate of the company facing Thiruvottiyur High Road, two, the compound wall of the company at far east and three, the HTL at the east as identified by the GPS officer.

The issues to be decided in this case were crystallised as follows;

1. Whether the impugned decision or order passed by Tamil Nadu Pollution Control Board against the applicant unit was valid in law?
2. Whether the Coastal Regulatory Zone Notification issued by the Ministry of Forest and Environment 06- 01- 2011 was applicable to the applicant unit and whether the applicant is bound by the Master plans of CMDA 2026?
3. To what relief the applicant was entitled?

In the present case, the unit of the applicant, which was a steel fabrication unit, was certainly a polluting Industry, both under Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. Therefore, the Tribunal was of the considered view that the applicant must be imposed with cost under the principle of 'Polluter Pays' before its applications were directed to be considered by the Board for granting consent to operate.

The application stood dismissed holding as follows:

1. The impugned order of the State Pollution Control Board, closing the applicant unit was valid in law.
2. The Coastal Regulation Zone Notification of 06-01-2011 issued by MoEF&CC was not applicable to the applicant unit as it existed on the date of this judgement, however it was made clear that either by expanding or by demolishing the existing structure or otherwise or starting afresh, the applicant shall be liable to approach the authority under said notification.
3. The applicant shall pay an amount of Rupees 30 lakhs under the 'Polluter Pays' principle, to be deposited with the Principal Secretary, Government of Tami Nadu, Ministry of Environment and Forest within 4 weeks and thereafter, resubmit or apply afresh to the Tamil Nadu pollution Control Board for consent to operate, in which event after having satisfied on acknowledgment of the payment made under 'Polluter Pays', the PCB shall consider the application and pass orders on merit and in accordance with law expeditiously in any event within 8 weeks thereafter.

There was no order as to the cost.

Miscellaneous

S. Binu
vs.
Directorate of Mining and Geology, Thiruvananthapuram

Application No. 378 of 2013 (SZ)

Coram: Justice Dr..P.Jyothimani, Prof.Dr.R.Nagendran,
Keywords: Non appearance
Decision: Application dismissed for non-prosecution
Dated: 2nd July 2015

The application was filed against respondent no.4 for construction of his house. The applicant did not appear before the Tribunal for one year. The Tribunal opined the issue to be a personal dispute.

Hence, the Tribunal dismissed the application for non-prosecution.

Samatha Law Society & Ors.
vs.
Union of India & Ors.

Application No. 393 of 2013 (SZ) (THC)

Coram: Dr..P. Jyothimani, .Dr.R.Nagendran
Keywords: Pollution, industrial activity, untreated effluents
Decision: Application disposed of
Dated: 2nd July 2015

The application was filed for a direction to ensure that the Puthanthode Canal was not polluted and the effluents from the industries/units which were located nearby are not discharged to the Puthanthode canal and other suitable directions to the official respondents. The case of the applicant was that by large scale of industrial activity of the respondents and discharge of untreated effluents into the canal, enormous pollution was occurred and that is the reason why the original writ petition was filed before the High Court of Kerala which stood transferred to this Tribunal.

The Tribunal was of the view that suitable direction should be given to the official respondents for the purpose of completing the process of the CETP. Hence, the following directions were given:

(1) The Government of Kerala shall complete the administrative process of starting the CETP within two months from today.
(2) Thereafter the CETP shall be established, completed and commissioned within 9 months. For the purpose of forming CETP, it is for the Government to follow the procedure established.
(3) Till the CETP is commissioned in respect of 150 small units, the present septic tank system shall be followed which shall be monitored by the Board to ensure that the system works properly.
(4) In respect of the respondents 19 to 23, who had been discharged as they had their own STPs, the Board shall continue to monitor the effective functioning of the said system.

With the above directions the application stood disposed of.

Miscellaneous

Yog Raj & Ors.
vs.
State of Himachal Pradesh & Ors.

Original Application No. 264(THC) of 2013
(CWP No. 9199 of 2012)

Coram: Mr. Justice Swatanter Kumar, Dr. D.K. Agrawal
Keywords: Damage, construction, house, hydroelectric project, compensation
Decision: Application allowed with observations
Dated: 30th July 2015

The application was filed seeking direction for an enquiry into the damage caused to the houses of the Applicants because of construction (especially tunnel) and other project activities carried out by the Project Proponent in the Parbati – Stage-II Hydroelectric Project. Further the prayer was for issuance of direction to pay compensation to the Applicants for rectification of the damage done.

The Tribunal, vide its order dated 2.1.2014, constituted a Committee directing the committee to conduct a joint inspection of the houses and report to the Tribunal the damage caused to the properties of the Applicants. The Committee submitted a detailed report with photographs of the properties in question to which the Applicant was directed to file objections vide order dated 28.03.2014. Along with the report, original hand-written site inspection report signed by all the Members of the Committee has also been filed. The main objections raised by the Applicants to the report of the Committee were that firstly, it associated a representative, the Chief Engineer of the Project Proponent, secondly that typed copy of the report is not signed by Mr. Anil Kumar, Geologist of the Department of Industries, State of Himachal Pradesh. According to the Applicant, for these two reasons, the report was liable to be rejected.

The Committee then submitted the detailed report to the Tribunal in which it had assessed the damage to the respective properties. In relation to the house of Khekh Ram, it was observed that on visual inspection, no significant structure change in building had been observed. Keeping in view the lapse of a long period between the event of blasting and when the inspections were conducted, it was very difficult to come to an exact conclusion in relation to the damage, cause and extent thereof and particularly the exact amount required for restoration of such damage. However, it was the responsibility of Respondents no.4 and 5 to make good the damage that has been suffered as it can be safely inferred from the record before the Tribunal that there is a link between the carrying on of blasting and heavy construction activity to the damage to these properties.

The only relief that the Applicant could be granted was that the Respondents should either pay the determined amount by the Committee to the respective Applicants or repair their houses as per the report.

With the above observation, the Original Application No. 264 (THC) of 2013 was allowed without any order as to costs.

Miscellaneous: Green Belt

Society for Protection of Culture, Heritage, Environment, Traditions & Promotion of National Awareness (SPCHETNA)
vs.
Union of India & Ors.

Original Application No. 60 of 2014

Coram: P. Jyothimani, Mr. Bikram Singh Sajwan
Keywords: Green area, District Park, commercial activity, noise level
Decision: Application disposed of
Dated: 10th July 2015

The application was filed for a direction against the 2nd respondent to take possession of the land around the Asiad Tower situated adjacent to Siri fort complex measuring 18500 sq. mtrs along with the remaining area and restore the area to its natural state and maintain as green for the purpose of District Park and allow the general public to use the same and to quash the letter dated 18-12-1997 along with the site plan wherein the green area/land measuring 18500 sq. mtrs around the Asiad Tower was handed over by the second respondent to the third respondent.

The applicant was stated to have been aggrieved by the commercial activities like the marriages, parties etc, arranged by the third respondent under the shade of the second respondent in the above area which is to be maintained as green area as per MPD 1962, 2001 and 2021 Zonal Development Plan under which the area was to be treated as a District Park.

On an overall analysis, it became necessary for this Tribunal to address and decide the following issues:
1. Whether the letter dated18-12-1997 would confer any right of license on the third respondent in respect of the green area in the district park to the extent of 18500 sq. mrts.?
2. Whether the issue raised in this case had already attained finality?
3. Whether the third respondent was entitled to exclusive use of 18500 sq. mtrs around Asiad Tower Restaurant for the marriages and parties or the green area was liable to be used by public for recreation also?
4. To what other relief the parties were entitled to?

It was not in dispute that the Tower Restaurant and the adjacent area formed part the District Park. While so, the statutory rules under the Delhi Development Act in the form of Master Plan 1962, 2001 and 2021 governs the field. The District Park could include within itself not only the restaurant but also recreational activities, however subject to certain restrictions contained in the Master Plan like the extent of the area etc. Moreover, there had been a specific finding that during these years, the third respondent has taken steps to make the green area by planting more trees.

Accordingly, while partly allowing the application, the Tribunal issued the following directions which were to be scrupulously followed by the second and third respondents apart from the SDMC and DPCC, and ensure that proper and continuous compliance was carried out and take appropriate actions whenever there were violations and giving liberty to the applicant to move appropriate applications before the Tribunal:

1. The third respondent shall be entitled to use the green area to the extent of 18500 sq mtrs around the Tower restaurant for marriages, parties, etc., not more that 10 days in a month and subject to the condition that it shall also run the Tower Restaurant and pay all necessary lease and license charges in accordance with the terms and conditions of lease and license to be executed.
2. It will be open to the second respondent to execute the necessary license deed in favour of the third respondent regarding the use of 18500 sq mtrs of green area around Tower restaurant subject to the above conditions and other conditions as may be stipulated by it.
3. The second respondent shall ensure that the third respondent complies with all the conditions of lease/license and take appropriate action on violation of the same.
4. The third respondent shall be responsible for the conduct of anyone permitted by it to use the green area for any recreational activities regarding the adherence of standards of noise level as prescribed by DPCC both during day and night hours. In the event of the limit being exceeded either by loud speakers or by use of crackers, the SDMC, DPCC and local police shall take immediate action including criminal prosecution.
5. The third respondent shall not be permitted to put any permanent structures in the green area and even the temporary structures erected for recreation shall be removed immediately and while doing so ensure that no damages are caused to trees, green area or land in the surrounding area.
6. The second respondent shall permit public including the members of applicant association in the remaining 20/21 days to be used as lung space however with usual conditions as may be imposed by it as the policy.
7. The third respondent shall ensure that vehicular parking is regulated properly on the roads adjourning the green area and in the surrounding areas during the times of marriages and parties.
8. 8. In the event of failure of the third respondent in ensuring any of the above conditions the second respondent shall take all appropriate legal actions in accordance with the terms of lease and license and in accordance with the law.

With the above directions the application stood disposed of with no order as to costs.

Environmental Clearance
Compensation & Restoration

SP Muthuraman
vs.
Union of India & Ors.

Manoj Mishra
vs.
Union of India & Ors.

Original Application No. 37 of 2015
(M.A. NO. 291, 293 & 294 OF 2015)
and
Original Application No. 213 of 2014
(MA 755 of 2014 & M.A. No. 177 of 2015)

Coram: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. A.R. Yousuf, Mr. Bikram Singh Sajwan
Keywords: Environment Clearance Regulations 2006, legality, construction work, jurisdiction, sustainable development, environmental compensation, restoration
Decision: Application disposed of
Dated: 7th July 2015

The application was filed challenging the legality and correctness of the circulars and the Notification dated 14th September 2006 titled the Environment Clearance Regulations of 2006 issued by Respondent No. 1. The Notification of 2006 was been issued under the provisions of Section 3 of Act of 1986, cannot be diluted, rendered ineffective or infructuous by issuance of these Office Memoranda.

In Original Application No. 213 of 2014, the Applicant claimed that he was a former member of the Indian Forest Service and is the convener of the "Yamuna Jiye Abhiyaan". The Organization was working for promotion of nature conservation as a strategy for establishment of a peaceful world.

The Applicant alleged that impugned Office Memoranda provided for considering the project of any Applicant where construction had been done already and did not specify the compliance of these four stages prescribed under Para 7 of the Notification of 2006. Therefore, the very purpose of the provisions of Act of 1986 and the Notification of 2006 stands frustrated by these Office Memoranda. If the construction has already commenced and/or even completed, compliance to the provisions of these laws would be impossible.

Both the Applicants had relied upon the judgment of the Supreme Court in the cases of *Lafarge Umiam Mining Pvt. Ltd. v. Union of India (UOI) and Ors.*, (2011) 7 SCC 338 and *M.C. Mehta v. Union of India (UOI) and Ors.*, (2004) 12 SCC 118, to contend that the circulars issued by the MoEF could not nullify a statutory Notification.

Pursuant to Tribunal's orders, an inspection was carried out by the Tamil Nadu Pollution Control Board on 2nd April, 2015, based on which an affidavit was filed before the Tribunal, stating that the construction was almost complete in all the blocks and that outer and inner works were going on and construction was going on even on 2nd April, 2015.

Upon inspection by the Tamil Nadu Pollution Control Board, it was noticed that the unit had completed construction work of 5 blocks and interior work is under process. It was not clear that when permission was granted for building 2 blocks, how come 5 blocks were constructed. This inspection was conducted on 2nd April, 2015 and stop work notice was issued by the Board on the same day. An inspection had also been conducted on 14th April, 2015. The photographs submitted to SEIAA on 26th September, 2013 and the photographs taken on 14th April, 2015 clearly showed that there were environmental violations by the Project Proponent

SEIAA and Tamil Nadu Pollution Control Board had taken clear stand that the Project Proponent had carried the construction activity without obtaining Environmental Clearance. The apology filed by the Project Proponent had clearly stated that he would not carry out any construction without obtaining Environmental Clearance and such violation would not be repeated. SEIAA had requested the Government of Tamil Nadu to take action under Section 15 and 19 of the Act of 1986 as per the guidelines of the MoEF against the Project Proponent. According to SEIAA, in view of the interim order passed by the National Green Tribunal, the application for grant of Environmental Clearance was not processed.

The issues that were taken for consideration of the Tribunal:

1. Whether the Office Memoranda dated 12th December, 2012 and 27th June, 2013 had been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof?
2. Were the above Office Memoranda ultra vires, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder? 62 Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.
3. Whether this Tribunal had no jurisdiction to quash both the impugned Office Memoranda?
4. Were the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?
5. Whether the provisions of Notification of 2006 requiring Environmental Clearance prior to commencement of construction are mandatory or directory and consequences thereof?
6. What were the status of structures raised by and the conduct of the private Respondents and its effect in law (statutory provisions relating to environment)?
7. What were the environmental impacts of the projects in question upon environment, ecology and biodiversity?
8. What relief, if any, any of the parties to the present proceedings were entitled to?
9. What directions, if any, needed to be issued by the Tribunal in the peculiar facts and circumstances of the present case?

The Tribunal had already noticed that within the dimensions of the executive power, compliance to the constitutionally provided procedure would be a sine qua non, for it to have the force of law

The impugned Office Memoranda were not only in conflict with the Notification of 2006, but in fact run contra thereto. What was not only intended, but in fact was prohibited to be done, was being permitted by the impugned Office Memoranda. They had been issued

without reference to any power or source of law and were neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, the Tribunal had already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, could not withstand the legal scrutiny and resultantly, would be liable to be quashed.

The impugned Office Memoranda had been issued in exercise of administrative power which was presumably exercised in furtherance to the powers vested in the Ministry under the Act of 1986 and /or Notification of 2006. These Office Memoranda had been issued for the purposes of 'implementation of Acts mentioned in the Schedule' Thus, the Tribunal saw no reason for accepting the contention that it had no jurisdiction to examine the legality or correctness of these Office Memoranda. Furthermore, except these two Respondents, none of the other parties to the list has even touched upon this objection.

There was nothing on record to show and was not even the case of the Project Proponent that the above conditions had been complied with and the Authorities referred herein further confirm noncompliance thereto. Thus, there was no unambiguous and unequivocal grant of Environmental Clearance recommendation to the Regulatory Authority by the SEAC. From the above discussion it was clear that none of the Project Proponents satisfied the basic essentials or requirements of Para 8 of the Notification of 2006. Non-compliance to law, intentional violation of law and further, the illegal conduct of the Project 138 Proponent would disentitle them from getting any relief under Para 8 of the Notification of 2006.

It was clear that the requirements of the Notification of 2006 were mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature was to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on the environment but upon the society at large. All these enactments were unambiguous and framed in no uncertain terms and this conveyed that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986. Thus, The Tribunal had no hesitation in holding that the provisions of Notification 2006 were mandatory and not procedural simplicitor.

The terms and conditions of the planning permissions were firstly to be read together, and secondly no document of this nature could be read to construe that it intended to cause waiver of any other requirement of law. All laws were to operate in their respective fields for obtaining the object of rule of law and not in favour of avoidance or dis-obedience to other laws in force. Therefore, the Tribunal found no merit even in this submission of the Project Proponents.

The Tribunal opined that the manner in which the basements were being constructed, its impact on the groundwater table, in what manner how much groundwater was proposed to be extracted, would also be a relevant consideration. EIA Report prepared ex-post-facto, i.e. on completion of the project, was to suffer from lack of due diligence and would foreclose the options for exploring alternatives. This would go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it would be very tedious and very difficult, if not impossible, to appropriately consider various components

of the biodiversity at the site and alternative steps that should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question.

In view of the above detailed discussion, the following order and directions were passed:

1) The Tribunal declared the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as ultra vires the provisions of the Act of 1986 and the Notification of 2006. They suffered from the infirmity of lack of inherent jurisdiction and authority. Resultantly, both these Office Memoranda were quashed.
2) Consequently, the above Office Memoranda were held to be ineffective and the Tribunal prohibited the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner.
3) It was declared that the resolution/orders passed by the SEIAA, de-listing the applications of the Project Proponents, did not suffer from any legal infirmity. These orders were in conformity with the provisions of the Act of 1986 and the Notification of 2006 and did not call for interference.
4) To constitute a Committee for compliance of the directions contained in this judgment.
5) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorized acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided.
6) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities had been strictly complied with or not.
7) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.
8) All the Project Proponents shall pay environmental compensation of 5 per cent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorized constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the Respondents is given.
9) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgment.
10) The above environmental compensation was being imposed on account of the intentional defaults and the conduct attributable only to the Project Proponents.

11) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.
12) All the project proponents were prohibited from raising any further constructions, creating third party interest and/or giving possession to the purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee. The report shall be submitted to the Registry of the Tribunal within a period of 45 days from the date of pronouncement of this judgment.

The above Appeal and Applications were accordingly disposed of. However, in the facts and circumstances of the case, the Tribunal left the parties to bear their own cost.

Safal Bharat Guru Parampara
vs.
State of Punjab & Ors.

Original Application No. 9 of 2014
And
M.A No. 79 of 2014, M.A 265 of 2014 and M.A 501 of 2014

Coram: Justice Dr. P. Jyothimani, Prof. A.R. Yousuf
Keywords: Punjab, policy, free electricity, ground water depletion, eucalyptus trees, over exploited area
Decision: Application disposed of (with directions)
Dated: 20th July 2015

The original application was filed by the applicant association seeking for a direction to set aside the policy of the State of Punjab for providing free electricity to the farmers for agricultural purposes, to lay down certain concrete steps to check the amount of ground water pumped by the farmers of state of Punjab and order a complete ban on the plantation of eucalyptus trees in view of the fact that the said trees require huge amount of water

It was stated that out of 137 blocks in Punjab, 100 had already been listed as dark zones by the Central Ground Water Authority (CGWA) due to over exploitation. The said authority by a Public Notice No. 1 of 2012 has also declared 27 areas of State of Punjab as "over exploited area". According to the applicant one of the factors of ground water depletion was the practice of growing eucalyptus trees for commercial and industrial purposes and it was those trees which were consuming huge quantity of water, as pointed by the environmentalists.

Based on the directions of Central Ground Water Authority, the State Government had issued a ban on installation of new ground water abstraction structures for commercial, industrial and farmers with land holding above 4 hectares so as to enable the medium land holding farmers to sustain agricultural production without feeling the pinch of the burden of rising cost of inputs. With the above averments the respondents 2 and 4 had prayed for dismissal of the application.

Pursuant to a direction of the Tribunal dated 17- 02 -2015 to the 6th respondent to file the greater details regarding the categorization of blocks in State of Punjab, the 6th respondent had filed a further affidavit dated 18- 02- 2015. It had also imposed restriction on ground water abstraction structures on any project subject to guidelines envisaged from time to time. The Deputy Commissioner of Revenue District having jurisdiction had to ensure the rain water harvesting/ recharge to ground water in the notified areas/ blocks. It was stated that the Authorised Officers in the State Government were ensuring to stop energization of tube wells/ bore wells as per the direction of Central Ground Water authority

The original application was heard by a Bench on 15th April 2014 which was continued on 17th April 2014. In the meantime, the applicant had filed M.A. 265 of 2014 under section 26 of National Green Tribunal Act 2010 to take action for not obeying the order of Status quo, alleging that electricity connections had been given even in the over exploited areas.

However, it was submitted that the State Government for the purpose of maintaining optimum ground water level, had to take adequate steps and also protect the crop patterns and follow new techniques like drip irrigation etc.

On an overall analysis of the entire matter and based on the original pleadings, the following issues were raised and arose for consideration:
1) Whether the policy of the State Government providing free electricity to the farmers for agriculture purposes was liable to be set aside on the ground that the same was being misused resulting in over extraction of ground water?
2) Whether there could be a complete ban on the eucalyptus trees in the State of Punjab?
3) What directions were necessary to check the ground water level in Punjab to retain its position?

The Tribunal had made it clear that the State should encourage farmers to plant eucalyptus trees preferably in the water logged area or the areas which are declared as safe by the Central Ground Water Authority. The Tribunal had found that plantation of eucalyptus would better serve environmental causes and it cannot be disputed that these trees yield more biomass and therefore more carbon sequestering trees as compared to other species of trees. Furthermore, no useful purpose was served in detaining the pending applications for tube well connections but the same must be processed and appropriate orders passed with certain mandatory conditions. Accordingly, the Tribunal disposed the application as follows:-

1. The application stood dismissed in so far as it related to the prayers relating to the issue no. 1&2.
2. The respondents shall be entitled to process the pending 1.2 lakh applications for electricity tube-well connections subject to the following conditions:
   a. The grant of tube well connections shall be subject to the restriction regarding the use of electricity and hours as to be specifically notified by the State Govt of Punjab.
   b. On grant of tube well connections by electricity, no farmers in the State of Punjab availing the facility shall be permitted to use diesel generator sets for drawing underground water.
   c. The Government shall strictly implement the provisions of the Punjab Preservation of Sub-Soil Water Act 2009 and notifications issued thereunder from time to time strictly and shall take appropriate action under section 5 and 6 in cases of violation.
   d. The above directions shall apply not only to the new connections to be issued form among 1.25lakhs of applications but also in respect of the existing tube well connections through electricity throughout the State of Punjab.
3. The State Government shall make necessary notification regarding the restriction of power supply to the tube well connections along with the timings and eligible criteria for the beneficiaries in clear terms within a period of 30 days from the date of this order. After such notification the same shall be effectively implemented. The State Government shall ensure that the water drawn with the pumps using free electric supply is not misused for any other purpose like industrial activity, building construction, water packaging and other commercial activities and in the event of such violations.
4. The Government shall notify the categories of areas as critical, overexploited, exploited, safe etc., in the State of Punjab regarding the ground water level and

impose restrictions regarding the use of ground water for agriculture and other purposes within a period of 30 days from the date of this order.

5. The Government shall ensure the drinking water supply to the people of the State without being affected by any contamination either by the growth of crop patterns etc., especially arresting the arsenic compounds beyond permissible limit due to the raising of rice crops.
6. The State Government shall take all proactive measures in advising the farmers to take steps on Rain Water Harvesting/ Recharge.
7. The State Government shall take steps to promote Resource Conservation Technology (RCT) by implementing various well established scientific techniques.
8. The State Government shall also take all earnest steps to implement the Limited Rotational Power Supply in the State which is the very object of the Punjab Preservation of Sub-Soil Act 2009.

With above directions the original application stood ordered. Consequently M. A. No. 501 of 2014 filed by the 5th respondent for modification of the order 05-0 3- 2014 stood closed as the same was not necessary by virtue of the final order. Similarly M.A. No. 79 of 2014 filed by the applicant stood dismissed and the order of status quo dated 05 -03- 2014 was modified in the above terms. M. A No. 265 of 2014 filed under section 26 of the NGT Act 2010 stood dismissed. There was no order as to the cost.

The Village Panchayat of Top
vs.
State of Maharashtra

Application No. 60(THC) of 2014

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keywords: Waste landfill site, village, injunction, environmental degradation
Decision: Application dismissed
Dated: 7th July 2015

The application was filed seeking declaration that allotment of land for Kolhapur Municipal Corporation (KMC), waste landfill site within limits of village Top, particularly, within area of Gaothan, was illegal and the Respondents be injuncted from using the said lands for filling of Municipal Solid Waste (MSW). By order dated March 27, 2014, learned Civil Judge, Senior Division, Kolhapur, transferred the suit to this Tribunal. The proceedings were thereafter converted into the Application under Section 14(1) of the National Green Tribunal Act, 2010.

The disputed lands were inspected by the Collector and other Authorities of Kolhapur district. A report dated March 7, 2007, was submitted by the District Mining Officer (DMO), to the District Collector, Kolhapur. By order dated September 17, 2008, the Collector allocated disputed lands to Respondent No.5- KMC, for use thereof as landfill site for dumping of waste generated in the KMC.

The issues involved in the present Application were:

i) Whether disputed lands were selected and ordered to be used as landfill sites by the Collector, Kolhapur without following due procedure laid down under the Municipal Solid Waste (Management & Handling) Rules, 2000 and with any kind of malafide intention, though other landfill sites at Kolhapur were available which could be selected without any hindrance and could be permitted to be used for landfilling, disposal of MSW and composting plant as per the Municipal Solid Waste (M & H) Rules, 2000?
ii) Whether use of disputed lands required any EC for the purpose of landfilling under the Municipal Solid Waste (M & H) Rules, 2000?
iii) Whether the Applicant had established that disputed lands were adjacent to any recognized religious place of archeological importance, wildlife sanctuary and could not be selected as landfill site under the Municipal Solid Waste (M & H) Rules, 2000 on any valid ground?

Considering entire internal dependency of above three points, the Tribunal decided to deal with them collectively.

Perusal of record showed that the entries did not indicate any use of disputed lands for residential purpose. It appeared, however, that in the recent past few small houses had been constructed nearby the disputed site. The case of Applicant appeared to be on shaky grounds. Still, however, during course of hearing, it came to the notice of the Tribunal that certain land was available with KMC at Kasba- Bawda. Availability of such alternative land could be explored by the KMC. Obviously, the disputed lands would not be used for MSW dumping or installation of incineration plant. The disputed lands would be used only

and only for the purpose of landfilling of non-biodegradable waste as permissible under the MSW Rules. Necessary fallout of said arrangement would be that village Top was not likely to suffer serious environmental degradation, because there would not be overflowing of leachates, foul odor of MSW, etc. Already, the disputed lands were abandoned quarries and, therefore, sufficiently deep in which some dry garbage could be dumped without causing environmental degradation and any problem to the inhabitants of village Top.

Thus, the Tribunal dismissed the Application with direction to the KMC to abide itself by the programme submitted to this Tribunal on 22nd May, 2015 with further direction that the landfilling activity in the disputed lands shall not be undertaken without construction of compound wall of 6ft. height around the disputed lands, and without installation of MSW Plant, Incineration Plant, Composting Plant, at Kasba Bawda as per proposed action plan dated 22nd May, 2015, which activities shall be undertaken '*Paripasu'*. With these directions the Application stood disposed of with no order as to costs. All Misc. Applications also stood disposed of in above Application as may have been pending

Water Pollution
Compensation & Restoration

Vanashakti Public Trust
vs.
Maharashtra Pollution Control Board & Ors.

Application No. 37/2013 (WZ)

Coram: Mr. Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Ulhas River, water pollution, untreated effluents, regulatory bodies, Precautionary Principle, polluter pays, restitution
Decision: Application disposed of (with costs)
Dated: 2nd July 2015

The application was filed by the applicant No.1, which is a public trust registered under the Bombay Public Trust Act, 1950, being aggrieved by the attitude of the Respondent-authorities in not protecting Rivers and other water bodies, in particular, Ulhas River in the Mumbai Metropolitan Region. The applicants claimed that these rivers and other water bodies had been undergoing severe environmental and ecological damage due to illegal discharge of dangerous untreated effluents, sewage and pollutants in violation of environmental Laws.

The Applicants submitted that two regulatory agencies namely; the Maharashtra Pollution Control Board (MPCB)-Respondent No.1 and Central Pollution Control Board (CPCB)-Respondent No.4, time and again issued notices to various offenders. However, no deterrent and effective action was initiated in order to ensure that the water pollution problem was pruned or eliminated.

The MPCB submitted that there were other sources of water pollution in Ulhas River basin, which mainly included untreated domestic sewage from various urban areas like Ulhasnagar Municipal Corporation, Kulgaon Badlapur Municipal Council, Ambernath Municipal Council, because of such directly untreated sewage being discharged into Ulhas River or in Waldhuni River. The Tribunal in its interim order dated January 15, 2014, directed the MPCB to appoint IIT to conduct a specific study for preparation of action plan in the present matter. However, even up to final arguments, the MPCB could not finalize such arrangements and work could not be initiated by IIT. The CETP (Textile) results of the outlet of CETP of 2013-14, indicated highly exceeding BOD, COD values, whereas, the CETP chemicals also had high BOD and COD values. CPCB further submitted that State Pollution Control Boards had sufficient powers under provisions of the Water and Air Acts to take necessary measures for control of water pollution.

The following issues were required to be decided for the final adjudication of the matter:
1. Whether discharge of untreated sewage and industrial effluent had caused pollution and environmental degradation of river Ulhas?
2. If yes, which were the pollution sources that could be held accountable for contributing to such pollution and environmental degradation in qualitative and quantitative manner?
3. Whether CETPs were being operated and managed efficiently to achieve prescribed standards and whether they could be held accountable for pollution and environmental degradation of river Ulhas, if so in what manner?

4. Whether urban local bodies had taken necessary steps for control of water pollution either by taking (J) Application No.37/2013 (WZ) 27 adequate and proper preventive drifting of untreated sewage in the Rivers or unscientific disposal of MSW?
5. Whether any immediate remedial and effective measures were required to be taken to restore entire ecology of Ulhas River, including marine life?
6. Whether any costs for restoration and restitution of river could be assessed and attributed to one or many of such identified water pollution sources?
7. Whether the regulatory authorities of MPCB and MIDC had taken adequate efforts to control and mitigate water pollution in this area and whether any specific directions were required to be issued to these authorities for effective implementation of environmental regulations?
8. Whether any specific directions were required to be given in this regard?

The comprehensive marine EIA study conducted by National Institute of Oceanography (NIO) and the findings presented in their report of September 2014, finally concluded that the upper and middle zones on Ulhas estuary had been degraded due to release of domestic and industrial effluent from different sources and conditions were not conducive for diverse aquatic fauna.

Cleaning and removal of sludge from Waldhuni River, abatement of other pollutants flowing in the said drains, preventing any discharge into the Ulhas river sweet water zone, and controlling pollution of Ulhas river basin free are the basic urgent steps which require attention of the Regulatory bodies particularly, in the facts and circumstances of this case. It was true that such measures required close co-ordination of various Government agencies and also, required substantial financial support. The Tribunal was, therefore, of the opinion that such a task needed to be undertaken by Divisional Commissioner, who heads the entire revenue division, with the aid and assistance of all concerned agencies.

The application was partly allowed with directions which were being issued under the powers conferred under the provisions of Section 19 and 20 of NGT Act, 2010, based on principles of Polluter Pays and Precautionary Principle:

1) The directions issued by CPCB vide letter dated 02-09-2008 to be strictly enforced by MPCB in case of the CETPs at Dombivili and Ambarnath till the time these CETPs are effectively operational complying the standards and such report is submitted to the Tribunal by MPCB along with substantial time series data and observations.
2) The CPCB shall ensure the effective implementation of its directions referred to above, and also ensure that the action plan submitted by MPCB is enforced in next six (6) months. CPCB shall verify the compliance of CETPs and also, conduct random inspection of major industries for ensuring compliance on monthly basis till its above directions are complied with. CPCB shall independently submit the compliance report on monthly basis to Registry of Tribunal for a period of 3 months
3) The Dombivili CETP is directed to pay the restitution and restoration amount of Rs.30 crores based on the excessive COD load released into the water environment. The Ambernath CETP (total capacity of 7 MLD, and operated at 3 MLD) is directed to pay Rs.15 Crores as restoration and restitution costs. This amount shall be deposited with Divisional Commissioner, Kokan Revenue Division, CBD Belapur.
4) MIDC shall commission both the effluent disposal systems in 24 (twenty four) months, and submit BG of Rs.10 crore to MPCB to ensure compliance.

5) The Ulhasnagar Municipal Corporation and Kalyan-Dombivali Corporation shall deposit Rs.15 Crore each with Divisional Commissioner for above restoration and restitution measures. The Kulgaon Badlapur Municipal Council and Ambernath Municipal Council shall pay Rs.5 crore (Rs. Five crore) each as restitution and restoration cost with Divisional Commissioner, Konkan Region. These amounts shall be paid within six (six) weeks.
6) The Divisional Commissioner shall deposit these funds in special escrow account and use this amount for implementation of scientific programme for cleaning of the River (Ulhas and Waldhuni) as per the plan submitted earlier and to ensure that no further Riverine pollution would occur hereafter and other kind of restoration and remedial measures like removal of sludge accumulated in the river/nullah, beautification of river banks in order to protect the river from any the unauthorized dumping of wastes and effluents in River Waldhuni and Ulhas estuary. Such works shall be completed in next 18 (eighteen) months. CPCB/MPCB shall provide necessary assistance for this purpose.
7) A committee under Chairmanship of Divisional Commissioner shall be constituted for this purpose. The Committee may adopt suitable experts or other government agencies for effective planning and implementation of such restitution and restoration works.
8) The above committees shall submit the action plan to complete above directions in next six (6) weeks including preventive, remedial and restoration measures.
9) Chief Secretary of Maharashtra shall ensure that all four (4) urban local bodies provide required STP capacity in phased manner within next twenty four (24) months and they shall submit a comprehensive action plan along with provision of funds for sewage treatment and disposal system to the Divisional Commissioner and Member Secretary MPCB in four (4) weeks. The Divisional Commissioner may take suitable action against these Corporations and Councils under the provisions of Municipal Acts, including taking over the Corporation and/or disqualification of Members, etc. as deemed necessary.

The Respondent No.1, 4, 5 and 6 was to pay litigation costs of Rs.25000/- (Rs. Twenty five thousand) each to the Applicants. The Application was accordingly disposed of along with all Misc. applications.

FC
Compensation & Restortation

Jawara Ram & Ors.
Vs.
State of Rajasthan & Ors.

Original Application No. 39(THC) of 2014
(CWP No. 9556 of 2011)

Coram: Justice U.D. Salvi, Dr. D.K. Agrawal
Keywords: Illegal deforestation, Polluter pays principle, compensation
Decision: Application disposed of
Dated: 10th July, 2015

Some of the Villagers residents of Villages Modi Khurd, Paldi, Bajwas falling within the limits of Gram Panchayat, Taparrwada Tehsil Parbatsar, District Nagaur had preferred the Divisional Bench Civil Writ Petition (PIL) No. 9556 of 2011 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur inter-alia praying for directions to initiate process of reforestation in Gochar Land situated in Village Taparwada Tehsil Parbatsar District Nagaur and for such other appropriate directions against the officials/persons concerned for allowing illegal deforestation.

The Tribunal invoked Polluter Pay Principle enunciated in Section 20 of the NGT Act, 2010 making the respondent No. 11 & 12 liable to pay such compensation. Such compensation not only should cover the cost of reforestation of the said gochar land but also be an exemplary one and therefore, it has to be quantified at 10 times the amount of sale process that is roughly Rs. 15 lakh. This amount of Rs. 15 Lakh had to be recovered from the respondent no. 11 & 12 personally, both jointly or severally, and caused to be utilized towards the reforestation of the said gochar land in village, Taparwada.

Further, the Tribunal felt it proper to order enquiries/ proceedings against the concerned Officials at the hands of the competent authorities. Outcome of such enquiries would enable it to pass further directions if necessary in accordance with the law. Therefore, petition was disposed of with the following directions:

a) The Respondent No. 11 and the concerned Respondent No. 12 personally shall, jointly or severally pay an amount of Rs. 15 lakhs to the District Forest Officer, Nagaur within a month who shall use this amount for re-afforestation in the same Gochar Land situated in village Taparwada in consultation with Gram Panchayat, Taparwada.
b) Respondent No. 1, Respondent No. 3 and Respondent No. 6 shall initiate appropriate proceedings against the Respondent Nos. 11 and 12 for allowing illegal deforestation to the said Gochar Land and take appropriate action in accordance with law.
c) The Respondent No. 2 shall cause the enquiry to be made against the concerned District Forest Officer, Nagaur for having connived at the deforestation cutting of the trees at the said Gochar Land and not having intervened in the process of cutting trees in time. Such enquiry shall be completed within three months and outcome of the enquiry shall be placed before the Tribunal for further directions.
d) Respondent No. 1 shall also submit the compliance report in respect of directions passed hereinabove to the Tribunal for further directions in accordance with law within three months.

Original Application No. 39 (THC) of 2014 stood disposed of accordingly.

AUGUST

Pollution

P. Murugeswari
Vs.
Tamil Nadu Pollution Control Board & otrs.

Application No. 282 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: water pollution, discharge of effluents
Decision: Application Disposed Off (Without costs)
Date: August 07, 2015

This application was filed seeking directions against the discharge of effluents into the nearby water body by the water service center of the Respondent. It was contended that the same resulted in pollution of the water body and is likely to affect the ecology of the area.

The Tribunal directed closure of the unit. It was further added that the Respondent may apply within two weeks to the State Pollution Control Board else he would not be permitted to operate said unit.

Miscellaneous: Consent to operate

Shri Sikkam Sambaiah & Otrs.
Vs.
Appellate Authority & Otrs.

Application No. 235 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Maintainability of appeal, withdrawn
Decision: Dismissed as withdrawn
Date: August 07, 2015

This application was filed seeking a direction for revocation of 'consent' in respect of the establishment of a Fish Feed manufacturing unit, 100 meters from the National Highway, in an area surrounded by residences of the applicants.

The Tribunal opined that the application had to be disposed of on the points of limitation and maintainability. Further, it was stated that the application could not be permitted since the procedure for preferring an appeal was exhausted owing to the fact that the same was dismissed as withdrawn and thus the liberty which was originally granted to the applicants was exhausted.

Jose A. Admialthura
Vs.
State of Kerala & otrs.

Application No. 413 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Coastal Zone Management Plan, public interest
Decision: Application Disposed Off (Without costs)
Date: August 10, 2015

This application was made seeking directions against the preparation of a new Coastal Zone Management Plan. The Applicant stated that none of their objections as regards the Plan was taken into account and that there is every possibility of the same not being considered when the draft notification would eventually be passed.

The MoEF stated that they would conduct a public hearing prior to issuance of final notifications as soon as they would themselves receive the draft application. The same was stated by the other respondents further contending that the applicant's apprehensions were unfounded.

The Tribunal opined that this application was premature since statutory effect to the notification has not yet been given by the Panchayat (5^{th} Respondent) as no notifications had been issued in accordance with the CRZ Notifications. However, protection of public interest before passing the final Notification was impressed upon.

The Tribunal directed that the MoEF should give proper opportunity to public to raise objections before the statutory Notification be issued.

Gandhi Yuva Kendra
Vs.
State of Kerala & Otrs.

Application No. 412 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Coastal Zone Management Plan, public interest
Decision: Application Disposed Off (Without costs)
Date: August 10, 2015

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The Tribunal directed that the MoEF should give proper opportunity to public to raise objections before the statutory Notification be issued.

Pollution
Consent to operate

Somanatha
Vs.
M/s. Ayush Envirotech Pvt. Ltd. & ors.

Application No. 242 of 2014

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Condonation of delay, consents
Decision: Application Disposed Off (Without costs)
Date: August 17, 2015

This application was filed challenging the consents to establish and operate granted by the Karnataka State Pollution Control Board to a Bio-medical Waste Treatment Facility.

However, the Tribunal opined that the Appellate Authority would instead be the proper forum and the necessary application for the same must be filed within 10 days of this order (to condone delay).

Miscellaneous

OM Industries
Vs.
Tamil Nadu Pollution Control Board & otrs.

Review Application No. 7 of 2015
in
Application No. 122 of 2015

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Review, remedy
Decision: Application Disposed Off (Without costs)
Date: August 20, 2015

This application was filed to rectify the remedy that the Applicant was seeking (i.e.) they were, in fact, seeking an order for temporary fresh electricity connection instead of continuance of the same. It was contended by the Appellant to be a bona fide omission.

The Tribunal, therefore, directed for fresh electricity connection temporarily for the specified purpose only on production of this order.

Pollution

V. Periyakudi Muniyasamy
Vs.
District Collector & otrs.

Application No. 161 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: salt pan unit, agricultural lands
Decision: Disposed Off as not maintainable (Without costs)
Date: August 24, 2015

This application was filed seeking directions to stop the establishment of a salt pan contending the area to be agricultural land and that the salinity would spoil the entire agricultural operations in the area.

The Tribunal opined that there is no applicable evidence to support the claim of agricultural activities being affected. Further, it was stated that even adjacent lands were being used as salt manufacturing units for years. Hence, this application was held to be not maintainable.

Pollution
Consent to operate

R. Subbu Duraisamy
Vs.
Tamil Nadu Pollution Control Board & otrs.

Application No. 48 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Illegal operations
Decision: Application Disposed Off (Without costs)
Date: August 24, 2015

This application was filed seeking an order for injunction from operation of a 'Preserved Gherkins' manufacturing unit and directions against the illegal operations of the said unit.

The Tribunal disposed of the application by stating that the applicant was at a liberty to work out his remedy in the manner known to law against the 'consent to operate' issued by the State Pollution Control Board.

Thomas Varghese
Vs.
District Collector & Another
(WP No. 16264 of 2008, Kerala High Court)

Application No. 444 of 2013

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Absence of applicant
Decision: Dismissed non-prosecution
Date: August 26, 2015

The Tribunal opined the application to be infructuous due to constant absence of the Applicant coupled with the submission of the Respondents as regards completion of their project without any excavation.

Miscellaneous: cutting of trees

M/s Tractors and Farm Equipment Ltd.
Vs.
Tamil Nadu Transmission Corporation Ltd. & Otrs.

Application No. 140 of 2015

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Felling of trees, vegetation, pruning
Decision: Application Disposed Off (no costs)
Date: August 28, 2015

This application was filed seeking a declaration of illegality as regards any line stringing work within the premises of the Applicant's farm and directions for relocation of two HT towers located within said farm.

It was pleaded on behalf of the Respondents that no felling of trees/clearing of vegetation below the stringing work and towers would be done sans required pruning of branches.

The Tribunal put forth the following terms:

i. No felling of trees to be caused sans necessary pruning within the premises of the Farm.
ii. The vegetation below and around the towers and electrical line be allowed to continue without any disturbance.
iii. The respondents are open to make appropriate representation to the authorities either for shifting of the tower or for any other purpose and the authorities would be open to pass orders in a manner known to law.
iv. The Respondents shall restore vegetation in case of any damage caused to it.

EC

Duvvuru Chenchu Kiran Kumar
Vs.
Union of India & otrs.

Application No. 80 of 2015

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Mining, environmental degradation
Decision: Application Dismissed
Date: August 21, 2015

This application was filed seeking a direction to stop mining operations and restore the heavy pits created by him due to the same causing environmental degradation.

The Tribunal opined that the Applicant had to work out his remedy in the manner known to law since the EC and 'Consent to operate' had been granted and the Tribunal could not go into such aspects.

K. Savad
Vs.
Union of India & Otrs.

Application No. 01 of 2015
&
M.A. No. 169 of 2015 and M.A. 150 of 2015

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Environmental clearance, construction, Western Ghats, Ecologically Fragile Land, Kerala Forests Act, 2003, EIA Notification
Decision: Disposed Off (without costs)
Date: August 31, 2015

This application had been filed seeking directions against the building permit/approvals to the Pristine Land, restoration of ecology therein, legal action for construction without EC and inclusion of land in Wayanad Wild Life Sanctuary under the provisions of Wildlife Act 1972.

It was contended by the Applicant that construction activities on Ecologically Fragile Land (EFL) and Ecologically Sensitive Areas in the Western Ghats were being conducted and that EC is required beyond 20,000 sq. m which was not obtained. This was also notified under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 wherein the construction activities over the land area exceeding 20,000 sq.m require prior Environment Clearance of the first respondent as per clause 8 (a) of the Schedule to EIA Notification 2006. It was stated that the construction activities would affect the entire area causing noise pollution and ecological imbalance. Further, no waste disposal plan was in place. All of this made the permits issued to the respondents as being against the precautionary principle and sustainable development making the respondents liable under polluter pays principle. Furthermore, it was stated that there was a deliberate suppression of material facts and filing of false affidavit (that the 12th respondent is not a legal person) leading to perjury.

The Respondents contended that there was no violation of EIA Notification and prior EC was not required also since the proposed construction included building for Higher Secondary School, Law College, Cultural Centre and Dormitory. Further, it was stated that the custodian of the Ecologically Fragile Land had reported that the land was not Ecologically Fragile Land (EFL) as per their record and to declare a densely populated area as wild life sanctuary did not make sense. It was also stated that if any person is aggrieved by the building permit granted to respondent 14 to 16, provisions for appeal and revision under Panchayat Rule were available which were bypassed.

Upon hearing both the parties, the Tribunal opined that EC was not required. Also, there was nothing on record to show that the State Government has declared the land as EFL or such. Therefore, unless and until a final declaration by way of a Notification was to be made, there was no ESA declared as far as the Kerala State relating to Western Ghats. Further, it was stated that the status of the 12th respondent has never weighed in passing the order and there was no reason for the Tribunal to take any action against the 12th respondent.

Therefore, the Tribunal stated that the applicant was not entitled to relief and they were of the considered view that certain environmental safeguards were to be taken along with necessary protections regarding the solid waste management in the scheme, effluent treatment plants and maintenance of the same periodically.

G. Sambath
Vs.
Department of Environment and Forests, Chennai

Appeal No.42 of 2015

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Environmental clearance, limitation
Decision: Disposed Off (without costs)
Date: August 31, 2015

This appeal was directed against the impugned environmental clearance granted by the 3rd respondent, i.e. the State Level Environment Impact Assessment Authority, Chennai dated 27.3.2015, and the appellant restricted his claim regarding the violations of conditions of the Environmental Clearance (EC).

The Government Pleader submitted that even though EC was granted on 27.3.2015, no work had been commenced. It was also submitted that in the event of the project proponent violating the terms and conditions of EC it would be always open to the appellant to question the same in the appropriate forum.

There was also one issue relating to the period of limitation. The EC was granted on 27.3.2015 and the present appeal had been filed on 21.7.2015, which was clearly beyond the period of limitation. The third respondent submitted that SEIAA had published in its website about the EC as well as the condition on 11.5.2015. Even if that was taken as a triggering point of limitation, the appeal was beyond the period of limitation. There was no application filed for condoning any delay in this appeal. Thus, the Tribunal made it clear that in the event of the appellant challenging the EC in future point of time it would be always open to the parties to raise the plea relating to the limitation. In so far as it related to the present appeal, as stated earlier, as and when the project was started and any violation was noted in respect of the conditions of EC, it would be always open to the appellant to challenge the said conduct before the appropriate forum.

In so far as it related to the conditions of licence which was granted under the Mines and Minerals Regulations, it was left open to the appellant to approach the appropriate authority under the said Rules.

With the above observation the appeal stood disposed of, with no order as to costs.

Environmental Clearance
Eco sensitive Zone

Amit Kumar
Vs.
Union of India and Others

Miscellaneous Application No. 684 OF 2015
in
Original Application No. 158(T^{HC}) / 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousouf
Keywords: Industrial Development Authority, Okhla Bird Sanctuary, Eco-sensitive Zone, environmental clearance
Decision: Application disposed of
Dated: 18th August 2015

The Original Application had been filed praying that the Respondents, all of them being official Respondents, including the Union of India, Ministry of Environment, Forests and Climate Change (for short 'the MoEF'), State of Uttar Pradesh and its various departments, National Board for Wildlife (for short 'NBWL') and New Okhla Industrial Development Authority (for short 'NOIDA'), be directed to forthwith prevent illegal and unauthorized construction works undertaken by developers within 10 km radius of the Okhla Bird Sanctuary, to initiate criminal action against them and to demolish all the illegal and unauthorized structures built within 10 km radius of the Okhla Bird Sanctuary.

The Tribunal vide its order dated 14th August, 2013 had directed NOIDA to conduct inspection of the areas where constructions were illegally carried out and upon inspection, if it is found that certain construction work, going on within 10 km radius of the Okhla Bird Sanctuary were done without obtaining proper Environmental Clearance or in contravention thereof, the same shall be immediately stopped and report be submitted by the authority to the Tribunal in this regard. The Tribunal also directed that all the building constructions made within 10 km radius of the Okhla Bird Sanctuary or within the 'Eco-Sensitive Zone', as may be prescribed vide the Notification to be issued by the MoEF, shall be subject to the decision of the NBWL. Structures which were illegal and located within the said area of 10 km were ordered to be removed in accordance with law.

M/s Jaypee Infratech Ltd. filed an application being MA No. 240of 2014 seeking review/modification of the Judgment by the Tribunal dated 3rd April, 2014. It was contended that the interim orders were passed by the Tribunal on a wrong assumption that the Hon'ble Supreme Court of India in Goa Foundation I case (supra) had laid down that the 'Eco-Sensitive Zone' in respect of the Okhla Bird Sanctuary shall be within a radius of 10km from its boundary. This application was dismissed by Tribunal saying the orders were in consonance with the judgement.

Aggrieved by the order of the Tribunal dated 30th May 2014, the review Applicant preferred a statutory appeal before the Hon'ble Supreme Court of India, which came to be dismissed vide order dated 10th June, 2014 of the Apex Court.

Another application being M.A. 684 of 2015, was filed in Original Application No. 158 of 2013 on behalf of the Supreme Court Bar Association Multi-State Co-operative Group Housing Society Ltd (for short 'the Applicant Society), through its authorized representative. The Applicant had made the following prayers in this application:

1) Direct the Ministry of Environment and Forests, Government of India to issue the final Notification in pursuance and furtherance to the draft notification dated 24.09.2014;
2) Declare that the order of this Hon'ble Tribunal in Application No. 158/2013, in the case of Amit Kumar v. Union of India & Ors. Dated 28.10.2013 is not applicable qua the Applicant;
3) Declare that the residential complex constructed in Sector 99, Noida of the Applicant-Society being within an approved master plan duly approved by the State of U.P. and the NCR Planning Board, does not need any further clearance from the National Board for Wildlife and which may please be deemed to have granted Environmental Clearance;
4) Direct the Noida authority to issue Completion Certificate for the Applicant-Supreme Court Bar Association Multi-State Cooperative Group Housing Society project applied for on 6.04.2015

In this application, it has been averred that the Applicant Society has constructed a group of housing complex on Plot no. 4and 5 in Sector 99, NOIDA, comprising of 684 (Originally 648) flats. According to the Applicant Society, they are not able to obtain Completion Certificate from the Authorities in view of the order passed by the Tribunal on 28th October, 2013 restraining the authorities from issuing Completion Certificate to the projects which are located within 10 km radius of the Okhla Bird Sanctuary or within the 'Eco-Sensitive Zone'. According to the Applicant Society they are suffering serious prejudice as they are living in rented accommodations and have even taken loans against the flats allotted to them and they are being doubly jeopardized by payment of EMIs as well as rent for every month.

It was held by the Tribunal that ambiguity in the present case is not such, which can persuade the Tribunal to alter the view which has been expressed time and again by the Supreme Court as well as this Tribunal. It was also put forth that the judgment of the Hon'ble Supreme Court and of the Tribunal both, are operative only till appropriate Notification is issued by the MoEF. With the issuance of such Notification, this controversy would no longer survive. The rights of all stakeholders would be regulated by such Notification and the uncertainty as contended by all parties would automatically come to an end. Once the Notification is issued, parties concerned or any aggrieved person would have the right to question the legality and correctness of such a Notification.

With this, the Tribunal passed following orders:

A) The prayer of the Applicant Society for review/clarification of the orders of the Tribunal dated 28th October, 2013 and 3rd April, 2014 was declined.

B) In regard to the prayer of the Applicant Society that the MoEF should be directed to issue the Notification expeditiously, and keeping in view the statement made on behalf of MoEF, we direct the Ministry to issue the final Notification which is being finalized, within three weeks from the date of passing of this judgment.

C) All the concerned stakeholders or any aggrieved person would be at liberty to challenge the said Notification in accordance with law.

D) We direct all the concerned authorities that upon the issuance of the above Notification by the MoEF, they should deal with and act upon the application of the Applicant Society pending before them expeditiously and in accordance with law.

In the above terms, the Misc. application was disposed of.

EC

Krishan Lal Gera
Vs.
State of Haryana and Others

Appeal No. 22 of 2015

Coram: Mr. Justice Swatanter Kumar, Mr. Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: SEIAA, Environment Clearance, HUDA
Decision: Appeal disposed of
Dated: 25th August 2015

State Environmental Impact Assesment Authority, State of Haryana (SEIAA) granted Environment Clearance for a Super-Speciality Hospital and a Harijan Residential School at plot no. 1, Sector – 16, Faridabad, Haryana. The appellant in the present appeal impugned the said Environmental Clearance and the minutes of 77th meeting of SEIAA dated 14th November, 2014, on the basis of which, the said Environmental Clearance was granted.

The challenge, inter-alia, but primarily was based on the ground that the prescribed land use by Haryana Urban Development Authority (for short 'HUDA') did not permit construction of a Super-Speciality Hospital at the site in question. It was also contended by the appellant that the construction of Super Speciality Hospital had commenced prior to applying for grant of Environmental Clearance and the project was practically completed even before granting of Environmental Clearance. The concerned authorities had found serious violations on part of the Project Proponent and decided to initiate credible action against him by invoking powers under Section 19 of the Environment (Protection) Act, 1986 (for short 'Act of 1986'). The land in question, having been allotted for construction of a Harijan Residential School and Social Development Centre, construction for any other purpose was impermissible.

The stand taken by the Respondents was that the Chief Administrator, HUDA in his order dated 14th June, 2014 while disturbing the findings of the Estate Officers, had observed that since, 'hospital' is mentioned as one of the usages in the zonal plan, there is no change of land use.

The Tribunal formulated four issues in this case:
1) Whether the present appeal was barred by time?
2) Whether the appellant had locus standi to file the present appeal?
3) Whether the appeal disclosed the 'cause of action' that clearly fell within the ambit and scope of the jurisdiction of the Tribunal under the Act of 2010?
4) Whether the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the Environmental Clearance dated 26th November, 2014 granted in favour of the Project Proponent were liable to be set aside and quashed?
5) What directions, if any, were required to be issued by the Tribunal in the facts and circumstances of the case?
6) Relief.

The Respondent no. 9 and 10 took a preliminary objection that the present appeal was barred by time. According to the appellant, the present appeal had been filed within the

prescribed period of limitation since the official Respondents as well as the Project Proponent did not comply with the requirement of communicating the grant of Environmental Clearance as contemplated under Regulation 10 of the Notification of 2006. This contention eventually was found true and it was held by the Tribunal that the present appeal was not barred by time.

Another issue was that of *locus standi*. The Tribunal concluded that definition of "aggrieved person" can be interpreted liberally. The appellant had specifically stated that the Environmental Clearance for the project would have adverse impacts on the environment and ecology of the area. Furthermore, the appellant has been pursuing the cause of environment protection before various forums for a considerable time. Hence, he was considered to be well within the ambit of "aggrieved party".

Third and fourth issues were primarily of cause of action and hence were discussed together. 'Cause of Action' is stated to be an entire set of facts that give rise to an enforceable claim. It was found that there were several breaches omitted by the Respondent and hence there were sufficient grounds/ cause of action.

This matter was disposed of without any order as to cost.

FC
Compensation & restoration

Kallpavalli Vriksha Pempakamdarula & Ors.
Vs.
Union of India

Original Application No. 92/2013

Coram: Mr. Justice Swatanter Kumar, Mr. Justice M.S. Nambiar, Prof. A.R. Yousuf, Mr. Bikram Singh Sajwan
Keywords: Windmill project, Environmental Impact Assessment Notification, 2006, compensation, environmental clearance, compensatory afforestation, diversion, Forest Conservation Act, restoration
Decision: Application disposed of
Dated: 25th August 2015

This application was filed with the prayer to enquire into the facts contained in the Petition, to visit the Kallpavalli area and to make a report to this Tribunal on the possible adverse effects both long term and short term of the windmills project and what needs to be done to protect the people and ecology of the area, and for an order directing the respondents to take all remedial steps. The applicant further sought an order directing the respondents to dismantle and remove all the windmills from the area and to take specific steps to restore ecology and the environment to its original state in the region; for an order directing respondent no.1 to prosecute all the heads of the respondents no. 1 to 4 under section 17 of The Environment (Protection) Act, 1986; for a direction to respondent no. 1 to include windmill farms in Category A of the Schedule of the Environmental Impact Assessment Notification, 2006; and for an order directing respondents to pay Applicant No. 1 an initial compensation of Rs. 1 lakh and for an order directing appointment of an expert committee to assess the damage caused to the environment and livelihood of the people and thereafter to direct the payment of compensation to the applicant no. 1 subject to the deduction of the payment prayed under.

First Applicant was Kallpavalli Vrishka Pempakamdarula Paraspara Sahayaka Sahakara Sangam Ltd. (Kalpavalli Tree growers) mutually aided Cooperative Society Ltd, a body registered under the Mutually Aided Cooperative Societies Act, 1995. Second Applicant was Timbaktu Collective, a Society registered under the Indian Society Registration Act, 1860. The third Applicant was a Society for Promotion of Wastelands Development, registered under the Indian Society Registration Act, 1860.

The Applicant and the respective Respondents were heard. It was established that the wind power mills were not included in the Schedule of the Environment Clearance Regulations, 2006 (hereafter referred in short as Notification). Therefore, no prior Environmental Clearance, as mandated under Clause 2 of the Notification, was required either from the Ministry of Environment and Forest or the State Environment Impact Assessment Authority (SEIAA). The non-inclusion in the schedule to the Notification was a conscious decision of the Central Government as was clear from the reply of Respondent no.6, the Ministry of New & Renewable Energy.

Respondent No. 5 had deposited the market value and had obtained advance possession of the said lands. By proceeding dated 18.01.2013, the Ministry of Environment and Forest,

based on the proposal of the State Government by letter dated 22.08.2011 seeking prior approval in accordance with Section 2 of the Forest Conservation Act, 1980, for diversion of 38.90 of forest land in Penukonda Addl. 1 and Koriga Reserved Forest at Ananthapur Forest Division, approval was granted subject to certain conditions including compensatory afforestation be raised in 43.38 hectares. Pursuant to the said approval, by proceeding dated 13.02.2013, the State of Andhra Pradesh granted permission to the Principal Chief Conservator of Forest for diversion of the said 38.90 hectares of land for setting up of the wind power project in favour of Respondent No. 5, making it clear that the total forest area utilized in the project shall not exceed 38.90 hectares.

The total extent of land given to the respondent no. 5, which fell in Kogira Village was 51.71 acres. In the report submitted by Tehsildar Roddam to the Divisional Forest Officer, Ananthapur dated 15th Feb, 2013, it was specifically stated that 3870.44 acres in survey no. 669 of Kogira Village was classified as government unassessed waste (adavi) land and that the entire area was covered by hilllocks and land masses. But the proceedings of the Ministry of Environment and Forest dated 18.01.2013, established that by order dated 22.08.2011, the State Government of Andhra Pradesh had sought prior approval of the Central Government in accordance with Section 2 of Forest Conservation Act, for diversion of 38.90 hectors of forest land for setting up of 17.60 MW of wind power projects by respondent no. 5 and by letter dated 22.05.2012, Central Government had accorded in principal, stage 1 approval and as the State Government reported compliance of the conditions stipulated in the principal approval, the Central Government conveyed the approval of Stage II, for diversion of 38.90 hectares of forest land in Pannukonda Addl. and Kogira Reserved Forest of Ananthapur Forest Division for the said project. Subsequently, by proceeding dated 13.02.2013, the State of Andhra Pradesh accorded permission to the Principal Chief Conservator of Forest for diversion of the said 38.90 hectares of land. It was thus clear, that out of the land transferred by the State of Andhra Pradesh in favour of respondent no. 5, 38.90 hectares (96.1 acres) which fell in Kogira Village and Penikonda Village were forest land. In the light of these materials, it could only be found that portion of the land wherein respondent no. 5, commissioned the windmill project was a forest land.

Respondent no.5 argued that when the applicants had no right over the land, they were not entitled to claim any compensation for themselves and in any case, based on an agreement which even according to the applicants they had terminated, no damage could be claimed. The learned counsel also pointed out that Rs. 20,00,000/- was paid to the applicants, in order to avoid the obstructions caused by them so as to purchase peace and to avoid obstacles in the smooth functioning of the project, and that too as a part of their social responsibility and hence, the applicants were not entitled to claim any amount and that too when they sent the cheque for Rs. 12 lakh alleging that it was in repayment of the amount paid by the company and the cheque when presented for encashment, was dishonored by the bank for want of funds. It was argued that, in law, the respondent no. 5 was not liable to pay any damages to the applicants.

Though the applicants would content that they had rejuvenated the waste land into a forest and reliance was placed on report submitted by PW2 and also relied on the oral evidence, tendered by the witnesses, the Tribunal found no material to hold that any right was granted to the first applicant in respect of any extent of land in the Kallpavalli areas by any authority as claimed by them. Proceedings of Mandal Revenue Officer Chennekaothaplli dated 21.02.1994 would only show that M/s TIMBAKTU Collective, the applicant no. 2, was permitted to take forestry activity in tune with the guidelines issued in GOMS no. 218

of Andhra Pradesh Government in respect of a total extent of 1000 acres in survey no. 314 in and around the Sappadi Venka both for Neem plantation and water shed development programme. It was also made clear that neither applicant no. 2 nor any beneficiary working under them would have any right over the land though they were permitted to take the usufructs and other produces that may accrue from the area allotted to them. Therefore, even if it was taken that, the applicants had been rejuvenating the land; they had no right to claim compensation by virtue of the said order. Though it was alleged that damage had been caused to the cattle contending that many cattle died by consuming plastic and metal debris because of the activities of the respondent no. 5, no material was found to support much less establish the claim.

From the materials produced and the evidence on record, it could only be said that while setting up the wind mills, respondent no.5 had constructed roads and in that process caused damage to the trees and also to the ecology by cutting the hills to make the roads. But there was no material to hold that the entire damages were caused only within the area transferred in favor of respondent no.5. As stated earlier, pursuant to the proposal forwarded by the State of Andhra Pradesh to the Ministry of Environment and Forest sought approval for diversion of 38.90 hectares of forest land in favor of M/s ENERCON India Pvt. Ltd, approval was accorded by the Ministry of Environment and Forest by order dated 22.05.2012. The proposal submitted by the State of Andhra Pradesh showed that the DFO had prepared a compensatory afforestation scheme for the 39 hectares of forest land to be diverted and the non-forest land identified was having an extent of 107.22 acres (43.38 hectares) with a financial outlay of Rs. 100.75 lakhs over a period of seven years from 2013 to 2020 and the user agency had already deposited 100.75 lakhs. By GOMS 19 dated 13.02.2013, Government of Andhra Pradesh granted permission to the Principal Chief Conservator of Forest for diversion of the 38.90 hectares of forest land in favor of M/s ENERCON. It also established that the compensatory afforestation is to be raised over 43.38 hectares of non-forest land in Mulakanur village and Cherlopalli Village. It further showed that Rs.100.75 lakhs had already been paid by respondent no.5 for compensatory afforestation in addition to the cost of 50% NPV of the forest area for diversion and of lease rent for establishment of the wind power project. If that be so, respondent no. 5 was not liable to pay damages for the loss caused to the trees or the land within the area diverted because of the payment of Rs. 100.75 lakhs for compensatory afforestation already made. But it was clear from the evidence and the materials on record that inspite of the specific provision in the permission granted to the Principal Chief Conservator by the State and the order transferring the land to Respondent No. 5 that alignment of the roads in the above area should be done by a recognized firm and it should be got approved by the concerned DFO. This stipulation was not complied with. The evidence also established that while constructing the road, extensive damage was caused to the topography, the surrounding areas, ecology and environment. Respondent No. 5 was, therefore, bound to compensate the damage and degradation caused to the ecology and environment. Therefore, the Tribunal directed Respondent No. 5 to pay an environmental compensation of Rupees Fifty Lakhs (50, 000, 00 /-).

It was also clear that extensive damage was caused to the trees while constructing the road. Thus, the Tribunal directed Respondent No. 5 to plant trees on either side of the road constructed by them in the area and not to cause dust to emanate from the road so as to protect the environment, as a precautionary measure. The applicants were not entitled to claim compensation or a direction to Respondent No. 5 to dismantle the windmills or any of the other reliefs sought for.

It was further determined that there was no acceptable data or evidence to hold that the sound associated with the wind turbines would result in noise levels, injurious to health of human beings. There was also no material to hold that the windmills cause any adverse effect on the animals, birds or climate. Based on the materials produced and the evidence tendered, the Tribunal held that there was no material to hold that wind power plants had any adverse environmental impact warranting any direction to the government to modify the Schedule to the Notification of 2006.

In view of the above detailed discussion, the Tribunal passed the following directions for restoration and restitution of the environment and ecology:

(i) Respondent No. 5 shall deposit Rs. 50 Lakhs as environmental compensation with the Andhra Pradesh Pollution control Board within one month. The Pollution Control Board in consultation with the State Forest Department shall utilize the amount, only for the restoration of ecology and environment of that area. The compliance report shall be filed before the Tribunal within two months.

(ii) Respondent No. 5 shall plant trees of local indigenous species under the guidance of State Forest Department on either side of the road constructed in this area upto the top of the hill where the wind turbines are installed. It is the duty of Respondent No. 5 to maintain these trees.

(iii) Respondent No. 5 shall plant trees on the hill top around the wind turbines and shall maintain it as a green area.

(iv) Respondent No. 5 shall not cause any plastic material to be scattered either on the top of the hill or on the surrounding area to prevent any pollution caused by the plastic.

A compliance report shall be filed within three months and thereafter a progressive report once in every six months for five years. The application was disposed of accordingly. Parties to bear their respective cost.

Grama Panchayat Salana Jeewan Singh Wala and Ors.
Vs.
Union of India & Ors.

Appeal No. 78 of 2014

Coram: Justice Dr. P. Jyothimani, Mr. Bikram Singh Sajwan
Keywords: Environmental clearance, limitation
Decision: Appeal Dismissed
Date: August 28, 2015

This appeal had been filed by the residents of Village Salana Jeon Singh Wala in Punjab challenging the environment clearance (EC) granted to 5th respondent for starting the project of Grain/ Molasses based Distillery Plant (200 KLPD) and 5MW Co-generation Power Plant at Village Salana Jeon Singh Wala, Tehsil Amloh, District Fatehgarh Sahib, Punjab. It has been contended that the project had been proposed in an "over exploited" area notified by the Central Ground Water Authority which prohibits extraction of ground water resources without specific approval of the Authorized Officer. Moreover, the public consultation process had been improperly conducted and the EC has been granted in a negligent manner. Furthermore, all of this was contended to be leading to environmental degradation.

The impugned order of EC issued by the MoEF was dated 19-05-2014 and in the column relating to limitation, the appellants had stated that the EC was uploaded on the website of the industry recently which came to the knowledge of the appellants on 20th September 2014 and immediately thereafter the appeal was filed 13th Oct 2014 before the National Green Tribunal under s.16 r/w s.18 (1) of National Green Tribunal Act 2010 (NGT Act). According to the appellants, before the said date there was no publication in the website and website link was not working most of the time. There was no newspaper publication.

The 5th respondent in the reply raised a preliminary objection on the ground that the appeal was filed beyond the period of limitation in terms of Section.16 of NGT Act 2010, and without any application for condonation of delay. It was stated that pursuant to one of the conditions of the EC, the 5th respondent Project Proponent had issued a public notice on 06-06-2014 in a regional and a national newspaper regarding the grant of EC and therefore the appellants were aware of the same. The 5th respondent relied upon a decision of the Tribunal rendered in *Sudiep Shrivastava v. Union of India and Others*, in Appeal No. 33/2013 wherein it was held that under Section. 16 of NGT Act 2010, in excess of 90 days (30+60) after the expiry of the said date the Tribunal would have no jurisdiction to condone the delay. Such objection regarding limitation was raised by the Ministry of Environment and Forest also. Even otherwise by going through the MoEF website dated 9-07-2014, it must be taken as the earliest day of putting the EC in public domain by one of the stake holders namely the MoEF. The newspaper publication dated 6-06-2014 cannot be in any event taken as publication of any particulars. When it was stated in the publication that copy of EC was available in the SPCB, the applicants had not chosen to take any efforts either by getting the copies or finding out from the MoEF.

Even otherwise as a matter of abundant caution, take the date of publication of the EC in the official website of MoEF as 9-07-2014 could be taken for triggering the period of

limitation. Therefore on the factual matrix, as the appeal had been filed beyond 90 days from the date of the public domain of the EC by one of the stake holders namely MoEF to the date of filing of the appeal was beyond 90 days, this Tribunal had no jurisdiction to condone delay even if such application was filed. Accordingly on the point of limitation, it was held that the appeal was beyond the jurisdictional limit of this Tribunal in so far as it related to period of limitation under Section 16 of NGT Act 2010. Accordingly the appeal could not be entertained and therefore dismissed on the point of limitation.

Gongat Virodhi Manch
vs.
The Commissioner, Pune Municipal Corporation & ors.

Application No. 116 of 2014

Coram: Justice V.R.Kingaonkar Dr. Ajay A. Deshpande
Keywords: 'Silence zone ', Loud speakers, Noise pollution
Decision: Disposed off (Without cost)
Date: 26th August 2015

This application was filed by the Applicant seeking directions from the Tribunal to be issued to declare 'Kamla Nehru Park 'as a silence zone and not to allow any person or any organization to conduct any program within precincts of garden premises, using loudspeakers and music system. As it was a residential area, any function conducted in the park would be a nuisance, causing noise pollution and disturbance.

In reply, the Respondent no.1 stated that no illegal activity was permitted and was already declared as 'silence zone'. Certain conditions were laid down by the PMC to restrict the use of the garden premises for events. In response the PMC states that it has no control over religious events. The MPCB or the Police authority has not filed any reply affidavit. On behalf of the Mandir an Intervention application was filed in 2015 stating that correct information was not given and the Temple authorities were doing public service. Similar intervention application was files by another group stating that social and cultural activities took place and people were not disturbed.

The Tribunal allowed the Application and directed PMC and other Municipal Councils/Corporations in the State of Maharashtra to declare 'Silence Zones' by evolving policies in keeping with directions of the Hon'ble High Court. Tribunal also directed direct that the State Government shall issue necessary Notification to fix the norms for declaration of such silence zones.

EC

Wireless Co-operative Housing Society
Vs.
Chaitrali Builders/ Sumanshilp (p) Ltd. & ors.

Appeal No. 28 of 2013 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Environmental Clearance, construction activity, speaking order
Decision: Disposed Off (Without costs)
Date: August 07, 2015

This appeal was filed challenging an Environmental Clearance (EC) granting extension to construction activity of a commercial project.

The Tribunal opined that construction which was carried out prior to seeking expansion/extension of the EC cannot be subject matter of the present Appeal since the same is barred by limitation. Further, SEIAA was directed to examine environmental issues prior to granting of the clearance for expansion/extension. They were criticized for not having seen what kind of environmental safeguards and pollution control arrangements would be required and whether they are being provided by the project proponent in proposed expansion/extension activity of construction. Furthermore, it was added that more caution is expected as regards extension in a busy city locality and a "Speaking Order" should have been passed in accordance with the principles of natural justice.

The impugned order of SEIAA was set aside on the ground of no "speaking order" without touching the said order on any other ground. The Tribunal directed SEIAA to independently examine relevant issues and pass "speaking order" while considering the proposal within ten weeks from the date of communication of the order. In the meanwhile, the impugned E.C. was suspended and the construction/project was ordered to be stopped.

CRZ

Agnelo Fernandes Candolim Goa
Vs.
Goa Coastal Zone Management Authority

Application No. 49 (THC) of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: regularization, construction activity, GCZMA
Decision: Disposed Off (Without costs)
Date: August 07, 2015

This application was filed seeking regularization of a temporary construction activity. The Applicant further added that they had complied with the previous order passed against them sans as regards a temporary structure.

The Respondent contested that post an enquiry it was found that certain structures of the Applicant were found to be illegal since they were constructed between 200 to 500 meters of HTL without proper permission from concerned authority (GCZMA). GCZMA by its impugned order directed the Applicant to dismantle/demolish the said illegal structures.

The Tribunal opined that the Applicant's application be examined by the competent authority independently and that the structure in question be demolished within two weeks and area be restored to its original state. Further, the GCZMA was directed to verify the factual situation within four weeks and report such compliance to the Tribunal.

CRZ
Compensation & Restoration

Cavelossim Villagers Forum
Vs.
The Collector & Ors.

Application No. 04 of 2015 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: CRZ area, water flow, dumping activity, environmental restoration
Decision: Disposed Off (Without costs)
Date: August 13, 2015

This application was filed seeking remedy(ies) against construction activities on an alleged CRZ area which caused an obstruction in the natural flow of water which previously went through paddy fields. This, in turn, was alleged to cause adverse environmental impact to the adjoining lands.

Counsel for the Respondents contended that the proposed construction project had been abandoned and that Respondent No. 6 would not dump debris and mud in the natural course of water to harm his own land. However, since dumping activity was in fact found to have happened, Respondent No. 6 agreed to deposit Rs. 25,000/- in furtherance of environmental restoration.

The Tribunal partly allowed the same and directed the:

i. Village Panchayat Cavelossim, to carry out restoration work by incurring expenditure if the amount be deposited within two weeks.
ii. debris, mud and plastic bottles to be appropriately disposed of.
iii. GCZMA to supervise abovementioned work and do the same by themselves if it not be done within four weeks by the Panchayat.

Miscellaneous

Sadanand Pandurang Mane
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 116 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay, quarrying
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Shailesh Shahikant Parab
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 117 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Milind Ramchandra Keluskar
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 118 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Ashok Bhupal Kurade
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 119 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Sadashiv Mahadev Morye
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 120 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Pramod Sadanand Kambli
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellanous Application No. 121 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Hanumant Bhaskar Talekar
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 122 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Sagar Chandrakant Loke
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 124 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has not been rejected or accepted yet by the party and hence any appeal cannot lie before a final decision is taken on the proposal.

Miscellaneous

Chandrakant Vishnu Pujare
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 126 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Sadashiv Shamrao Chavan
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 125 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Narhari Krishanji Lingraj
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 127 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Sanjay Ganpat Pol
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 128 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Mr. Santosh Eknath Parab
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 129 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Rajendra Pandurang Mane
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 130 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Narayan Motiram Hindalekar
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 131 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Ramesh Mahadev Bandal
Vs.
State Level Expert Appraisal Committee & Ors.

Miscellaneous Application No. 132 of 2015 (WZ)

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous

Bhalchandra Bajirao Satam
Vs.
State Level Expert Appraisal Committee (SEAC) & Ors.

Misc Application No. 133 of 2015
IN
Appeal No. 49 of 2015

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of six days of unintended delay caused due to collection of relevant copies under provisions of the Right to Information Act, 2005.

The Tribunal opined that the delay was marginal, unintentional and duly explained. Further, that such a technical barrier should not hamper the Applicant's right to prefer an appeal. Furthermore, as regards the appeal it was opined that the SEAC's decision was not appealable since the SEAC had not granted neither refused the proposal (i.e.) there was no final order.

The Tribunal directed the MoEF to clarify the issue within 2 months and directed the SEAC to taken decision upon the proposal within 3 months. Lastly, the Tribunal directed that the filing of the Appeal should not be construed as an adverse act of the Appellant/Applicant against the Authority.

Miscellaneous

Vilas Narayan Hadkar
Vs.
State Level Expert Appraisal Committee (SEAC) & Ors.

Misc Application No. 134 of 2015
IN
Appeal No. 50 of 2015

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of six days of unintended delay caused due to collection of relevant copies under provisions of the Right to Information Act, 2005.

The Tribunal opined that the delay was marginal, unintentional and duly explained. Further, that such a technical barrier should not hamper the Applicant's right to prefer an appeal. Furthermore, as regards the appeal it was opined that the SEAC's decision was not appealable since the SEAC had not granted neither refused the proposal (i.e.) there was no final order.

The Tribunal directed the MoEF to clarify the issue within 2 months and directed the SEAC to taken decision upon the proposal within 3 months. Lastly, the Tribunal directed that the filing of the Appeal should not be construed as an adverse act of the Appellant/Applicant against the Authority.

Miscellaneous

Mahhadev Balkrushna Parkar
Vs.
State Level Expert Appraisal Committee (SEAC) & Otrs.

Misc Application No. 135 of 2015
IN
Appeal No. 51 of 2015

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Condonation of delay, maintainability of appeal
Decision: Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of six days of unintended delay caused due to collection of relevant copies under provisions of the Right to Information Act, 2005.

The Tribunal opined that the delay was marginal, unintentional and duly explained. Further, that such a technical barrier should not hamper the Applicant's right to prefer an appeal. Furthermore, as regards the appeal it was opined that the SEAC's decision was not appealable since the SEAC had not granted neither refused the proposal (i.e.) there was no final order.

The Tribunal directed the MoEF to clarify the issue within 2 months and directed the SEAC to taken decision upon the proposal within 3 months. Lastly, the Tribunal directed that the filing of the Appeal should not be construed as an adverse act of the Appellant/Applicant against the Authority.

Air Pollution
CRZ

Janardan Chandar Patil
Vs.
Union of India

Application No. 33(THC)/2013 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Air pollution, CRZ Notification, mangroves, Navi Mumbai, residential area
Decision: Disposed Off (Without costs)
Date: August 17, 2015

The present Application was originally filed as PIL No.17/2005 in High Court of Judicature at Bombay which was transferred to National Green Tribunal. In the present Application, Applicant Janardan challenged illegal actions of the Respondents affecting the public at large on following grounds:-

i) Gross failure to maintain ambient air quality in the residential zone;
ii) Developing residential area by Respondent Nos.2 and 3 by destroying the mangroves which was adversely affecting the natural habitat in creek side of Talavali, Ghansoli and Gothivali in Navi Mumbai, in violation of CRZ Notification;
iii) Development of new residential areas in the above villages in violation of air pollution norms and also environmental norms.

The Applicants stated that Navi Mumbai was developed to decongest city of Mumbai, considering rapidly growing ratio of population on the limited area available in Mumbai. Large areas of Navi Mumbai, still accommodate major chemical, petro chemical and also, hazardous industries which are located in proximity of newly developed residential area. Applicants alleged that certain green zones which were identified in the earlier development plan had been converted into residential zones without considering the environmental risks, including the public health concern. There was no green belt separating the industrial area and the residential area and thereby, the residents were directly exposed to the hazardous air pollution caused due to the industries. Applicants also alleged that in the process of development of residential area, large scale destruction of mangroves was done on the eastern side of Thane creek, in violation of to CRZ Notification. The Applicants, therefore, prayed for the issuance of a writ of Mandamus, or a writ in the nature of Mandamus, or any other appropriate writ, order or direction appointing a committee of experts to investigate the air pollution levels in the villages of Talavali, Gothivali and Ghansoli, of Navi Mumbai and the feasibility of the blatant development of residential and commercial complexes undertaken by CIDCO in the light thereof, Secondly, the development of plots by the 3rd Respondent by creek side of these villages by destroying mangroves and make a report to this Hon'ble Court on this count, and issue appropriate directions to the Respondents in the light of the report of the expert committee as regards the residential and commercial development.

Considering the records of the Application and Affidavits filed by the contesting parties, the following issues were to be decided for the final adjudication of the matter:

1) Whether the ambient air quality of Navi Mumbai area, more particularly, the area of Talavali, Ghansoli and Gothivali was as per the norms, and if not, what were the different causes contributing to such deteriorated air quality?

2) Whether any air quality improve Action Plan was contemplated or required to be formulated for air quality management of the above area?
3) Whether the mangroves destruction and violation of CRZ notification had taken place the coastal area of Navi Mumbai, more particularly, in areas of Talavali, Ghansoli and Gothivali?
4) Whether any specific directions are required from the Tribunal on the ambient air quality management and coastal zone protection?

On issue no.1, it was determined that the ambient air quality in the Navi Mumbai area was still not meeting the prescribed standards as notified by the CPCB. In addition, there was no authentic study on record to indicate the presence of various organic chemicals listed in the CEPI report, as on 2010, when the industrial area was declared as "critically polluted" viz-a-viz the present status. In the absence of such data and also, the continuing operation of the chemical industries, there was a clear likelihood of presence of various obnoxious odours in the area surrounded by the industrial estate and therefore, the issue No.1 was answered in the affirmative while holding that the air quality in Navi Mumbai area was not meeting the prescribed norms.

Therafter, issue no.2 was discussed. It was on record that the Navi Mumbai area which included three (3) villages in question had already been declared as 'critically' polluted area. The CEPI score indicatd that Air pollution in Navi Mumbai area was more predominant among the three types of pollution i.e. Air, Water and Land. It was, therefore, necessary to achieve the prescribed norms for an acceptable of Air quality. In view of this, it is necessary that the CPCB, as a premier technical regulatory authority shall take a review of action plan and also, periodically review implementation of the same. At the local level, MPCB was required to coordinate the efforts with the local authorities like Corporation, transport department etc. Issue No.2 was accordingly answered in the affirmative.

The Applicants alleged widespread mangroves destruction along the side of creek. MCZMA has been constituted under the provisions of CRZ Notification and Environmental (Protection) Act, 1986. A close look at the notification of constitution of MCZMA issued by MoEF would reveal that the authority has been empowered to take measures for protection and improving the quality of coastal environment in the State of Maharashtra. The role of MCZMA is multi-dimensional and MCZMA is also expected to issue directions for certain compliances, if it is found necessary and further, in case of noncompliance, can even file prosecution. In the instant case, no such proactive and affirmative action could be noticed from MCZMA. The only actions which were reported was receipt of complaints and forwarding the same to the local authorities which could not be called as effective and proper in view of the mandate given to MCZMA. The above discussion along with reports filed by MPCB as well as MCZMA, the claims made by CIDCO regarding dumping of debris by private developers and also, receipt of complaints by MCZMA regarding destruction of mangroves in the same area, it was imperative that detail investigations were required to be carried out by MCZMA in this matter, by involving its own members and experts, on a scientific/technical technique using latest analytical tools. Issue No.3 was, therefore, answered in affirmative though the quantum of such mangroves destruction needed to be ascertained further.

Thus, the Tribunal allowed this Application with following directions, which were issued under the powers conferred by Section 20 of the National Green Tribunal Act 2010:

1. The Member Secretary, CPCB shall review the action plan for control of pollution for Navi Mumbai area submitted by MPCB for its adequacy and efficacy and finalise the same within the next four (4) weeks.
2. The Member Secretary, MPCB shall take necessary steps and measures to execute and enforce such action plan by all stake holders within period of six (6) months, by taking monthly review meeting. A monthly progress report shall be submitted to the Registry of the Tribunal.
3. CPCB and MPCB shall take necessary steps to install the ambient air quality monitoring station in the critically polluted areas including Navi Mumbai which can monitor all the specified air pollutants as per the prescribed standards within next six (6) months.
4. CPCB shall update the CEPI index for all such identified areas, on yearly basis and yearly trend of such index shall be available on the website of CPCB and concerned SPCB.
5. The Committee under Chairmanship of Chief Conservator of Forest (mangroves cell) and including Expert Member of the MCZMA (to be nominated by Chairman, MCZMA) with Member Secretary MCZMA as Member-convenor is hereby formed to assess and verify the fact position related to destruction of mangroves and violation of CRZ area in Navi Mumbai. The Committee is at liberty to seek expert opinion, if it is required.
6. The Committee shall also identify the violations of the CRZ Notification, 1991 and 2011 and also, violators and the person/agency responsible for such violation. The Committee shall submit its report to MCZMA within next four (4) months and copy shall be submitted to Registry of the Tribunal.
7. The MCZMA shall take necessary action on the report of the Committee on priority within (two) months thereafter.

The Application was accordingly disposed of. No costs.

Smt. Lalita Sandip Shinde (Deshmukh) & Ors.
Vs.
Chief Executive Officer & Ors.

Application No. 14 of 2013 (WZ)

Coram: Justice V.R.Kingaonkar, Dr.Ajay A. Deshpande
Keywords: Environmental degradation, water waste, pollution
Decision: Application dismissed (with directions)
Date: August 17, 2015

The Applicants had raised the issue of environment degradation and pollution caused to river Godavari due to various activities at Trimbakeshwar Municipal area. The floating population of Trimbak Municipal area varies from 3,00,000 to 50,00,000 whereas its own population being around 10,000. RCC box culverts had been constructed on the river making the river disappear. Many lakes in the area were also polluted that resulted in damaging the environment, human life and property.

The application was heard on several occasions and many interim directions had been issued. It was noticed that the river was heavily polluted due to disposal of solid waste. An inter-departmental study group was formed and the study was done by MERI. Financial assistance was given by the government under the NRCP. It was stated that no unnecessary construction had taken place, the solid waste of pind dan and puja were bio-degradable. Bins had been provided. The sewerage water was a very small percent. They had been instructed to lay down cement pipes for waste water. Another issue was of flood plains for which demarcation is being done with contractual help. Plans to consider the amenities for pilgrims and also to protect the flow of river were approved by MoEF and NRCP. Steps had been taken for the free flow of the river and the safety of the pilgrims.

In view of the above discussion, the Tribunal was not inclined to accept the prayer of the Applicants for removal of the concrete structures covering the river. At the same time, based on the precautionary principle enumerated in Section 20 of the National Green Tribunal Act, 2010, the Tribunal issued certain directions to concerned authorities:

1. Director, MERI shall conduct a detailed evaluation of such concrete structures in view of the updated rainfall data, flood probability and potential, and suggest any improvement/ additional measures in order to ameliorate the apprehensions of flooding and associated damages and submit a report with suitable recommendation to the district administration within 4 months for further necessary action.
2. Trimbak Municipal council shall undertake regular cleaning of such concrete channels in order to ensure smooth flow in the channels in dry season. TMC shall further undertake the interception and diversion of untreated domestic waste waters to avoid its entry in river course which shall be completed in next 6 (six) months.
3. The STP and bio-methanation plant shall be operated continuously and effectively.
4. Collector, Nashik shall take necessary action as required by the Law, on the report of the blue line, Red line submitted by Irrigation Department.

The Application, along with all Misc. Applications, was accordingly dismissed. No costs.

Miscellaneous

Mayaji Bapu Gurav
Vs.
State Level Expert Appraisal Committee & Otrs.

Misc Application No.123/2015 in Appeal No.39 of 2015

Coram: Justice VR Kingaonkar, Dr. Ajay A.Deshpande.
Keywords: Maintainability of appeal, condonation of delay
Decision: Application Disposed Off (Without costs)
Date: August 17, 2015

This application was filed seeking a condonation of delay of six days in filing the appeal and further perusal of an impugned decision by the SEAC indicated in minutes of meeting dated 19 to 21 June, 2014 regarding prohibition of quarrying processes in six talukas.

The Tribunal opined that the delay in application of the appeal can be condoned by the authority because it is marginal, acceptable and duly explained in the application that it was a result of the time taken in the due process of obtaining information from the authorities under the Right to Information Act. However, as far as the perusal of the impugned decision is concerned it has to be disposed off without costs because the decision clearly states that the proposal of the party has neither been rejected nor been accepted yet by the SEAC and hence any appeal is not tenable before a final decision is taken on the proposal.

Miscellaneous: cutting of trees

Muthukumaran
Vs.
State of Tamil Nadu & otrs.

Application No. 88 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Felling of trees, construction projects, injunction
Decision: Application Disposed Off (Without costs)
Date: August 03, 2015

This application was filed by the Applicant seeking for an order of permanent injunction against the respondents from felling of trees/ permission granting the same and for the issue of directions to the respondents to find an alternative not involving the same in other sites for the construction of a Police Station and an Electric Sub-Station since those tress, (i.e.) their produce, are the source of income for many including the Applicant's. Further, it was also stated that the same would cause environmental harm and harm to the ecosystem and that this act was contrary to the precautionary principle and sustainable development.

R2 contended that the plot was classified as 'thoppu poromboke' and that private individuals had no right per se to the trees/their rights could be cancelled any time and that a Police Station was of utmost importance in the area. Further, no other suitable land was available for the purpose and no objections were received when called for. Furthermore, that the proposed area for felling does not include as many trees as claimed by the Applicant.

The Tribunal opined that the application was totally misconceived and that the applicant had no title/interest over the land but only the usufructs of the trees. Further, it accepted the Respondents' argument that the area to be felled includes a relatively small portion of trees. Furthermore, the Tribunal could not give directions when the Government has decided to have a permanent Police Station which serves greater public purpose. However, the Tribunal also opined that in the event of the applicant claiming himself to be entitled for usufructs from the coconut trees, it is for him to work out his remedy in the manner known to law.

The Tribunal eventual directed the respondents to carry out necessary afforestation by planting 520 trees of native character and see that all the said trees are maintained well. However, Applicant permitted to use benefits of remaining trees.

Pollution
Consent to operate

United Carbon Solutions Pvt. Ltd.
Vs.
Tamil Nadu Pollution Control Board

Application No. 132 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Renewal of consent
Decision: Application Disposed Off (Without costs)
Date: August 03, 2015

This application was filed by the Applicant seeking for directions to be issued for renewal of consent. The 'consent' had been rejected on the ground that the applicant had to approach the learned Appellate Authority against the said order but had instead passed the appellate remedy.

Further, The TNPCB had not dealt with the merit of the matter as to whether the activated carbon can cause pollution. The Respondent contended that until the applicant exhausts the appellate remedy, the present application would not be not maintainable.

The Tribunal opined that even though appeal should be the normal remedy, such appeal can be possible only if any reason on merits (for not granting consent) is given. For example, if the Board has come to a conclusion that the activated carbon manufactured by the applicant tends to cause pollution with various scientific reasons. Then in such an event, there is a possibility for the applicant to go to the Appellate Authority. Further, a distinction was made in between 'activated carbon' and other pending cases which pertain to the manufacture of charcoal. Furthermore, the Tribunal stated that what the Appellate Authority can decide could certainly be decided by this Tribunal.

The TNPCB was directed to reconsider the application afresh. The applicant was entitled to make application along with all the papers which were already sent along with the original application.

Air pollution

Shrimati Rajeswari
Vs.
District Collector & Otrs.

Application No. 137 of 2014 (SZ)

Coram: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Odour nuisance, Air Act, poultry farm, air pollution
Decision: Application Disposed Off (Without costs)
Date: August 05, 2015

This application was filed by the Applicant seeking for directions for closure of poultry farm run without consent of concerned authorities. It was contended by the applicant that the site chosen was close to a thick residential locality, Panchayat Union and Primary school. Further, it was contended that there are serious health hazards associated with running of a poultry farm in close proximity to schools and residential areas due to the filth created by bird excreta and dead birds which in turn results in environmental pollution and infectious diseases arising out of the same. Furthermore, it was contended that the farms were being run without adopting any safety precautions letting out waste and contaminated water and in spite of this, none of the respondents had followed up on the issue and taken action for removal of the poultry farms after having conducted inspections.

The 6th respondent contended that her poultry was at the backside of her house in the main road and the poultry of the 5th respondent was in a street which cannot be called a thick residential locality. Further, no objections were raised either by the Panchayat Union Primary School or by the public and even the Health Department issued a no objection certificate. It was also contended that the applicant had filed the application as an outcome of a family feud with ill-will and mala fide intent.

The Tribunal opined that the poultry farms consisted of a thousand chicks or more in a residential locality (without consent from concerned authorities) causing air pollution. Following directions were given in furtherance of the same:

i. The Director for Public Health and Preventive Medicine, Chennai to initiate departmental disciplinary action against the officials who had given 'No Objection Certificate' to the poultry farms of the 5th and 6th respondents.
ii. The Chairman, Tamil Nadu Pollution Control Board directed to initiate necessary departmental disciplinary action against the District Environmental Engineer, Vellore for having permitted the operations of poultry farms of the 5th and 6th respondents who had caused air pollution by carrying on the operations of the unit illegally.
iii. Closure of farms.

EC

S. Palanisamy
Vs.
District Collector & Otrs.

Application No. 296 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Environmental clearance
Decision: Application Disposed Off (Without costs)
Date: August 05, 2015

This application was filed stating that the Ministry has passed orders in the matter of constitution of a State Level Expert Appraisal Committee for Tamil Nadu which is awaiting clearance from the Law Ministry.

The Tribunal directed such a clearance and constitution to be done expeditiously post which the application of the Applicant for environment clearance would be considered by the newly constituted Committee on merits within four months.

Pollution
Compensation

M/s Kathir Blue Metals
Vs.
Tamil Nadu Pollution Control Board & Ors.

Application No. 223/2014 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Polluter pays principle, Air pollution, consent to operate, stone crushing unit, compensation
Decision: Application Disposed Off (Without costs)
Date: August 6, 2015

This application was filed by the Applicant seeking for directions to be issued to grant an order of Consent to Operate (CTO) a stone crushing unit and direct continual of power supply for the same. The Respondent (TNPCB) had provided CTO for 2007-08 post which the crusher was effectively inactive till 2011. The Applicant contended that when he wanted to restart operations, all reports indicated compliance to prescribed air quality and noise level standards. Further, the Applicant incurred expenses in complying with norms apart from having duly applied for the CTO and paying the required fee.

The TNPCB, however, contended that they found that effective steps had not been taken to comply with certain air pollution control (APC) measures due to which directions for closure and disconnection of power supply were issued. The closure order was suspended conditionally subject to Ambient Air Quality survey for assessment of compliance with APC measures. It was observed, in subsequent inspections, that the unit remained out of activity for varying durations of time leading to the APC measures being worn out and in damaged condition due to inactivity.

Further, the District Environmental Engineer (DEE) of PCB's inspection report and submission of survey data indicated compliance of all required measures.

Upon hearing both the parties, the Tribunal pointed out that the applicant carried on activity in his unit without obtaining renewal of consent nor complied with the conditions prescribed by the TNPCB and without taking adequate APC measures knowing the same to be illegal. It was also added that as regards the APC requirement of the development of green belt, planting of trees here and there in isolation and few trees in a single row for a small stretch does not constitute development of green belt. All of this rendered the applicant liable for pollution and environmental damage caused during its period of supposed inactivity.

The Tribunal, therefore, applied the 'polluter pays principle' and gave the following directions:

i. Rs. 50,000 compensation be paid within one month from the date of judgment into the account of Environment Relief Fund established under Section 24 of the National Green Tribunal Act, 2010.
ii. Rs. Rs.50,000 be paid within one month from the date of judgment to the concerned DEE of the TNPCB to ensure thick vegetation constituting green belt for a width of

at least 10 m around the unit is taken up by planting indigenous species suitable for controlling air pollution (in consultation with the local forest officials).

The Tribunal also added that considering the applicant has completed works and taken all the required APC measures as reported after conducting the latest inspection by the DEE, the TNPCB should consider the application made by the applicant seeking for grant of renewal of CTO and pass orders within a week of payment of aforesaid amounts by the applicant.

Miscellaneous: Ecologically sensitive zone
Consent to operate

Unnikrishnan Thekkemuri
Vs.
District Collector & otrs.

Application No. 400 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Ecologically Sensitive Zone, quarrying
Decision: Application Disposed Off (Without costs)
Date: August 07, 2015

This application was filed seeking directions to prevent illegal quarrying done in villages declared as an Ecologically Sensitive Zone by the Madhuv Gadgil Committee. It was contended that quarries were being operated in violation of the "Stop Memo".

Based on the Village Officer's report, the District Collector directed the Mining and Geology Department to lift the Stop Memo since specific permission for quarrying and licences had been obtained with a direction to impose strict conditions regarding the quantum of explosives to ensure no environmental problems etc. Further, it was stated that permanent stoppage of quarrying can happen only in the event that the issued licenses be withdrawn. It was also added that no new 'consents' to operate were being given.

Upon hearing both sides, the Tribunal gave directions in the following lines:

i. No activity of mining or quarrying permitted in areas categorized as Ecologically Sensitive Zone(s) – I.
ii. No renewal on 'consents' in the above-mentioned Zones.
iii. All necessary steps be taken to prevent illegal quarrying in places declared as Ecologically Sensitive Zone – I and appropriate action in the manner known to law be taken.

EC

Thenkeeranur Vivasayigal Nala Sangam
Vs.
Secretary to Government of Ministry of Environment and Forests & Otrs.

Application No. 193 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Environmental clearance, pollution, construction projects, wetlands, EIA Notification, 2006
Decision: Application Disposed Off (Without costs)
Date: August 07, 2015

This application was filed on behalf of an association of agriculturists seeking relief in respect of harm to be caused due to construction activities of a railway line and station on a part of a crucial lake area (which is under the Public Works Department and has been classified as poromboke).

It was contended by the Applicants that there was heavy dependence on the concerned lake for irrigation, flood regulation, draining of storm water, groundwater replenishment, drinking water and rainwater harvesting purposes. Further, the Railway department had failed to follow protection measures to preserve lake, proceeded with survey without getting Environmental Clearance, the proposal and plan did not use the wetlands wisely as per the Wetlands (Conservation and Management) Rules, 2010 and the Indian Railways had acted contrary to Articles 48-A and 51-A (g) of the Constitution of India. Furthermore, it was also stated that the state authorities (in acting as trustees to such governmental property) cannot infringe the rights of community. Lastly, the need for sustainable development was also stressed upon.

The Respondent contended, in return, that proper inspection had been done and they had no proposal to acquire either the entire lake or to destroy its storage capacity. Also, stated that a major part of the station would be located in private dry lands only.

The Tribunal opined that certain area was not wetland. Further, it was stated that the EIA Notification, 2006 clearly required the following of EC requirements whether they are in respect of new projects or expansion of existing projects. Furthermore, it was also stated that a balance had to be maintained in between the existence of the water body and its usefulness to the local villagers and the need for the formation of railway track and the purpose which would serve the public at large.

The Tribunal, therefor, gave the following directions:

i. The Railway department was restrained from constructing the Railway Station on any part of the Lake and from bisecting the lake by forming bunds or raising culverts for laying railway line. Shall lay the railway line in the cross-section of the lake by providing necessary railway bridge or by any other necessary construction ensuring free flow of water in order to maintain the water level on all sides alike.
ii. Public Works Department (PWD) is restrained from making transfer/allowing conversion in any part of the said water body beyond the land already transferred for laying the railway line.

iii. Southern Railway shall not commence/execute the project without obtaining prior EC and other consents/permissions from respective authorities.

iv. The said authorities from whom such EC/Consent/Permission is required to be obtained by the Southern Railway were directed to take into consideration all the observations made by the Tribunal in the judgment.

SEPTEMBER

Miscellaneous: Water Tank

N. Gajendran and Anr.
Vs.
Principal Secretary/Commissioner, Corporation of Chennai and Others

Application No. 101 of 2015 (SZ)
(M.A.No.151 of 2015)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Wetland Rules, Water Tank, Chennai Metropolitan Water Supply Board
Decision: Applications disposed of
Dated: 2nd September 2015

The Applicant had filed this application seeking to restrain the Respondent no. 1 and 2 from filling up the existing *Thamaraikeni Kulam* Water tank with quarry dust for constructing water overhead water tank and sump, in order to preserve the tank thereby to maintain the ecology and protect the environment.

The water tank serves as a ground water recharge in the area by collecting rain water and allowing it to percolate into the ground which helps in maintaining the water table in that area. It also contained Aquatic plants and fishes. The Applicants state that the authorities had begun to dump quarry dust into the live tank in order to execute the project and aggrieved over the same they have approached this Tribunal.

In their joint reply the 1st and 5th Respondents stated that the *Thamaraikeni Kasam* was handed over to the 1stRespondent by the erstwhile Kottivakkam *Panchayat* during its merger with the Corporation of Chennai in the year 2011. The Ward Committee of Perungudi Zone passed a resolution in 2013 to hand over this tank to Chennai Metropolitan Water Supply & Sewerage Board (CMWSSB) for providing drinking water supply to the residents of Kottivakkam. They have dumped quarry dust to prepare the ground for their drinking water project.

According to the Respondents, the Applicants have approached this Tribunal in order to disrupt the entire proposed scheme of supply of water to the benefit of more than 4700 households with a population of 71923.The Respondent Board further contends that the *Thamaraikeni Kulam* tank cannot be maintained in the present condition as it ceased to be a tank 5 decades ago except in records.

The Tribunal in its decision said that it is fact that the tank was used for storage of rain water for meeting the requirement of the villagers for both drinking water purpose and irrigation of their agricultural lands. But, once expansion of urban agglomeration has taken place and after the merger of the Kottivakkam *Panchayat* with the Chennai Corporation and once the surrounding agricultural fields have been converted into real estate the aforesaid water tank has lost its significance over a period of time and it is no longer used either for irrigation purpose or for drawing drinking water directly. CMWSSB has come up with a plan for construction of drinking water distribution centre comprising one overhead tank of 22 lakh litre capacity and one underground sump of 3 lakh litre capacity along with 5 recharge wells with a diameter of 3 m. on both sides to maintain ground water level. It is

proposed that after the above constructions balance area will be retained for accumulation of rain water and can be continued to be used for conducting religious ceremonies/rituals.

Following questions were formulated for consideration:

1- Whether the Applicants are entitled for the issuance of an injunction order thereby restraining the Respondent authorities from filling up of the existing *Thamaraikeni Kulam* for the construction of the overhead tank and sump.

2- Whether directions are to be issued to the Respondents to remove the quarry dust that had been dumped into the *Thamaraikeni Kulam* and also to remediate and restore the tank to its original position.

Tribunal in its discussion held that the Applicant has not provided any scientific data or information that it is essential to preserve the aforesaid tank in the present condition for maintaining ecological balance in the area. Permitting the 2nd Respondent to establish over-head tank and underground sump for purpose of supplying drinking water to the residents will be justified if one takes into account the responsibility of the State under Article 21 of the Constitution wherein the right to life is guaranteed and providing safe drinking water to the citizens is also the responsibility of the State. But, in the present case, the concept of Sustainable Development which this Tribunal cannot overlook shall take precedence. The proposed activity taken up by the Respondents is only in public interest and not for any commercial activity or to meet the interest of any particular individual or group.

Since the water tank in question was not declared as a protected wetland the wetlands (Conservation and Management) Rules, 2010 are not applicable in this case and the interim injunction granted on 22.05.2015 is vacated.

With the above directions the OA No. 101 of 2015 (SZ) along with the M.A.No.151 of 2015 was disposed of.

Prof. P. Murugaiyan (Retd.)
Vs.
Sri Mahalakshmi Sweets & Bakery

Application No. 118 of 2014 (SZ)

Coram: Shri Justice M. Chockalingam, Shri P.S. Rao
Keywords: Small Scale Industry, PCB
Decision: Application disposed of
Dated: 2nd September 2015

The Applicant stated that the Sri Mahalakshmi Sweets & Bakery while preparing the bakery items was polluting the air thereby spoiling the entire atmosphere and the drainage water discharged from the bakery is causing water pollution. The people who are residing in and around the area are suffering a lot and the Applicant's differently abled son is affected with due to the pollution. The Applicant has requested the Respondent to vacate and to set up the bakery in a non-residential area but he denied to shift it and hence the Applicant has made a representation to the The Tamil Nadu Pollution Control Board and panchayat for taking steps to relocate the bakery from the residential area.

It is clear that the is carrying out sweet and kaaram manufacturing activity in the residential area and apparently the country stove/ wood stove for which bio mass is used as fuel is leading to emission of pollutants whereas the bakery oven which is run on LPG stove, is environment friendly and pollution free. Therefore, the question arises whether the use of the country stove for the production of sweetmeats which falls under the commercial activity does require any consent to be obtained from the PCB and if so any emission standards are prescribed for such activities.

In the absence of any specific rules and regulations, the question remains unanswered as to whether such small scale commercial activity of making sweets and kaarams and bakery products bereft of installation of any machinery and equipment and which cannot be termed as an industrial activity in a residential area, amounts to violation of any environmental laws. It is for the concerned civic authorities to take a decision as per prevailing local laws as to whether the unit can be permitted in the residential area. This Tribunal cannot comment on this aspect.

But it is always necessary for PCB to frame appropriate guidelines by fixing norms for such small scale commercial activities in residential areas with reasonable restrictions and prescribing the standards so that no pollution is caused and the business activities of such small traders who have got a Fundamental Right to carry on their business as per the Constitution, go unhindered without affecting their livelihood. Such regulatory measures by the PCB are quite necessary in such cases as no standards are prescribed

The Tribunal in this case decided that nothing prevents the PCB to take action in case it finds pollution in the surroundings of the unit particularly air pollution by measuring Ambient Air Quality (AAQ) but no such findings have been produced by the PCB.

Moreover, the Respondent took all necessary measures to prevent pollution and also gave an undertaking to shift the unit manufacturing sweets and kaarams across the road which is

away from the Applicant's house. Therefore, it can be safely concluded that the Applicant's grievance has been redressed to a large extent.

With this, the application was disposed of.

Miscellaneous

M/s. Magaarani Dyeings
Vs.
The Tamil Nadu Pollution Control Board and Anr.

Application No.54 of 2015

Coram: Justice Dr.P. Jyothimani, Prof. Dr.R. Nagendran
Keywords: Dyeing Unit, Work days
Decision: Application disposed of with directions
Dated: 3rd September 2015

This application was filed by the Applicant, a dyeing unit, for a direction against the Respondents viz., the State Pollution Control Board to permit them to operate on all days of the week.

As on date of application the Applicant unit is permitted to function from Monday to Friday. Applicants contended that even by permitting the unit to work on Saturdays and Sundays the consented capacity will not be increased.

Applicant contended that he had made a representation to the State Pollution Control Board and if a direction is given to the State Pollution Control Board to consider the said representation that would be sufficient.

Accordingly the Tribunal disposed of the application with a direction to the Respondents to consider the representation of the Applicant dated 29.3.2010 and pass appropriate orders within a period of 8 weeks.

Miscellaneous

M/s. Ullagaram Vaazhum Makkal
Vs.
The Commissioner, Corporation of Chennai and Others

Application No.164 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Sewage Pump, Sanitation, Corporation of Chennai
Decision: Application dismissed
Dated: 8th September 2015

This application was filed by the residents of Ullagaram for restraining Respondent Nos.1& 2 viz., the Corporation of Chennai from implementing any scheme and constructing the sewage pumping station in Draupathy Amman Koil Tank in Survey No.28/1 of Ullagaram Village and for consequential direction against the said Respondents to restore the tank.

It was also stated and brought to the notice of Tribunalthat the work undertaken by the 4th Respondent of constructing sewage water tank has been completed and this act was done by 4th Respondent taking note of the public health, as the stagnation of sewage water on the open ground pave way for the multiplication of mosquitoes and flies causing Malaeria, Cholera, Dingue etc. At the time of filing the application 77% of the work stood completed and the learned counsel appearing for4th Respondent has stated that now the work has been completed and they were also satisfied by seeing the photographs that the work has been completed to the full capacity. Also no substantial environmental issue was raised in this case under Section 14 of the National Green Tribunal Act, 2010.

Tribunal in its discussion held that it appears that there is a land dispute. If really the Applicant's intention was to have this area as belonging to the temple, it is for the Applicant to take appropriate action in the manner known to law.

By giving such liberty to the Applicant, the application was dismissed.

Miscellaneous

M/s. M.K. International Realty Pvt. Ltd.
Vs.
Government of Tamil Nadu rep. by the Secretary, Environment and Forests Department and Others

Application No.166 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Ice Factory, PCB
Decision: Application disposed of
Dated: 10th September 2015

ORDER

The Applicant has sought for a direction against Respondents No.1 to 3 to initiate legal action against 4th Respondent who is stated to be running Ice factory in respect of which a complaint has been lodged by the Applicant to the Pollution Control Board on02.04.2014. The Pollution Control Board has subsequently rejected the permission sought for by the 4th Respondent factory for running the ice factory even as early as12.09.2009. As against the said rejection order, the 4th Respondent has moved the learned Appellate Authority where the appeal is stated to be pending. The Applicant can always implead himself as a party before the learned Appellate Authority.

Therefore it was held by the Tribunal that nothing survives in this application for the reason that whatever prayer is asked for in this application has been answered by the Pollution Control Board in rejecting the claim of the 4th Respondent.

Hence the application was disposed of.

Mr. T. Victor
Vs.
The Member Secretary, Tamil Nadu State Pollution Control Board and Anr.

Application No. 129 of 2015(SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Tamil Nadu Pollution Control Board, DEE, CMDA
Decision: Application disposed of
Dated: 8th September 2015

This application was brought forth seeking a direction to the 1st Respondent, the Tamil Nadu State Pollution Control Board (Board) to pass orders on the representation of the Applicant dated 9.1.2015 in accordance with law and in consonance with the report of the 2nd Respondent, the District Environmental Engineer dated 11.2.2015 at the earliest.

The Applicant who is the owner of the property situated at No.16, Periyar 4thCross Street, Srinivasa Nagar, Padi Post, Chennai-600 050 was carrying on a small scale industry in the ground floor of the premises in the name and style M/s. Victor Industries Heavy Planner Milling after obtaining necessary service connection therefore from the Electricity Board. Pursuant to complaints made against the Applicant it was found that the Unit was located in a residential area, that the Unit originally obtained power connection for 5 HP electric motor from the Tamil Nadu State Electricity Board and later obtained connection for 30 HP electric motor to carry out heavy planner milling that too in the primary residential area. It was also noticed that the Unit was carrying on its operation without obtaining Consent from the Board.

The DEE concerned recording the statement of the parties recommended to the Board for issuing direction to the Unit dated 13.12.2013 that :
1. the Unit should remove the additional installed 30 HP heavy duty planner milling machines immediately as the Unit is located in the primary residential area declared by the CMDA,
2. the Unit should operate with machines of 5 HP motor only along with adequate noise pollution control measures as permitted in the primary residential area by CMDA.
3. the operation and activities of the Unit should not give room for complaints from the residents of that area by causing pollution.

After receiving the report from the DEE, the Board issued a direction for closure and also for disconnection of the electricity power supply under Section 33-A of the Water Act 1974 and under Section 31A of the Air Act, 1981. The Applicant made a request for the revocation of the closure order and restoration of power supply assuring that the premises would be used only for the office purpose or for residential purpose by a communication dated 12.3.2014. On the recommendation of the DEE, the Board made a revocation of the closure order and also for restoration of power supply to the Unit by it communication dated 21.3.2014 and 19.6.2014 respectively subject to the following conditions:-
1. The Unit should not install the machinery again in the premises
2. The Unit premises should be used only for the office or residential purposes.

The Tribunal was of the view that the Applicant has filed an undertaking affidavit to the effect that he would carry on the business of engraving on metals with the aid of 5 HP motor as permitted under the aforesaid Master Plan. Hence, no impediment is felt by the Tribunal in issuing a direction to the Board if necessary application / representation is filed by the Applicant then to consider the application and pass suitable orders.

The concerned DEE who is present, was also directed to make an inspection of the Unit after establishment of the same following the granting of Consent and also to monitor whether the activities of the Applicant are in strict compliance of the conditions stipulated in the Consent Order.

With these directions, the application was disposed of.

Miscellaneous

P. Mothilal Nehru
Vs.
Tamilnadu Pollution Control Board and Others

Application No. 218 of 2014

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: PCB, Dying Unit
Decision: Application dismissed
Dated: 11th September 2015

Application was made by Applicant to issue directions against 1st and 2nd respondent, State Pollution Control Board to initiate proceedings against 3rd respondent, A.R. Sadhasivam based on representation made by Applicant on 19-08-13.

In the representation, Applicant had stated that 160 acres of agricultural lands of Applicant are situated beside the Respondent's dying unit. Due to pollution caused by the unit agricultural work was affected. There also was a water body, Amaravathi River nearby. Respondent on the other hand stated that the industry has been given consent to operate which has been renewed till 30-06-15.

Nothing therefore survives in the application, except that the Applicant has right to challenge the "consent to operate" in appellate authority.

Accordingly, the application was dismissed.

Environmental Clearance

News Item dated 07-07-12 in The Hindu about quarrying operations in Sathyamalagam Tiger Reserve Forest
Vs.
The Secy. To Government, MoEF & Ors.

Application No. 165 of 2013

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Mining, Suo Moto, National Parks, Sanctuaries, Environmental Clearance
Decision: Application dismissed
Dated: 14th September 2015

This application was been taken up suo motu on the basis of a newspaper report stating that in the forest area at Sathyamangalam, some illegal quarrying have been going on.
An interim order against such quarrying activities was passed and subsequently, many quarrying operators were made as parties. Some of the Respondents filed application to vacate the order of stay. It was stated that these quarries are situated beyond 10 km from Sathyamangalam Tiger Reserve Forest.

The primary issue was: Whether the interim stay order passed was bad in law?
Whether the decision and the ratio given in the Hon'ble Supreme Court reported in Goa Foundation vs. Union Of India in 2006 judgement i.e. there was no direction on 04.12.2006, interim or final, of the Hon'ble Supreme Court, prohibiting mining activities within 10 km of the boundaries of National Parks or Wildlife Sanctuaries should be taken into consideration in the present factual scenario.

Relying on what has been held by the Supreme Court in earlier 2006 order, the Central Government should take into consideration the claims of all the stakeholders before closure of such mining activities, including the project proponents and huge number of employees who are likely to be affected and therefore any decision should be taken only after hearing of all the persons who are likely to be affected by such a decision.

The Tribunal in its discussion said that, in such view of the matter it is clear that as per the law as it stands as on today, the mining activities within 10 km of the National Park or Wildlife Sanctuaries are not prohibited. Therefore, the interim order passed due to the above said reason cannot stand as on date.

However, it remains the fact that as per the EIA Notifications 2006, any mining activity is expected to have the Environmental Clearance (EC). Simply because certain units have been functioning for a long time without obtaining Environmental Clearance (EC), this Tribunal cannot permit them to carry on their activities in the light of the EIA Notification 2006.

Moreover, it cleared that SEIAA should give priority to those cases where applications have been made and pending before it seeking Environmental Clearance (EC) for mining operations in Satyamangalam Reserve Forest and pass appropriate orders expeditiously, in any event, within a period of 4 weeks, in the manner known to law.

The Tribunal made it clear that as explained by the Hon'ble Supreme Court in cases where

the quarries are situated within 10 km, no permission will be granted. In light of this the application was dismissed.

Environmental Clearance

Mohar Singh Yadav
Vs.
Union of India & Others

Original Application No. 128 of 2015
Miscellaneous Application No. 363 of 2015

Coram: Justice Swatanter Kumar, Dr. D.K. Agrawal
Keywords: Power Industry, Environment Clearance, Thermal Power plants
Decision: Application disposed of (with directions)
Dated: 15th September 2015

The application was made against the Tribunal under Section 18 read with Section 14 and 15 of National Green Tribunal Act, 2010 praying for cancellation of Environment Clearance granted to Lalitpur Power Generation Company Ltd., vide order dated 31st March 2011.

Lalitpur Power Generation Company, who was Respondent no. 6 in this case, had proposed to establish a 3× 660 Mega Watt Imported Coal based Power plant at villages Mirchwara and Burogaon of Lalitpur Distt. Ministry of Environment, Forest and Climate Change granted clearance to the same on 31st March, 2011.

Cause of action of the application made by the Applicant was that there was breach of the terms and conditions provided in Environment Clearance by Respondent and also other illegal activities were done by him, primarily:

1- That the project proponent had constructed a wall which obstructed the flow of river Sajnam and Utari, two primary rivers bordering the area and used largely by farmers and native inhibitants.
2- The project proponent was drawing water from river Sajnam in an unauthorised manner and illegally from a Check Dam, an impermissible point.

The first issue in this case was, whether the present application was barred by time?

The contention of the Respondents was that since the clearance application was granted to them on 31st March, 2011 and the current application was presented on 20th April, 2015, nearly two years have passed since cause of action arose and therefore this application is barred by time and beyond the purview of Section 14. While according to the Applicant he has not contended legality of clearance but illegal activities undertaken under the garb of that clearance certificate reflected in his RTI application dated 29th November, 2015 thus computing the period to be only of six months.

The Tribunal herein rejected the objection raised by Respondent and stated that the Applicant had complete *locus standi* to bring an application since he is a resident of the area and is claiming that the ecology is being disturbed and they only became aware of the same on 29th November, 2015.

According to the Applicant there were two fundamental breaches done by the Respondent (enlisted above) The Respondent denied any activity that was conducted against terms and conditions of Environment clearance. The State of U.P. also supported his case and said that they have entered under an agreement to provide 80 cusecs of water to the Respondent. MoEF also took the stand that there was no breach on the part of Respondent in this case as they have monitored the project on regular intervals. As far as the establishment of Check Dam was concerned, it has been done through the NGO for betterment of the farming community as well as for recharging of ground water. The only dispute which requires

some consideration is that the drawl of water of 10 cusecs from the Burogaon Check Dam was not very proper.

After the discussion, the Tribunal did not find any merits in the application made by the Applicant. The only considerable ground was extraction of water from the check dam. Tribunal therefore dismissed the original application and passed following directions:

1- Project proponent is to complete RajghatPipelne for withdrawal of water for the power plant within 3 months from the order so that the extraction from check dam could be stopped.
2- Officers from MoEF, CPCB, UP Pollution Control Board and Irrigation Department would conduct inspections and ensure that temporary extraction of water from the Buragaon Check Dam does not cause any adverse effect on Agricultural purposes and recharge of ground water.
3- The committee shall also submit a report to the Tribunal in case any unauthorised or excessive withdrawal of water from the Check Dam takes place.
4- Once the pipeline is completed, the project proponent would not be permitted to withdraw water from the check dam.

U.P. State Industrial Development Corporation
Vs.
Cheif Secy. Govt. Of U.P. And Others

Review Application No. 22 of 2015
(M.A. NO. 789, 790 & 791 OF 2015, 851 & 852 OF 2015)
in
Original Application No. 177 OF 2013

Coram: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Mr. Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr.Ranjan Chatterjee
Keywords: UPSIDC, Encroachment, Section 19(4) (f) NGT Act
Decision: Applications disposed of (with clarifying directions)
Dated: 15th September 2015

The Respondent no. 4, who is a Journalist, had filed O.A. No. 177 of 2013 with a prayer that the Respondents in the said main application be directed to remove all the encroachments made on the ponds and other water bodies as per list attached to the application.

The U.P. State Industrial Development Corporation (UPSIDC) then filed Review Application No. 22 of 2015 under Section 19 (4) (f) of the National Green Tribunal Act, 2010 (for short 'NGT Act') read with Rule 22 of the National Green Tribunal Practice and Procedure Rules, 2011 (for short 'Rules of 2011), seeking not only the review of the impugned order but even for setting aside the Judgment dated 3rd December, 2014, passed by the Tribunal in Miscellaneous Application. According to the review Applicant, they were not a party to the petition or the application which has been disposed of by the Tribunal.

Feeling aggrieved from the above Judgment of the Tribunal, the review Applicant preferred a statutory appeal before the Hon'ble Supreme Court of India being C.A. No. 12382 of 2015 titled as Uttar Pradesh State Industrial Development Corporation v. Sushil Raghav and Ors. This appeal was dismissed by the Hon'ble Supreme Court of India, while granting liberty to the review Applicant to approach the Tribunal.

In furtherance to the permission granted by the Hon'ble Supreme Court of India, the Applicant has filed the present review petition.

The Tribunal therefore found a committee to undertake and answer the following questions so that it could pass any clarificatory directions while declining to review the judgement:

A) How many water bodies are in existence in the area in question including Khasra No. 469?

B) What are the constructions raised on or around the water bodies, pond or otherwise?

C) When and with whose sanction were these constructions raised?

D) Notice to be served on all the concerned parties and a reasonable opportunity of being heard shall be given to them.

E) The Committee will also submit whether any part of the graveyard falling in Khasra No. 319 has been encroached upon by construction of the road.

F) Whether there has been any adverse environmental and ecological impact and whether there has been any contamination of ponds and other water bodies in that area?

M.A. No. 851 of 2015 was filed by the petitioner for condonation of delay of approximately 240 days in filing the present review petition. The present application for

review was filed on 3rd August, 2015. Consequently, in this application the delay in filing the present review application was condoned.

M.A. Nos. 789, 790, 791 and 852, all of 2015 were applications filed by the review Applicant seeking exemption from filing certified copies of the Annexure, typed copies of the illegible Annexure and from filing English translation of Hindi documents/Annexure respectively, filed along with the application. Since the matter has already been heard on merits and is being disposed of finally by this judgment, all these applications had become infructuous and were disposed of as such.

Fair Log Warehousing and Trading (P) Ltd.
Vs.
Kerala Coastal Zone Management Authority and Anr.

Application No.286 of 2014

Coram: Justice Dr. P. Jyothimani, Prof. Dr. P.R. Nagendran
Keywords: Kerala Coastal Zone Management Authority, Non-Development Zone
Decision: Application allowed
Dated: 15th September 2015

This application is filed to set aside the order of the Kerala Coastal Zone Management Authority viz, the 1st Respondent, pertaining to the property of the Applicant consisting of 91.70 acres of land. The lands which belonged to the Applicant was proposed to put up a warehouse in an extent of 2431 sq.mon the ground floor. It was with that proposal, the Applicant had approached the 2nd Respondentpanchayat for the purpose of obtaining building permission. The panchayat referred this matter to 1stRespondent, Kerela Coast Zone Management Authority due to the notion that under the notion that the Applicant's property lay within the CRZ Zone and therefore the Coastal Regulation Zone Notification, 2011 will apply.

The first Respondent, on inspection found that the land was situated in Non-Development Zone and hence denied the grant of permission for construction of the warehouse. It is against this that the Applicant had approached the Tribunal.

The Tribunal in this case observed that the impugned decision taken by the 1st Respondent has no legal basis to stand at all and stands set aside with a direction to the second Respondent to consider the application for building permission on merits and in accordance with law on the ground that the land in question was not within the CRZ and to pass appropriate orders within four weeks from the date of receipt of the copy of this order.

Miscellaneous

G. Jeyaprakash
Vs.
The Chairman, Tamil Nadu Pollution Control Board and Others

Application No.220 of 2014

Coram: Justice Dr. P. Jyothimani, Prof. Dr. P.R. Nagendran
Keywords: Aqua Foods, Packaged Water Plant, PCB
Application: Disposed of with directions.
Dated: 15th September 2015

The application was for the closure of units of the 4thRespondent, M/S SMR Aqua Foods as it was found that generator set is being used by the 4th Respondent against the order previously issued by Tribunal and the unit is being run without consent and the Pollution Control Board.
The prayer was to take action against the 4th Respondent for his unlawful operation of the packaged water plant located in Umaiyalpuram village, SevinthilingapuramPanchayat, MusiriTaluk, Trichy District and also to close the packaged water plant operated by the 4th Respondent.
Tribunal disposed of the application by directions to the State Pollution Control Board to take steps to close the unit and not to operate it until PCB's consent.

John Wilfred and Others
Vs.
Tablets (India) Ltd. and Anr.

Application No.269 of 2014

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Boiler, State Pollution Control Board, noise pollution, water pollution
Application: Disposed of with directions
Dated: 16th September 2015

This application is filed by few of the residents of Tondiarpet for a direction against the 1stRespondent Tablet (India) Ltd., to relocate the boiler to a suitable location, control air, noise and ground water pollution and also for a direction against the second Respondent, the State Pollution Control Board to effectively supervise the said operations so as to enable the habitants in the neighbourhood to live in a safe and comfortable state, free from pollution.

The case of the Applicant is that the first Respondent is having a factory / work premises adjacent to their residential area. On the south west corner of the premises of the first Respondent a boiler has been put up some 35 years ago and the said boiler emits noise as well as fine chemical and coal dust and thereby polluting the entire area. According to the Applicant the dust which is released from the said boiler is reaching up to 400 sq.ft area and there have been several complaints by the people living in the area of health being affected due to the pollution, . Therefore, the present application had been filed for the relief as stated above.

The first Respondent in the reply dated 19.5.12 has informed the State Pollution Control Board that the unit has proposed to install cyclomax dust extraction system for the boiler emission which has advantage over the scrubber in reducing overall noise level and chimney corrosion. It is also stated that the unit has installed sound proof enclosure for the induced draft fan provided for boiler emission let out and the unit has also requested 12 weeks time for the supply and installation of cyclomax system.

The Tribunal was of the view that after hearing the respective counsel and going through the entire records as well as the documents filed by his parties, we see that the first Respondent company which has been in existence from 1966 is having the said boiler on the south west corner place for the past 40 years and there has been no complaint so far, which fact has not been denied by the learned counsel appearing for the Applicants.

The Tribunal was satisfied that there is absolutely no pollution caused by the conduct of the first Respondent and the request made by the learned counsel appearing for the Applicants that by shifting the existing boiler to some other area in the same place is not going to cause damage is not acceptable. If really pollution has been caused by the boiler which is situated in the present area, by shifting it to some other place is not certainly going to solve the problem. It made it very clear that looking from any angle the Applicants are not entitled to any relief.

It also directed that the Pollution Control Board shall have periodic visits, irrespective of any complaint from any person and scrutinise the efforts taken by the 1st Respondent for the purpose of abating pollution and also suggest ways to mitigate the same.

With these directions, the application was disposed of.

J. Antonyraj
Vs.
The District Collector, Karur District and Others

Application No.166 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Explosive Usage, Crusher Unit, Noise Pollution, dust pollution
Decision: Application disposed off with directions
Dated: 21st September 2015

M.A.224 of 2015 was filed by the Applicant for amendment in respect of the distance criteria. The application stood allowed. This Application 166 of 2013 was filed by a neighbouring farm holder for a directionagainst the first Respondent District Collector to monitor and regulate the use of explosives in the 3rd and 4th Respondent units and also for a direction against the 2nd Respondent to close the said units. According to him, the conducts of the 3rd and 4th Respondent crusher units were causing noise pollution. That apart, the dust pollution caused by virtue of the explosive had affected the neighbouring fields which were used for agricultural operations. Due to air pollution a show cause notice was issued on 11.6.2013 and direction for closure was made and subsequently various requirements of rectification have been carried out and it was found to be true at the time when the unit was in operational condition. However it appeared that the Respondents 3 and 4 have applied for consent and by virtue of the order of stay granted by the High Court, the consent to operate was given, pending disposal of the writ petition. Even though it was stated that the High Court had dismissed the writ petition holding that the B.P.No.4 dated 2.7.2014 is valid, it was left to the Board to decide whenever the issue arises as to which of the units were to be closed.

The board had made the following suggestions in respect of the 3rdRespondent unit:

i. To construct compound wall of height 15 feet on northern side in addition to green belt;
ii. To provide wind arrester net for 5 feet above the compound wall on northern and eastern side.

In respect of the 4th Respondent, the suggestions made by the Board were:

i. The construct compound wall of height 15 feet with green belt on eastern side adjacent to its quarry.
ii. To provide wind arrester net for 5 feet above the compound wall located on the eastern side adjacent to crusher and quarry.

The Tribunal ordered compliance with these conditions issued by the boards within six months. Also it was made clear that in respect of silica dust stated to be stored already in the premises of the 4th Respondent, the same shall be removed by them within the above said period, and water sprinklers should be used for the purpose of preventing dust pollution.

Kamburam Dharma Paripalana Araya Samajam v. Kozhikode Corporation and Others

Application No.331 of 2013 (SZ) (THC)
[W.P. (C) No. 24035 of 2009, High Court of Kerala at Ernakulam]

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Coastal Regulation Management Authority**,** illegal construction activities
Decision: Application Dismissed
Dated: 22nd September 2015

This application was taken on file of this Tribunal by an order of transfer of the Writ Petition (C). No. 24035 of 2009 from the High Court of Kerala at Ernakulam by an order dated 12.09.2013.

The Petitioner *Samajam*is a registered society which represents the traditional fisher folks and their grievance is about the indiscriminate and illegal construction activities being carried out in the *Kamburam*Beach which falls within the Coastal Regulation Zone-II (CRZ-II) area by the builders/developers including the 6th Respondent which would have an adverse impact on the coastal environment thereby affecting the day to day lives of the members of the Society.

The Petitioner put forth that the permission granted by the Respondent Nos.1 to 5 to the builders is in utter disregard to the building rules and in violation of the instructions given by the Coastal Regulation Zone Management Authority (CRZMA). The writ petition was filed as the concerned authorities did not act upon the grievance of the Petitioner and as the activities were violative of the fundamental rights guaranteed to the Petitioners under Art.14 and 21 of the Constitution of India.

The Respondents filed their respective replies to the Writ Petition and to the application challenging the averments made by the Applicant. The 1stRespondent put forth that it had granted building permits to the 6th, 8th and 9thRespondents at a relevant point of time wherein the constructions were permissible within CRZ –II area and they were under the *bona fide* belief that no separate prior clearance from the CZMA or such a reference for clearance was available in the CRZ Notification, 1991. The 5th Respondent stated that Consent to Establish was granted by them to the 6th, 8th and 9th Respondents after necessary verification of their proposal of waste water management and location of the sewage treatment plant. The 6th Respondent had obtained the renewal of Consent to Establish for the term up to 14.07.2014. The 8th Respondent had obtained the renewal of Consent to Establish for the term up to 31.10.2015.

On the above pleadings, the following questions were formulated for consideration by the Tribunal.
i) Whether the Petitioner is entitled for a declaration that the 6th, 8th and 9thRespondent builders/ developers have no right or authority to carry on construction activities in the *Kamburam*Beach adversely affecting the coastal environment.
ii) Whether it is necessary to issue directions to the Respondent Nos. 1 to 5 not to permit any builder or developer to carry out any construction in the said beach.

Advancing the arguments on behalf of the Applicant it is submitted that the Applicant society represents the traditional fisher folks of *Kamburam*beach area whose livelihood is dependent on the fish catch and marine ecology of the area.

The very intention of the CRZ Notification, 1991 was to protect the livelihood of fisher folks and the cultural entity and ecology of the coastal areas. The commercial construction of flats by the 6th, 8th and 9th Respondents was destroying the ecological balance of the area. Without obtaining any consent from the 4th Respondent KCZMA or MoEF&CC those Respondents were carrying on their construction activities in CRZ-II area.

The Applicant prayed for following reliefs:
i) A declaration by the builders/ developers including the 6th Respondent has no right or authority to carry on construction activities in the *Kamburam*beach adversely affecting the coastal environment.
ii) Direct Respondent nos. 1 to 5 not to permit any builder or developer to carry out any construction in the said beach.
iii) Direction to the 5th Respondent to carry out extensive study on the adverse impacts of construction activity now being damned by builders and developers.

The Tribunal, in its discussion said that the very inherent purpose of the EP Act, 1986 was to ensure that the activities are controlled according to the law and the Central Government had chosen to dedicate and invest the 4thRespondent with powers to do so. While the 6th, 8th and 9th Respondents had applied and the 4th Respondent authority had granted clearance in accordance with law, no reason was noticed to interfere with these orders. Apart from that, as stated above, on inspection the CESS had also reported that the building constructions made by the Respondents were very much permissible in law though they were in the CRZ-II zone.

Due to the abovementioned reasons, the application was dismissed.

Waste Management
Polluter pays principle

Parminder Singh and Others
Vs.
Punjab Pollution Control Board and Others

Original Application No. 35/2013 (THC)

Coram: Justice Dr. P. Jyothimani, Justice U.D. Salvi, Prof. A.R. Yousouf, Mr.Bikram Singh Sajwan
Keywords: Hazardous Waste, Chemical Industries, polluter pays
Decision: Applications Disposed off (with costs)
Dated: 23rd September 2015

The Applicants filed Civil Writ Petition No. 3481/ 2007 on the file of the High Court of Punjab & Haryana, alleging that Respondents 4 to 7 were polluting the environment by not complying with the provisions of Hazardous Wastes (Management and Handling) Rules 1989, affecting their Fundamental Rights guaranteed under article 14 and 21 of the Constitution of India. All the ten petitioners were residents of different villages in Tehsil Bhawanigarh, Dist. Sangrur (PB), which are in the proximity of 1-2 kilometres from the area where the industrial unit "M/S Matharu Chemical Industries" (later on renamed as M/S MahalaxmiOrgochem Industries) of Respondents No. 4 and 5 was situated. According to the petitioners the said unit was manufacturing H-acid, i.e. Sodium Salt, which is highly toxic in nature and the waste material, from the process of manufacturing is highly hazardous to the environment. The said Respondents did not dispose of the waste material from the manufacturing process, including by-products, all of which is hazardous in nature. It was found by authorities that The Industry in question violated all the above mentioned terms and conditions, more or less for the whole period of its operation at the site. No record was maintained in respect of Gypsum and Iron oxide, which because of the presence of quantities of naphthalene based compounds qualified to be treated as hazardous wastes and neither of these materials was stored properly and laid on the premises in a scattered manner without proper cover. Even the most hazardous incinerated ash was kept in the open for more than two years.

The Tribunal therefore concluded that the project proponents had not obtained consent for a considerable number of years and even during the period of consent they did not act as per the terms contained therein and that there was a clear breach in respect of handling of hazardous waste, therefore it decided a relief which included remediation process. The first step that Tribunal ordered was removal of hazardous waste stored in that area in the form of sludge. The second step was purification of water in the area surrounding the unit.

It was also observed by the Center that the liquor and other waste present in the solar evaporation ponds may be treated as hazardous waste and lifted and transported as it is or after sufficient treatment. It was also stated that contamination of top soil within the premises of the unit, especially with iron oxide and gypsum sludge may be taken care of.

It was held by the Tribunal that the 8thRespondent, Tara Singh, who was the purchaser of the land of company, could not be held responsible for the pollution caused by other Respondents. It was also held that the 9thRespondent, who was the director of Matharu Steel Pvt. Ltd. cannot disown his obligation by merely transferring his interests in the unit.

Accordingly, the Tribunal passed the order that:

1. The Application No. 35/2013 stood allowed.
2. It was declared that the Respondent 4 , 5 units also represented by Respondent 6 & 7 as the directors of the 4th and 5th Respondent company and Respondent 9, by their industrial activities have polluted the air, land and water including the ground water and produced and stored hazardous waste unauthorisedly and without any proper disposal.
3. The Respondent 4 to 7 and 9 shall remove all hazardous waste still lying in the premises of M/S MahalaxmiOrgchem Industries under the joint supervision of the Central Pollution Control Board and the Punjab State Pollution Control Board at their cost.
4. The Respondent 4 to 7 and 9 shall effect remediation of water contamination in the premises of the unit and all the surrounding areas polluted by the activities of the unit at their cost. This shall be done under the joint supervision of the CPCB and PPCB, who shall suggest the suitable method through appropriate agency/agencies. The steps shall include prevention of agricultural activities in the surrounding area as suggested by the Boards and all other precautionary methods. The said process shall be completed in a period of eight months.
5. The CPCB and PPCB shall file periodical report about the progress in the Registry of the Principal Bench of the NGT, once in a month commencing from 01- 11- 2015.
6. That apart, the Respondents 4 and 5 along with their Directors Respondent no. 6 and 7 and 9 shall pay an amount of Rs. Two crores under the principles of 'Polluter Pays' in the following proportion i.e Respondent no. 4 along with all its Directors including Respondent no. 6 and 7 to the extent of 40% jointly, Respondent no. 5 and all its Directors to the extent of 30% jointly and the remaining 30% by the 9th Respondent. The said amount shall be deposited within 8 weeks from today with the Principal Secretary, Ministry Environment, State of Punjab, who shall keep the said amount in a separate account and spend for providing safe drinking water and better solid waste management facilities to the people.
7. The Respondents 4 to 7 and 9 shall be liable to pay cost of Rs. 25000/ to be payable to the learned counsel for the Applicant/Amicus and another amount of Rs.50000/ to the Applicants as cost.

M.A. No. 21 of 2014 did not survive as the main application No. 35/2013 (THC) had been finally disposed of.

Bharat Jhunjhunwala
Vs.
Union Of India And Others

Original Application No. 161 OF 2014

Coram: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. A.R. Yousouf, Mr. Ranjan Chatterjee
Keywords: Hydro Electric Project, environmental damage, restitution, Polluter Pays
Decision: Application disposed of (with directions)
Dated: 24th September 2015

The Applicant had approached the Tribunal under Section 14 (1) read with Section 15 of the National Green Tribunal Act, 2010 with a prayer that the Union of India, MoEF Respondent no. 1, should be directed and ordered to remove the Vishnu Prayag Hydro Electric Project (for short 'the Project') located on the upper reaches of River Alakananda in Uttarakhand. He also prayed for restitution of the environmental damage resulting from this project and order payment of compensation to affected parties on "Polluter pays principle" as according to him, this project had adverse and irreparable environmental impacts. He alternatively, prayed for a study to be commissioned on this project on various aspects including cost benefit analysis and the study may be required to assess the position under following alternative scenarios: with project as present; with implementation of mitigation measures; with redesign of project; and with removal of project.

The Applicant had specifically stated that he did not challenge the Environmental Clearance or the Forest Clearance in the present application, but the various environmental impacts of the project which had come to light, which were either not known or not appreciated in their perspective earlier, were the primary issues being raised in the present application.

Following were the grounds on which the Applicant challenged the project:
1) Cost benefit analysis was opposed to the continuation of the project.
2) The project fell within the Nanda Devi Biosphere Reserve or buffer zone thereof.
3) The running of the project would have adverse environmental impacts upon the environment and ecology of the area which is an eco-sensitive area. It was not possible to take any mitigative steps.
4) The wildlife connectivity to the river had been completely hampered.
5) The restricted e-flow was adversely affecting the downstream and was causing damage.

The Tribunal in its discussion found that Applicant had only placed general studies on record to show that hydro projects in eco sensitive area were not a safe option. All these studies were generic, and were not project centric. They agreed with the Respondents that the studies carried out in US by itself could not be made applicable to the project in hand. These studies were of some consequence when the project was conceptualized. The project had been completed in the year 2006 and immediately thereafter had become operational and had been operating successfully for all these years. No study or definite material had been placed before the Tribunal which would show that the project caused an imminent threat to the environment and ecology. It was also held that there was no substance in the contention of the appellant that it was not possible to take additional or more effective

mitigative steps and the hydro project needs to be demolished. It would cause huge economic loss and it would also result in serious deficiency in power generation.

The Tribunal held that a Committee should be constituted to suggest if any further mitigative and regulatory steps are required to be taken by the Project Proponent. The Tribunal formed a committee comprising of- Chief Wildlife Warden; Uttarakhand; Principal Scientist, WII, Dehradun; Director, MoEF (Involved in Hydro-Power Projects); and Principal Scientist, Wadia Institute of Himalayan Geology to suggest mitigating and regulatory steps if any. With this direction the application was disposed of.

Disha-A-Life School and P.K.D .College Of Education and others
Vs.
The State of Tamil Nadu and others

Application No.106 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Water pollution, air pollution, contamination, Online Monitoring System, consent to operate
Decision: Application Disposed of
Dated: 24th September 2015

This application was filed for a direction against Respondent Nos. 2 & 3 to close the units of 4th and 5th Respondents for violating the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and also for a direction against Respondent Nos.2 & 3 and Respondent Nos.4 & 5 to remediate the lands and ground water from the contamination caused. They were said to have caused air and water pollution by virtue of metal dust emanated from the said units which are deposited on the surrounding lands. It is also stated that the illicit discharge of liquid effluents along with chemicals and used sand outside the unit's premises has contaminated the channels and the polluted the water resources. It is also complained that the units have not erected the 'Online Monitoring System'.

On an earlier occasion, the Tribunal had directed closure of the units on the ground that 'Online Monitoring System' had not been established by the 4th and 5th Respondents. Subsequently, it was informed that such Online Monitoring System had been installed which was also confirmed by the State Pollution Control Board. Thereafter it was informed that in so far as it related to the 4th Respondent, the 'consent to operate' had been renewed up to 30.06.2016 and the 4th Respondent had also installed the 'Online Monitoring System'. Likewise, the consent to operate was also granted at an earlier occasion to Respondent 5.

Therefore, Respondent 4 was allowed to function thereby adhering with terms and conditions of the pollution board, with this, the application was closed.

Air, Water & Noise Pollution
Polluter Pays Principle

S. Vishnuvarma
Vs.
M/s. Appollo Distilleries Pvt. Ltd.

Application No.437 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Distillery Unit, air pollution, waste water, noise, Environment Clearance
Decision: Application disposed of (with costs)
Dated: 24th September 2015

This Application was filed by the Applicants praying for passing an order of permanent injunction restraining the Respondent Company from operating its distillery unit at Billakuppam Village, Gummidipoondi Taluk, Thiruvallur District.

M/s. Appollo Distilleries Pvt. Ltd., the Respondent Company, was functioning within 0.5 km radius from the residential area of their village and was producing alcoholic drinks. The company emanated an unbearable bad odour due to which the people of the village felt uneasy to breathe. The air pollution was also causing severe health problems like miscarriage, nausea etc., to the pregnant women in and around the village. A small canal was situated on the back side of the Respondent Company and the waste water discharged from the company was mixed with the water flowing in the canal. Whenever the canal ran dry, the waste water discharged from the company alone flowed through it. An open well nearby the Respondent Company which was used in the summer particularly had been found to be contaminated after the starting of the company. Sometimes the company generated much noise which would be due to the release of air and this causes serious hearing problems to the residents as many were not able to recognise any sound for some period even after the noise stops. Preventive Medicine and the report dated 09.10.2013 stated that the water was not fit for consumption and has got high levels of chemicals. The Respondent Company had not obtained license/approval/permission/certificate, as the case may be, from various statutory authorities

The Primary issues were:

1. Whether the industrial activities of the Respondentcompany fall within the ambit of EIA Notification, 2006 and if so, Respondent Company should be restrained from carrying on its operation for not obtaining Environmental Clearance (EC) from the competent authority.
2. Whether the activity of the Respondent Company requires prior approval under the MSIHC Rules, 1989?
3. Whether the activity of the Respondent Company requires licence under the Industrial (Development and Regulation) Act, 1951 (IDR Act, 1951) read with New Industrial Policy, 1991 from the competent authorities.
4. Whether the Respondents industry had been causing pollution by letting waste water outside its premises.
5. Whether there were habitations, water courses and wells within the prohibited radius of the location of the Respondent's unit.
6. Whether the Applicants were entitled to the relief of permanent injunction as asked for

and what reliefs, the Applicants were entitled to.

Decision and ratio by the Tribunal were:

1. M/s. Appollo Distilleries Pvt. Ltd., which produced alcoholic drinks such as beer etc., was situated within a radius of 0.5 km from the residential area of the village and had been causing different types of pollution such as air, water and noise enormously.
2. The Respondent company was situated on agricultural lands and thus it was not an industrial area/estate and company was to have obtained prior EC from MoEF since it was located in an area which was not notified as industrial use zone and the industrial activities of the Respondent Company fell under the distillery industry under Category A in Schedule to EIA Notification, 2006 under Serial No. 5(g).
3. As per the condition of the New Industrial Policy, 1991, if the investment is above Rs. 500 million, EC needs be obtained. As the Respondent Company investment was above Rs. 500 million, it would be clear that the Respondent Company was illegally carrying on its activities in violation of law. Hence, it had to be restrained.
4. The Ethyl Alcohol had been notified as a hazardous chemical under Serial No. 248 of Part-II of Schedule I of MSIHC Rules, 1989. Under Rule 7 of the MSIHC Rules, 1989, for undertaking such an activity, prior approval is mandatory.
5. In so far as air pollution was concerned, everyone in the families in the village was affected by the bad odour emanating from the Respondent Company.
6. The Expert Committee while concluding the report pointed out that M/s. Appollo Distilleries Pvt. Ltd. had a system to treat effluents and achieve Zero Liquid Discharge (ZLD). Hence, at present the allegations made by the Applicants complaining of letting the treated and untreated effluents and waste water outside its premises cannot be accepted though, the Applicants have come with the case stating that the Respondent company had dug an lengthy artificial ditch parallel to the natural water course and allow the waste water into the ditch which is connected to the natural water course outside their premises using a small piece of plywood board. Pointing to Section 24 (1) of the Water Act, 1974, the Applicants submitted that the water pollution caused by the Respondentcompany was in violation of Section 24 of the Water Act which was a criminal offence under which a person was liable to be sentenced. In the instant case, the Respondent Company was knowingly allowing the wastewater to mix with the natural water course.
7. The agriculturists of the villages depended on those water sources. In view of extraction of groundwater by the Respondentcompany for its production, many wells in the villages had dried up with not even a single drop of water due to the presence of the Respondent Company. Water was not available in wells and bore wells for carrying on agriculture. Thus, in the instant case, there was absolute violation of the right to clean environment included in the right to life and personal liberty guaranteed to the citizens under Art.21 of the Constitution of India.

Tribunal thus made following orders:

1. To appoint an independent agency in order to ascertain the factual circumstances in respect of pollution in canal, pollution of ground water, open wells and other water bodies alleged to have been caused by the Respondent industry
2. It is conscious of the fact that at the time of inspection by the Expert Committee there is no concrete evidence linking the pollution of the water to the discharge from the unit and no definite opinion has been given in that behalf by the Expert committee.

However, as held above, the only plausible reason that appears is as a result of clandestine discharge of the untreated waste either in the past or even at the present the water analysis results gave higher levels of pollutants in the samples taken in the canal at the points located nearest to the unit and downstream.

3. While recording its appreciation on the steps and efforts taken by both the Applicants in their endeavor for filing this application after collecting vast amount of data and materials, the Tribunal was of the considered view that the Respondent industry should be directed to pay a cost of Rs. 1 lakh to each of the Applicants within a period of 4 weeks from the date of this judgement.

With above directions, the application was disposed of.

T.S. Sekar
Vs.
Secretary to Government Ministry of Environment, Forests and Climate Change, Union of India, New Delhi

Application No. 32 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Madras Aluminium Company Ltd., red mud dust pollution, agricultural lands
Decision: Application Disposed of (with directions)
Dated: 24th September 2015

The main grounds on which the Applicant approached this Tribunal was that he was aggrieved with the red mud dust pollution caused by the Madras Aluminium Company Limited (MALCO) Respondent and inaction of the Chairman Tamil Nadu Pollution Control Board and the District Environmental Engineer Tamil Nadu Pollution Control Board as the red mud dust pollution is causing irreparable damage to the agricultural lands, contaminating the ground water in the area and also polluting the residences. Consequently the whole atmosphere was spoiled creating health hazard to the inhabitants of the area where the Applicant resided. He also expressed his apprehension that dumping of such huge quantity of red mud adjacent to the Mettur dam on the banks of the Stanley reservoir may lead to a catastrophe if any untoward incident happened. He quoted the incidence of breaching of red mud pond belonging to Vedanta Group which owned M/s. Sesa Sterlite Limited in the year 2011 causing flow of caustic toxins into the Vasundhara River in the State of Orissa and if such disaster happened at the dumping site of the Madras Aluminium Company Limited (MALCO) Respondent industry which was located at a stone's throw distance from the Mettur dam, it would affect the drinking water supply to millions of people.

The facts of this case were that the Madras Aluminium Company Limited (MALCO), the Respondent filed detailed replies brining out all the relevant facts and agreed that about 20 lakh tonnes of red mud solid waste and residues were dumped in Government alienated land from the year 1995 till the Madras Aluminium Company Limited (MALCO) Respondent company stopped its activities in the year 2008. Out of this, 1756855 tonnes of red mud had been removed for utilising in the cement industries which was a unique and environment friendly method of disposal of such a solid waste. The Madras Aluminium Company Limited (MALCO) Respondent Company had not only taken the above precautions but also installed water sprinkling system to prevent fugitive emission. However since there was no movement of vehicles in the dumping site as no transportation of material was being done, there was hardly any dust emission. However, it was a fact that during the inspection of the site conducted by the TNPCB officials the water sprinklers were found stolen/removed.

The main question was that whether the Respondent Company had not yet taken up afforestation work at the site which is a permanent solution to stabilize the dump and prevent any sort of pollution being caused from the left out red mud residue which is nothing but solid waste lying in heaps at the dumping site.

The Respondent in his reply stated that due to various problems associated with disposal of

red mud causing environmental and ecological problems it was a challenge to the aluminium industry for sufficient treatment and storage of high volume industrial waste such as red mud. Alkali seepage into the underground water, instability of storage, fine dust particles of the red mud getting air borne impacting plant life and causing pollution were the main problems encountered in the handling the red mud. In fact it required vast area for disposal.

The following orders were made by the Tribunal:

1. First the Madras Aluminium Company Limited (MALCO), the Respondent Company, proposed to level the ground and undertake top soil management. Based on the feasibility study, a pilot project for raising plantation with suitable species over a small extent of area would be taken up and this work was expected to be completed by the end of August, 2016 followed by green belt development and maintenance involving an area of 10 acres by the end of 2017. The Respondent company was directed that instead of waiting for such a long period, they could commence the green belt project during 2015-2016 north-east monsoon season itself and take up planting with suitable species as recommended by the aforesaid reputed institutes at least over an area of 2-5 acres duly procuring required seedlings/saplings from the government nurseries or private nurseries instead of waiting till 2016-2017 monsoon season and based on the outcome of the Pilot study the Respondent company could plan the establishment of a full fledged nursery for planting in the rest of the area during 2016 – 2017 monsoon period and completed by next year i.e. 2017-2018. Once the entire 70 acres of the dumping site is fully afforested and the dump is stabilised there will be no chance of causing pollution or damaging the environment.
2. Till the entire site was stabilized and raised with successful green belt, the Respondent Company shall not give any chance of runoff to occur into the adjacent water bodies and also prevent dust pollution for which sprinklers have to be re-established and made to operate ensuring that they are duly protected from vandals. If required the company shall erect a foolproof fence and also strengthen the existing bunds to prevent any chance of runoff into the adjacent water bodies as rightly pointed out by the Applicant that if any such disaster takes place in the Mettur dam millions of people depending on the dam for the drinking water will be affected.
3. The Respondent TNPCB officials shall periodically inspect the site, review the progress made on the green belt development and stabilization of the site and ensure that the whole process is completed in the next 2 to 3 years.

With these directions, the application was disposed of.

R. ThillaiVinayagam
Vs.
The State of Tamil Nadu Rep by its Secretary and Others

Application No. 27 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Sewage Pumping Station, environmental impact, septic tank
Decision: Application dismissed
Dated: 24th September 2015

The application was filed to restrain the 1st and 2nd Respondents from establishing a Sewage Pumping Station at the Park at Tamil Nagar, Ramapuram, Chennai and to direct the proposed Sewage Pumping Station to be relocated to an alternate site. The said premise was situated at Tamil Nagar Colony which comprised of 62 independent houses that faced a common vacant area which had deliberately been left vacant and earmarked by the 3rd Respondent as a park. The Applicants came to know that the 1st and 2nd Respondents' proposal to construct a Sewage Pumping Station in the middle of the park was sought to be established by them despite the objections of the residents. The Applicant alleged that establishing and operating of the Sewage Pumping station at the park was likely to be environmentally hazardous and any malfunction during the course of the operation of the said Sewage Pumping station would have adverse environmental impact.

A common reply was filed by the 1st and 2nd Respondent, wherein they put forth that the pumping station had to be set up for the proper maintenance of the sewerage system which would prevent environment pollution. On the pleadings, the following questions were formulated:

i) Whether the Applicant was entitled for an order of direction to 1st and 2nd Respondents from establishing a Sewage Pumping Station at the place earmarked for that purpose.
ii) Whether it was necessary to issue a direction to relocate the proposed Sewage Pumping Station to an alternative site.
iii) To what relief the Applicant was entitled to.

The Tribunal in its decision concluded that establishment of a septic tank would bring positive effect on the environment. And that the residents in every area need to have a proper sewerage project for safe disposal of sewage not only to protect the environment but also their health.

It was submitted by the 2nd Respondent that the proposed Sewage Pumping Station would be constructed with RCC wall, therefore there would be no chance of seepage or leakage. Also, when the sewage entered into the Pumping Station from the houses in closed drains full safety would be maintained and the same would be immediately pumped. There was no possibility for any bad odor emanating or affecting the environment since the domestic sewage received through closed pipes is pumped out instantaneously to the treatment plant. It was also submitted by the 2nd Respondent that for pumping the sewage submerged motors would be used and if so vibration of the motor could be minimised with meagre sound production and thus there is no possibility for noise pollution.

Thus, the Tribunal on being unable to notice any force in the contentions put forth by the Applicant's side and no grounds either to injuct the proposed Pumping Station by the 2nd Respondent in Tamil Nagar or shift the same to any alternate site dismissed the application for being devoid both on merits of facts and law.

Miscellaneous

Sri C. Murugan Proprietor M/s. Manjunath Dyeing Works
Vs.
The Member Secretary Karnataka State Pollution Control Board

Application No. 155 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Consent
Decision: Application Disposed of
Dated: 29th September 2015

The only grievance ventilated by the Applicant was that though all the conditions stipulated therein were strictly complied with by the Applicant and an application was filed for Consent before the Respondent KSPCB, the application was returned instead of granting Consent without properly considering the same.

In answer, it was submitted by the counsel for the KSPCB that the order dated 15.5.2015 of the Tribunal was not strictly followed by the Applicant. However, it remained a fact that the application filed by the Applicant on 31.7.2015 for granting Consent was returned by the KSPCB and it remained in the hands of the Applicant. There could not be any impediment for giving permission to the Applicant to re-present the application before the Respondent KSPCB and issue a direction to the Respondent KSPCB to consider the application.

Accordingly the application was disposed of.

Vilappilsala Samyuktha Samara Samithi
Vs.
State of Kerala & Ors.

Application No. 247 of 2014

With
Application 248 of 2014
And
Application No. 429 of 2013
(W. P. (Civil) No. 1306/2012, High Court, Kerala)
(connected matters)

Coram: Justice Dr. P. Jyothimani, Dr. R. Nagendran
Keywords: Solid Waste Treatment Plant, Environmental Protection laws, violation
Decision: Application allowed
Dated: 30th September 2015

All the three applications raised a common question relating to the removal of the Solid Waste Treatment Plant (MSW Plant) established by the Thiruvananthapuram Corporation (the Corporation) in the area belonging to Vilappil Panchayat and solid waste accumulation in the said area. The residents of Vilappilsala Panchayat complained against the Corporation in an attempt to establish a Solid Waste Treatment Plant without obtaining necessary approval and sanction from the State Government, Pollution Control Board (SPCB) and other agencies. The resident of Vilappilsala hasd prayed to forbear the Corporation, the second Respondent therein from proceeding with the activities of handling, dumping, storing, treating and disposing of garbage, filth and solid waste of Corporation in its Plant situated at Vilappil village, which was in violation of Environmental Protection laws and causing various diseases to the people.

The facts of the matter were:

1. The Corporation, without obtaining prior approval from Government and in violation of Kerala Municipality Act, 1994 purchased 12.5 acres of land in Chavalloor ward No. III of Vilappilsala Panchayat in the year 2000 by a private sale. Thereafter, it entered into an arrangement with a private company and established the MSW Plant. This was opposed by the people in the area. It was their case that corporation had made further purchase of lands in Chavalloor ward totally to an extent of 46.5 acres.
2. One of the main rivulets namely Meenampally originates from the mountain and passed through the Vilappil Panchayat and reached Karamanariver which was the main source of drinking water to the people of VilappilPanchayat and the Corporation. It is stated that after acquiring 46 acres, the Corporation had started dumping waste in the entire land during night times which had become very huge in quantity in the year 2010. The use of 46.5 acres of land as a dumping yard of solid waste of Thiruvananthapuram for utilising in the Plant in 12.5 acres was opposed by the people of the Panchayat
3. The High Court by looking into the complaints of residents had appointed an Advocate Commissioner and the SPCB which was subsequently impleaded as a party to conduct an inspection. Both of them conducted inspection and filed separate reports. The Commissioner found that the Plant is causing pollution to the entire locality.
4. The PCB also took a stand that operation of the Plant would cause serious pollution.

After purchasing further extent of land, the Corporation had started dumping waste collected from the city of Thiruvananthapuram which had resulted in leachates seeping into the land flowing out from the Plant to the entire adjacent area including paddy field, wells, ponds and natural streams especially Meenampally rivulet causing environmental pollution. Due to this, the entire soil in the area had changed not only in colour but also in odour of water in the wetland, paddy fields etc., affecting the day to day life of residents of the entire Panchayat. This caused not only damage to the cultivation and cattle farming but also serious health problems including skin diseases and respiratory problems to the people. As there was a State-wide agitation against this conduct of the Corporation, the officers of the Government as well as the SPCB including the District Medical Officer conducted inspection and found that the functioning of the Plant had created serious environmental problem. When this was referred to the Government by the Corporation, the decision of the Panchayat was stayed by the Government and the matter was referred to the Ombudsman. It was stated that subsequently, the Kerala Government Cabinet on 21-12- 2011 had decided to close down the Plant.

Therefore, the present applications were filed on legal grounds that the Government and Municipal Authority were to manage the waste generated within the Municipal Area and that as per the provisions of the MSW Rules, 2000, the Municipal Authority had the responsibility of establishing infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste within its territorial area. In cases where the area falls under the jurisdiction of the Development Authority which consist of more than one Municipal Authority, it is the duty of the Development Authority to identify the site. However, in this case it was by purchase of land in the Vilappil Panchayat privately, the Corporation had illegally set up the MSW Plant. Further, before setting up of such Plant a comprehensive environment study should have been made and necessary approval should have been obtained from Urban Development Department along with the Municipal Authority. Such a landfill site should be away from habitation clusters, forest areas, water bodies, monuments, national parks, wetland and other places of cultural, historical and religious importance. The Corporation has no authority to do anything about its municipal activities outside its territorial area without prior concurrence of the Development Authority and the State Government. In as much as the Corporation had no interest in the problems of Vilappilsala Panchayat and its people, it would not have studied the environment and health impact of such a project on the people living within the territorial jurisdiction of the Panchayat.

The Tribunal carved out following issues for discussion:

1. Whether the Corporation of Thiruvananthapuram was entitled to set up a Municipal Solid Waste Treatment Plant outside its territorial jurisdiction and in the extent of land purchased by it in Vilappilsala Panchayat to treat the solid waste generated within its corporation limit?
2. Whether the Corporation of Thiruvananthapuram had followed the provisions of the MSW Rules, 2000 in setting up of the Plant. If not, what were the remedial measures to be taken by the Corporation of Thiruvananthapuram?

The functions relating to the Solid waste Management including preservation of water are all the mandatory functions of the Village Panchayat. In such circumstances such powers cannot be given up by the village Panchayat to benefit certain Municipalities unless there is consensus between the Municipality and the Panchayat. The consensus itself can be arrived at by village Panchayat in the meeting of duly elected members. While so, on the factual

matrix of the case when the Vilapplilsala Panchayat had taken objection to the conduct of Thiruvananthapuram Municipal Corporation in setting up a MSW Plant in Vilappilsala territory, certainly such plant cannot be installed there at all as per the spirit of the constitutional mandate.

On the factual matrix of the case, either under the Constitution of India or MSW Rules, the Thiruvananthapuram Municipality had no manner of right to put up its MSW Plant in Vilappilsala Panachayt. That apart, not even one of the conditions contemplated under MSW Rules was proved to have been complied with including the site selection, transportation, processing, and disposal. There was no documentation regarding landfill and there is nothing on record to show that environmental studies have been undertaken before the entire process was commenced. Therefore, there was a substantial and procedural violation in respect of all the acts done by the Corporation in establishing the said MSW Plant at Vilappilsala.

No "Precautionary Principle" was applied by the Corporation before establishing the MSW Plant at Vilappilsala. According to the Tribunal, this was not only a transgression by the Corporation into the territory of the Panchayat but also violative of Article 48A of the Constitution of India, read under Article 21 of the Constitution regarding right to life. The conduct of the Corporation certainly affected the people of Vilappilsala Panchayat and their right to live in pollution free environment. Furthermore, the Cabinet of the Kerala Ministry appeared to have taken a decision to defer the project and shift it to some other place.

The court decided that the damages caused by this most unlawful and anti-environmental and improper Plant to the people of Vilappilsala as well as the people living in downstream of Karamana river was enormous. It was the duty of Thiruvananthapuram Municipal Corporation to remove the entire Plant put up in the territory of Vilappilsala Panchayat and restore the land to its original position by rectifying all defects. While doing so, the Corporation shall take steps to make thorough scientific study for the purpose of removal of the Plant without causing anymore environmental damage and the entire activity shall be done at the cost of Thiruvananthapuram Municipal Corporation.

Following orders were given by the Tribunal:

1. Accordingly all the applications stood allowed and it was declared that setting up of MSW Plant by the Corporation at Vilappilsala Panchayat was illegal and the same was to be removed by the Corporation;
2. Within a period of 4 weeks from the date of receiving this order, the Corporation shall form a Task Force with an exclusive mandate to complete the said process
3. The Task Force shall identify a suitable location to establish the MSW Plant within the Corporation area following the norms and guidelines as per the MSW Rules, 2000 and make application and obtain prior Environment Clearance (EC) from SEIAA or MoEF& CC as applicable, following the due process of law. Prior to the commencement of shifting the existing municipal solid waste dumped at Vilappilsala site, a detailed study shall be undertaken following the advice of the Task Force
4. Under no circumstances shall the Corporation commence shifting of the waste till all the facilities in the new project are ready for commissioning.

Vinod Kumar Kori
Vs.
State of Madhya Pradesh & Ors.

Original Application No. 337/2014 (CZ)

Coram: Mr. Justice Dalip Singh, Mr. B.S. Sajwan
Keywords: Waste management, slaughter house
Decision: Application disposed of
Dated: 30th September 2015

This application was filed seeking directions to respective authorities for closure and relocation of a slaughter house, revocation of consent in operation of the same and penalties along with regular action reports.

The Tribunal made the following observations:

i. That the waste and water generated could not be accommodated in the facilities provided and was discharged into the nallah passing behind the Slaughter House which ultimately joined the Betwa river.
ii. Further, there was no arrangement for waste management and animal market was operating adjacent to the Slaughter House.
iii. Hence, the activity carried out in the Slaughter House was not in accordance with the pollution norms and rules framed and the same were flouted contemptuously.
iv. Furthermore, it was observed that despite opportunities being given to the Bhopal Municipal Corporation (BMC) to improve the conditions and adequate arrangements for collecting the entire effluent generated in tank and to stop the discharge of effluents in the nallah leading to the Betwa river (tributary to the River Ganga) the same was not done.
v. The Tribunal also opined that no consent to establish and to operate were obtained from the MPPCB and no document giving any indication about any alternate sites were provided even though opportunities to do the same were duly given.
vi. Guidelines given in *Laxmi Narayan Case* were also ignored.

The Tribunal eventually gave directions on the following lines:

i. Closure of disputed Slaughter House.
ii. District Administration, State Government and Municipal Corporation to take positive steps to find an alternate site for establishment of Slaughter House according to the procedure established by law and guidelines of the Hon"ble Supreme Court in case of *Laxmi Narayan Modi Vs. Union of India*.
iii. Funds be raised by the BMC against the land available at the present site on the principle of "Land Bank".
iv. Meanwhile, the present site be allowed to operate up to 30.06.2016 on the condition that all pollution control measures as required be put into place by the BMC.
v. A special officer for the abovementioned purpose be designated to ensure compliance of measures.
vi. The MPPCB to carry out periodical inspections every week of the present site.

Miscellaneous

KJ Tomy
Vs.
State of Kerala

Application No.292 of 2013(SZ)(THC)
W.P.13927/2012 High Court of Kerala

Coram: Justice Dr.P. Jyothimani, Prof. Dr.R. Nagendran
Keywords: Not maintainable
Decision: Application withdrawn
Dated: 24th September 2015

The application before this Tribunal is not maintainable. Accordingly the applicant was permitted to withdraw the application with liberty to approach the appropriate forum for enforcing his legal remedy in the manner known to law.

No cost.

Miscellaneous

D. Nirmal Kumar
Vs.
Tamil Nadu Pollution Control Board

Application No.108 of 2014 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Enquiry, liquidation, CDMA
Decision: Disposed Of
Dated: 23rd September 2015

The prayer in the application was limited to the extent of directing respondent Nos.2 and 3 to conduct an enquiry against respondent Nos.4 and 5 (promoters and builders) since the concerned property belonged to a company which went under liquidation and whose building was being demolished by the former respondents during pendency of proceedings by the Applicant's father (former employee of the company under liquidation) in the High Court.

The Tribunal directed the CMDA to lawfully consider the application since the matter was still pending before it.

Suo Motu
Vs.
Government of Andhra Pradesh

Application No.270 of 2013 (SZ) (Suo Motu)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Ground water pollution, Solar Thermal Power Plant
Dated: 23rd September 2015
Decision: Disposed of (without costs)

In this case the issue that gave rise to the complaint was that the project proponent (one of the respondents) wanted to set up a Solar Thermal Power Plant which would be likely to draw water from the ground water level resulting in the depletion of the same which would cause pollution and would ultimately lead to shortage of drinking water as well as water to be used for agricultural operations.

It was contended by the 4th Respondent that a permission to reply must to provided to him post which it should be open to the other Respondents to take appropriate decision.

The Tribunal eventually opined that the Project Proponent be given an opportunity to explain all queries raised by the PCB post which it must pass appropriate orders.

Miscellaneous

K. Gnanasekaran
vs.
Executive Officer, Selection Grade Town Panchayat, Vellore

Application No.210 of 2014 (SZ)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Unit, closed
Decision: Application Dismissed
Dated: 21st September, 2015

The Tribunal opined that nothing survives in an application when a unit (facility) has been closed as per previously given instructions. Further, the Tribunal also opined that prior consent and license from the State PCB would be required in the event the Respondent wants to restart operations in the same premises.

Miscellaneous

Venkatesan
vs.
Govt. of Tamil Nadu

Application No.134 of 2015

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Sand quarry, conceded
Decision: Application disposed of (no costs)
Dated: 15th September 2015

The relief claimed in the application was for a direction against the 2nd respondent District Collector, Villupuram not to permit any one to carry out sand quarry in Melpayswarnavoor and Kelpayswarnavoor panchayats in Villupuram District.

The prayer in the application was conceded by the Government Pleader. Application was disposed of with no cost.

M/s. Standard Colours
Vs.
Tamil Nadu Pollution Control Board

Application No.93 of 2014

Coram: Justice Dr. P. Jyothimani, Prof. R. Nagendran
Keywords: Pollution, Monitoring Committee
Decision: Disposed of
Dated: 14th September 2015

This application was filed to direct the first respondent not to insist the petitioner to join the trial run undertaken by the fourth respondent (being CETP). The Tribunal even discussed the importance of the Monitoring Committee appointed by the Division Bench of the Madras High Court in this Order going on to state that the State PCBs should have closed the erring units once the Monitoring Committee found irregularities.

Further, the Tribunal also stated that the Chairman of the PCB (while passing final orders) should take into consideration the minute details given by the Monitoring Committee. Furthermore, the Tribunal also directed for the Monitoring Committee to be given compensation for having availed their services.

Environmental Clearance
Compensation & Restoration

Sunil Kumar Chugh & Anr.
Vs.
Environment Dept. Government of Maharashtra

Appeal No. 66 of 2014

Coram: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: Environmental clearance, building project, construction, Notification of 2006, polluter pays principle, Environment Management Plan, Environmental Relief Fund
Decision: Disposed of (with costs)
Dated: 3rd September 2015

This was an appeal assailing the grant of Environmental Clearance on 25th March, 2014 to a building project of the respondent no. 5-M/s Piyali Builders at CS No. 2 (part) and 89 (part), Salt Pan Division, admeasuring 6535 sq. meters (total plot area), Punjabi Colony, J.K. Bhasin Marg, Sion Koliwada, Mumbai, broadly on two grounds: firstly, having started construction without obtaining Environmental Clearance and in violation of imperatives prescribed by the Ministry of Environment and Forests (MoEF) vide Office Memoranda dated 12th December, 2012 and 27th June, 2013 and secondly, the project had been constructed in violation of Town Planning laws and Development Control Regulations. Both the appellants claimed to be residents of Mumbai having deep concern about the environment degradation occasioned by the said project coming up in the locality where they resided.

According to the appellant, the Slum Rehabilitation Authority had recorded in clear terms that the proposed built up area of the project exceeded 20,000 sq. meters and thus required Environmental Clearance from MoEF, Government of India and the same would be insisted upon before approval of further CC (Commencement Certificate) to 1st rehabilitation building. Notwithstanding the fact that the Notification of 2006 clearly stated that no construction of any nature shall commence without obtaining prior Environmental Clearance, yet the construction of the project started in full swing and the authorities including the Environment Department of Government of Maharashtra, failed to take any effective action against such construction despite various complaints lodged by the appellants, both with the Environment Department and the law enforcing agencies. The project proponent applied for the Environmental Clearance to the State Level Environment Impact Assessment Authority after the commencement of the said project i.e. on 21st February, 2011. The appellants sought to quash the Environmental Clearance dated 25th March, 2014 granted to the project in question with consequent reliefs of stoppage of project work, demolition of the construction carried out till this date, invocation of Polluter Pay Principle for the violation of Environmental Clearance Regulations and such other action against the public officials who abdicated their statutory powers for according their favours by granting EC in question on following amongst other grounds:

I. Despite a clear perception that the project built up area exceeded 20,000 sq. meters and as such required prior Environmental Clearance, the respondent no. 2 SEIAA and respondent no. 3 SEAC turned a blind eye to the construction carried out by the project proponent.

II. The Slum Rehabilitation Authority had conceived development of three separate buildings on the plot in question under DP Reservation of Municipal Office; (i) Independent Municipal Office having 5 floors with 10 parking spaces on a separate carved out plot; (ii) Rehabilitation Building; and (iii) Building for sale.
III. However, the project proponent merged the Municipal Office building with the Rehabilitation Building thereby putting strain on the environment which fact was ignored by the respondent no. 2 and 3.
IV. The appellants despite making complaints and sending notice under Section 19(1)(b) of the Environment (Protection) Act, 1986 was not given a proper opportunity of hearing and the Environment Clearance was granted upon one sided representation made by the project proponent.
V. The project proponent suppressed the fact of commencement of construction of sale building from the respondent no. 3 SEAC and continued with the same.
VI. The construction of the project was raised to such an extent as to render the collection of base line data and making provision for parking spaces as per the National Building Code of India in compliance with SEIAA condition a virtual impossibility. Grant of Environment Clearance to the project after its work had been substantially accomplished was violative of Article 14 of Constitution of India for having discriminated with the one who is required to obtain prior EC before proceeding with the construction work.
VII. Un-wholesome compromising of Town Planning stipulations relating to fire safety and marginal open spaces, recreation ground and parking spaces.
VIII. Responsibility of public servant who permitted construction to be carried out without EC under Section 17 of the EP Act, 1986, particularly, when there was no provision under the Environment (Protection) Act, 1986 to regularise the construction which had come up in violation of environment laws.
IX. 'Precautionary Principle' and 'Polluter Pays Principle' needed to be invoked for quashing of EC and imposing compensatory cost on the project proponent for having carried out construction without obtaining prior EC so as to account for loss to environment.

For answering the present controversy which arose as a result of the commencement of the construction in question prior to the grant of environmental clearance, it was necessary to know what happens upon the violation of the EC Regulations, 2006 by undertaking construction as aforesaid. Gap between the commencement of construction (as pleaded by the project proponent as having commenced upon the issuance of Commencement Certificate dated 07-09-2006) and making of the application for grant of EC on 21-02-2011, gave scope for concealment or misrepresentation of certain facts pertinent to grant of EC, and, therefore, possibility of any mischief in furnishing information/Data as required to be furnished vide Form-1 and Form-1A could not be ruled out.

In the given fact situation, the Tribunal concluded that the Environment Management Plan must have been submitted long after the commencement of actual construction. Environment Management plan, therefore, could be suitably tailored to match the conditions for obtaining EC at the time of making the application, when things get altered due to previous construction and there remains no source of assessing its efficacy or validity with reference to the things obtaining at the time of commencing the construction.

Whatever little window that was offered to what happened after submission of an application for grant of Environmental Clearance in the present case was through the

minutes of the meeting of SEAC placed. From the reading of Minutes of 18th Meeting of the SEAC dated 19th -21st September, 2013, it could be gathered that Environmental Management Plan was inadequate or in-appropriate as regards parking for rehab portion, rain water storage capacity, STP for rehab portion, construction and demolition, Waste Management, solar PV Panels, and yet the construction of 13,734.03 sq. meters of rehabilitation component had already come up. Nothing more needed to be stated as regard the environmental damage incurred due to the transgressions of EC Regulations, 2006 by undertaking construction prior to grant of Environmental Clearance. SEAC further noted the shortcomings in the project vis-à-vis parking in rehab portion, rain water storage capacity, STP for Rehab portion, solar PV panels and construction and demolition waste management plan as noticed previously and merely recorded that the project proponent had complied with or agreed to comply with the requisition made in respect of the said shortcomings and thereafter proceeded to decide the grant of Environmental Clearance in favour of the project.

In the instant case, it was evidently clear that the project proponent violated the EC Regulations, 2006 by undertaking construction before the EC was granted and thereby denied the realistic environmental safeguard to be in place. It was also seen that inadequate recreational space and parking space was proposed in the said project. This begged a pertinent question as to whether EC in question needed to be set aside and the construction which included rehabilitation component/building comprising of 263 flats, 61 shops, 4 tenements of welfare centre, 4 tenements of Balwadi, society office and Municipal office should be exposed to its logical consequence. The Tribunal opined that when there was some space left for providing certain safeguards and seek recompense for the violation of EC Regulations, it would be rather harsh to set aside the EC and instead the project proponent needed to be saddled with appropriate measure of compensation and directed to make certain amends in the construction of sale component building, the construction of which had been stopped vide order dated 30th April 2014 to maintain status quo so as to provide adequate parking spaces as required, to avoid spilling over of the vehicles on the public streets and cause congestion of traffic leading to adverse impact on the environment.

Therefore, the Tribunal disposed of this appeal with following directions:

1. The respondent no. 5 shall pay and remit a sum of Rs. 3 crores to the Authority, specified under sub-section (3) of section 7(A) of the Public Liability Insurance Act, 1991 to be credited to the Environmental Relief Fund within a fortnight.
2. The respondent no. 5 the project proponent shall pay an amount of Rs. 32,63,600/- being market price of the deficient recreational area as on March, 2014 to the Maharashtra Pollution Control Board for incurring expenses on Environmental and ecological rehabilitation within a fortnight.
3. The respondent no. 5 shall make necessary amends in the construction plan of the sale building, get it approved as per law and make available additional parking spaces on adequate number of floors in sale building.
4. Construction of the sale building shall not proceed and no third party interest by way of sale, transfer, assignment, lease or parting with possession of any portion of sale building/component in any manner whatsoever shall be made unless the amounts as directed hereinabove are paid and necessary amends to comply with the directions to provide additional parking spaces as aforesaid are made.

The appeal thus stood disposed of with cost of Rs.1,00,000/- (one Lakh).

SP Muthuraman
vs.
Union of India
(with all other connected matters)

Review Application no. 20 of 2015
in
Original Application no. 37 of 2015

And
Review Application no. 21 of 2015
in
Original Application no. 37 of 2015

And
(M.A. nos. 696/2015, 697/2015, 723/2015, 729/2015 & 879/2015)
in
Original Application no. 37 of 2015

And
Review Application no. 24 of 2015
(M.A. nos. 809/2015)
in
Original Application no. 37 of 2015

Coram: Justice Swatanter Kumar, Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. M.S. Nambiar, Mr. Ranjan Chatterjee
Keywords: Review, Environmental Compensation, Code of Civil Procedure, 1908
Decision: Review Application disposed of with directions
Dated: 1st September 2015

The applications were all filed by different Project Proponents seeking Review/Modification/Clarification of the judgment of the Tribunal dated 7th July, 2015, in Original Application No. 37 of 2015 to the extent that the Environmental Compensation imposed by the Tribunal vide its judgment dated 7th July, 2015 be reduced and/or waived completely. Along with them, a Review Application No. 24 of 2015 was also filed by the applicant in Original Application No. 37 of 2015 seeking review and further directions in terms of the said judgment of the Tribunal praying that the authorities be directed for demolition of the projects in question.

There are limitations on exercise of Review Jurisdiction of the Courts or Tribunal. A review is by no means an appeal in disguise where by an erroneous decision can be guided. An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record. Besides this, the court has also stated that there is clear distinction between the erroneous decision and an error apparent on the face of the record. The first can be corrected by the higher forum while thelatter can only be guided by exercise of Review jurisdiction.

The Tribunal was of the considered view that the contentions of these review applicants were without merit. It was neither an error apparent on the face of the record nor a reason sufficient enough to call for review.

As far as the fixation of Environmental Compensation directed to be paid by the Project Proponents was concerned, the Tribunal heard the parties at length. The contentions of accrued interest, liability of the Project Proponents to the financial institutions, 3rd party interest and other contentions sought to be raised now were considered by the Tribunal and finally direction for payment of Environmental Compensation were passed. If any of these parties are aggrieved from the findings recorded in the judgment of the Tribunal then they had the remedy available to file a statutory appeal before the Supreme Court of India. These applicants not only stated that they had not filed any appeal, but even that they did not challenge the findings in the judgment except praying for reduction of the amount of the Environmental Compensation. This, in the considered view of the Tribunal, could not be a ground that would fall in any of the class of cases contemplated under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. It was exactly a case of arguing a review petition under the guise of an appeal.

All these applications were beyond the purview and scope of review as contemplated under Order XLVII, as they amounted to reagitating the issues already argued and decided by the Tribunal. Despite having held as above, the Tribunal still proceeded to examine the merits of the other contentions raised by the parties. In terms of the directions contained in the judgment of the Tribunal dated 7th July, 2015, all the Project Proponents were required to pay five per cent of the project cost as Environmental Compensation. None of the Project Proponents had paid the entire amount due from them and in any case within the time stipulated in the judgment of the Tribunal dated 7th July, 2015. The plea of economic and business hardship had been taken up by all of these Project Proponents as a primary ground, while praying for complete waiver and/or reduction of the Environmental Compensation which was required to be paid in terms of the judgment dated 7th July, 2015.

In view of above discussion, the Tribunal disposed of all these applications with the following order:

a) The Review Applications filed by the respective parties were patently beyond the purview and scope of Order XLVII Rule 1 of the CPC read with Section 19(4) of the Act of 2010.
b) Dehors the above and in any case, the Tribunal declined to reduce and/or waive the liability of the Project Proponents on account of environmental compensation, as directed in terms of the judgment of the Tribunal dated 7th July, 2015.
c) However, time was extended for payment or remainder thereof, payable by each of the Project Proponents by a further period of two weeks. This shall be computed from the date of this order and not from the date on which the period for payment lapsed in terms of theJudgment dated 07th July, 2015.
d) The buildings belonging to the two Project Proponents, M/s. Y Pondurai and M/s. Jones Foundations Pvt. Ltd., shall be de-sealed, while the projects of the other two Project Proponents, M/s. Dugar Housing Ltd. and M/s. SPR & RG Construction Pvt. Ltd. would remain sealed, till further orders of the Tribunal, which would be passed upon submission of the final report by the Committee.
e) The committee constituted under the judgment now chaired by Jt. Secretary, MoEF&CC shall submit its final report to the Tribunal at the earliest. The members of the committee were named/ listed by the Tribunal in this judgement.

f) The Chairperson of the Committee was directed to take immediate steps to ensure submission of the complete and comprehensive report to the Tribunal in terms of the judgment dated 7th July, 2015 without any further delay.
g) The relief of demolition prayed for in R.A. No. 24 of 2015 was declined at this stage. Further direction in that behalf shall also be passed by the Tribunal upon submission of the final report by the Committee.

With the above directions all these applications were disposed of, however, without any order as to costs.

Water Pollution

Sarang Yadwadkar & Anr.
vs.
The District Collector & Ors.

Application No. 119/2015(WZ)

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Water pollution, idol immersion
Decision: Disposed of (no costs)
Dated: 24th September 2015

This application was filed against the alleged environmental degradation and loss of drinking water caused due to excessive release of portable water from a Dam for the purpose of idol immersion.

The Respondents contended that they have taken precautions and have the provision of artificial ponds along with provisions for disposal of sludge.

The Tribunal directed the Pune Municipal Corporation to select new sites for 'landfills' to account for the due disposal of sludge and to provide for more artificial tanks (in the manner as suggested in the oral judgment). Additional directions were given to effectuate the same.

CRZ

Shri Kiran Krishnan
Vs.
State of Goa & Ors.

Application No. 49/2015(WZ)

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: structures, sea beach, Coastal Regulation Notification 1991/2011
Decision: Disposed of (no costs)
Dated: 16th September 2015

This application pertains to illegally constructed structures on a sea beach.

The Tribunal, in this oral judgment, opined that there was no prohibition imposed against the GCZMA to take action under the Coastal Regulation Notification 1991/2011. Further, nothing survived in the application owing to the finding that the GCZMA has passed an order of demolition since the concerned area was a "No Development Zone".

Miscellaneous: Cutting of trees

Smt. Sunita D' Souza
Vs.
Municipal Corporation of Greater Mumbai

Application No. 58 of 2015

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Felling of trees, limitation, damages
Decision: Application partly allowed with costs
Dated: 15th September 2015

The applicant filed this application against the allegedly illegal felling of tress done without permission of the Tree Officer which lead to "irretrievable damage" to the environment.

The Respondent contended that the application was barred by limitation and that just three trees were felled and not fifteen (as had been alleged). It was contended that other trees were cut down due to them being dangerous owing to various stated reasons.

The Tribunal opined that the application was not barred by limitation. However, it was also stated that there was no proof of fifteen trees as alleged by the Applicant but there was (in fact) unauthorized felling of three trees which lead to loss of green cover leading to environmental damage.

The Tribunal directed the Respondent to pay damages and plant adequate number of trees, in the manner as provided in the judgment.

Miscellaneous: Cutting of trees

Shri Surendra Kale & Anr.
Vs.
Shri Dhananjay Kulkarni & Ors.

Application No. 112/2014 (WZ)

Coram: Mr. Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Cutting of trees, housing society, limitation
Decision: Disposed of (no costs)
Dated: 10th September 2015

This application was filed against the illegal and unauthorized cutting of trees standing within the premises of a Housing Society.

The Respondents contended that this application was filed in a vindictive manner and that the Applicants were present during the meeting wherein the trimming of certain trees was discussed and agreed upon. Further, it was contended that this application was filed beyond limitation. Other Respondents (Seva Kendra and the Pune Municipal Corporation) also provided their defenses.

The Tribunal opined that this application was a result of the internal rivalry and feud amongst the members of the Society and that the Applicants had not approached the Tribunal with clean hands. Further, it was stated that the application was barred by limitation and it did not even mention the "society" as a Respondent. Lastly, the Tribunal directed the Pune Municipal Corporation to develop a compliance verification mechanism.

Mr. Babubhai Ramubhai Saini
Vs.
Gujarat Pollution Control Board

M.A.NOS. 146, 150, 151, 152, 153, 154, 155, 156,157,158,159,160,161,176 OF 2015
With
Application No.21 of 2015

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Pollution, discharge / emission, coal-based gasifiers
Decision: Disposed of (no costs)
Dated: 8th September 2015

This application was filed seeking directions against pollution caused due to ceramic, silicate and frit industries and for closure of all coal-based gasifiers being illegally used in the same. It was further argued that industries were being run without due verification of polluting discharge/emission standards. Lastly, the Applicants suggested the use of less polluting fuels instead of coal and gasifiers.

The Respondents contended that the end product of the entire gasification process was ash which makes the process eco-friendly.

The Tribunal stated that the CPCB and GPCB are the Statutory Environmental Regulatory Authorities to abate pollution. Certain directions as regards consent to industrial units vis-à-vis was also stated for the GPCB and CPCB. The Tribunal eventually directed the formation of a Committee comprising one officer each nominated by the Chairman of CPCB and Chairman of GPCB along with concern Head of Department, Environment Engineering Department of M.S. University, Baroda, shall hold a meeting of which Zonal Officer of CPCB, Baroda (Vadodara), would act as convener in furtherance of which mandates were accordingly provided. Furthermore, gasifiers were directed to have necessary consent of GPCB.

FC

The National Highways Authority of India
Vs.
Chief Secretary & Ors.

Application No.57/2015

Coram: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Compensatory afforestation, National Highway
Decision: Disposed of (no costs)
Dated: 3rd September 2015

This application was filed seeking a diversion of certain forest land to non-forest purpose in an area along with necessary approvals and associated necessary forest clearance approvals for widening of a National Highway.

The Tribunal provided certain conditions to be met for such an activity as regards the widening of the road, speed breakers, signage, controlled movement of traffic, measures to combat heavy rainfall in the area and of adequate number of under passes for animals. Further, 2% of the project cost be paid for wildlife conservation and management since it was opined that compensatory afforestation needs to be carried out (the necessity of which was also discussed in the judgment). Furthermore, the forest department was directed to submit reports through its internal mechanism and the NHAI was directed to get involved in monitoring the progress of compensatory afforestation as part of corporate environmental governance.

Mayur Harishchandra Raskar & Anr.
Vs.
The Saswad Mali Sugar Factory & Ors.

Application No.42 of 2013

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Co-generation power, River Regulatory Zone (RRZ) Policy, consent to establish, limitation, precautionary principle
Decision: Application disposed of
Dated: 3rd September 2015

This application was filed seeking a declaration that a resolution passed in EGM with respect to implementation of a new co-generation power plant be held ultra vires and the setting aside of a 'Consent to Establish' along with grant of consent to operate with stay orders regarding the same. The Applicants contended that the industrial development (construction of co-generation power plant) was a violation of the "River Regulatory Zone" Policy.

The Respondents contended that the abovementioned power plant would replace the presence and need for multiple small boilers.

The Tribunal discussed 'Consent to Operate' and 'Consent to Establish' and opined that the Applicants had neither applied for condonation of delay nor had communicated the order and so their claim as regards 'Consent to Establish' was declared barred by limitation. Further, as regards all other issues, the Tribunal stated that nothing survived in the application. Lastly, by applying the Precautionary Principle, the member secretary of MPCB to take a comprehensive view of pollution control.

Pollution

Dinkar Sitaram Dhulgand
Vs.
Utech Sugar Ltd. & Ors.

Application No.46/2015(WZ)

Coram: Shri Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Sugar industry, River Regulatory Zone (RRZ) Policy, consent to establish
Decision: Application disposed of
Dated: 2nd September 2015

This application was filed to challenge the consent to establish being granted to a sugar industry on the ground that no industrial activity could be permitted within a distance of 8 kms from the river as per RRZ policy. Further, the applicant also sought to challenge the new RRZ policy (now cancelled by the State of Maharashtra under the Resolution dated February 3rd, 2015).

Due to the new Resolution, the RRZ policy which required location of industry of Respondent No.1 to be established beyond 8 kms from the river, was recalled and became non-existent.

The Tribunal opined that in order to avoid conflict of decisions, on the same issue, the Application as regards validity and legality of Government Resolution dated February 3rd, 2015 in the context of instant Application should be left out unless and until the said PIL be either withdrawn or transferred to this Tribunal or otherwise is directed to be decided by this Tribunal under orders of the Apex Court.

The Tribunal eventually permitted the project activity inasmuch as the RRZ policy remained changed and regarded it as “fait accompli”. It was also stated that this decision should not be regarded as a precedent to other such claims.

Environmental Clearance

Lakhan Musafir & Ors.
Vs.
Sardar Sarovar Narmada Nigam Ltd. & Ors.

Misc. Application No. 74 of 2015
(Arising Out Of Application No.10 of 2014)

Coram: Shri Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Limitation, Res Judicata, locus standi
Decision: M.A. allowed; Application dismissed
Dated: 1st September 2015

This application was contended on the points limitation, applicability of the principle of res judicata, whether the applicant has locus standi and applicability of the Narmada Bachao Andolan vs. Union of India case. It was the case of the Applicants that the Respondents had encroached construction in respect of the Garudeshwar Weir project, without having obtained environmental clearance, without having carried out any environmental impact assessment and/or without having undertaken any environmental safeguards and measures.

This application was filed seeking reliefs for staying the ongoing construction in respect of Garudeshwar Weir which would be in contravention of provisions of the Environment (Protection) Act, 1986, Environmental Sub Group (ESG) and Relief and Rehabilitation Sub Group (RSG) of the Narmada Control Authority (NCA).

The Tribunal eventually held that the Application No. 10 of 2014 would be barred by limitation, the constitution of NCA will not oust the jurisdiction of the NGT in case the Application falls within the ambit of Section 14(1) of the NGT Act, 2010 and that the Application is not barred by res judicata.

NA

Prof. Mathews C. Varghese
Vs.
Kerala State Human Rights Commission

Application No.446 of 2013 (SZ)
W.P.No.22938 of 2008 (Kerala High Court)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. Nagendran
Keywords: Human Rights issue, jurisdiction
Decision: Application Dismissed
Dated: 30th September 2015

This application involved a human rights issue pertaining to the introduction of a vaults system in cemeteries.

The Tribunal eventually opined that it did not have jurisdiction over the matter (even though the State PCB stated that by the new method of vault there was a possibility of seepage of liquid from dead bodies) since there was no proper evidence as to such a claim.

CRZ

M/s. Pannaiyoor Regional Citizens Welfare Trust
Vs.
MoEF

Application No.05 of 2013 (SZ)
with
Application No.04 of 2014 (SZ)
Application No.69 of 2015 (SZ)
(Connected matters)

Coram: Shri Justice M. Chockalingam, Shri P.S. Rao
Keywords: CRZ Clearance, Fishing Harbour
Decision: Applications disposed of
Dated: 29th September 2015

An application was filed seeking directions to set aside the CRZ Clearance granted for construction of a Fishing Harbour. The clearance was subsequently cancelled by the MoEF & CC. Such a cancellation was, further, challenged.

The Tribunal opined that nothing remained to pursue since the clearance was cancelled.

Ossie Fernandes
Vs.
Union of India & Ors.

Application No.141 of 2014 (SZ)

Coram: Shri Justice M. Chockalingam, Shri P.S. Rao
Keywords: CRZ Notification, public hearings
Decision: Application allowed
Dated: 29th September 2015

This application was filed seeking a declaration of invalidity against public hearings conducted for Coastal Zone Management Plans along with directions against Respondents to re-conduct such hearings according to the CRZ Notification of 2011 and to upload CZMP of 1996 with maps, the Supreme Court judgment and newly prepared plans on the website of Appropriate Authorities.

It was contended by the Applicants that public hearings were conducted without maps (sans one corresponding to survey numbers) or old plans and neither was anything of that sort made available to the public. This made effective participation by the public impossible.

The Tribunal eventually opined that since the original plan could not be acted upon, the respondents have to follow guidelines by the Ministry of Environment, Forests and Climate Change along with a fresh preparation of CZMPs post which the plans need to be put in the public domain and necessary public hearings be convened and conducted. The previous public hearings were, therefore, held invalid.

Miscellaneous

Abu KA
Vs.
Mr. Joseph & Ors.

Application No.76 of 2014 (SZ)
W.P.No.31003 of 2009 (High Court of Kerala)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Consent to operate
Decision: Application disposed of
Dated: 11th September 2015

In this case, it was submitted on behalf of the 5th Respondent that 3 units were functioning without necessary licences from the Panchayat. In response to this, Respondent Nos.1 to 3 submitted provisions of Section 230, & 324 of Kerala State Panchayat Act which stated that when an application was made and not processed by the Panchayat within 30 days after the expiry of statutory period, licence would be deemed granted subject to the payment of necessary fees.

The Tribunal eventually directed the State PCBs to inspect all units to check compliance of necessary conditions.

NA

CV Johny
Vs.
State of Kerala

Application No.330 of 2013 (SZ)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Non appearance
Decision: Dismissed for non-prosecution
Dated: 10th September 2015

This application was dismissed for non-prosecution/ nonappearance of the Applicant from the beginning.

NA

Hassan Rawther
Vs.
State of Kerala

Application No.405 of 2013
(W.P.8656 of 2012 of Kerala High Court)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Non prosecution
Decision: Dismissed for non-prosecution
Dated: 2nd September 2015

Application was dismissed for non-prosecution. However, the Tribunal also opined that 'ordinary soil' has been included as a minor mineral the quarrying of which corresponds to certain restrictions.

Association of Environmental Protection
Vs.
State of Kerala

Application No. 392 of 2013
W.P.(C). 20266 of 2012 of High Court of Kerala

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Absence, construction
Decision: Application Dismissed
Dated: 1st September 2015

The absence of representation on behalf of the Applicant and the completion of the construction of a Lock-cum-Regulator resulted in the Tribunal ordering a dismissal of the present application since nothing survived in it.

Pollution
Consent to operate

S. Nujum Manjappara & Anr.
Vs.
State of Kerala & Otrs.

Application No. 79 of 2014
W.P. No. 24430 of 2012 of the High Court of Kerala

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Quarrying, closure
Decision: Application closed (no costs)
Dated: 1st September 2015

Application filed due to alleged adverse effects caused to the normal life of people due to quarrying operations of the Respondents.

The Tribunal opined that nothing survived in this application owing to the fact that the units were not in operation. Further, directions were given for closure of unit(s) unless lawful permit be granted by the appropriate authority.

Enviornmental Clearance

Pudiparthi Mallikharjuna Reddy
Vs.
The Union of India and Otrs.

Application No. 96 of 2015
AND
Application No. 144 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Mining operations, EIA report, Environmental clearance
Decision: Disposed Of (without costs)
Date: September 7, 2015

This application was filed seeking directions against the appropriate authorities (MoEF & CC, State of Andhra Pradesh and SEIAA) to take actions against private respondents for conducting mining activities without proper Environmental Clearance and against the extraction of silica sand.

The Tribunal opined that by simply filing the proposal in Form No. 1 and after expiry of 105 days the deemed provision will not come into operation (EIA Report is required to be submitted) and that prior EC is a condition precedent in respect of private respondents.

The Tribunal also allowed private individuals to remove mined minerals by issuance of dispatch permit and subject to the payment of necessary fee.

Pollution
Compensation & Restoration

M/s. Srinivasa Blue Metal
vs.
Chairman, Tamil Nadu Pollution Board
ORIGINAL APPLICATION No. 214 of 2013 (SZ)

Coram: Shri Justice M. Chockalingam, Shri. P. S. Rao
Keywords: Closure order, stone crushing unit, air pollution, noise pollution, Polluter pays principle
Decision: Disposed of
Date: September 14, 2015

This application was filed against a closure order and directions to the Tamil Nadu Electricity Board to disconnect power supply to the applicants' stone crushing units. It was contended by the applicants that they had complied with all the instructions given by the TN PCB pertaining to preventive and precautionary measures to control pollution.

The respondents contended that the applicants were found to be operating without consent and had not complied with APC measures. Further, complaints were received from the public regarding air and noise pollution.

The Tribunal opined that the applicants were in fact highly negligent and had violated the law in having operated the units and caused pollution in doing the same. Further, the Tribunal applied the 'Polluter Pays Principle' against the applicants.

The Tribunal eventually directed the applicants to pay damages to the Environment Relief Fund and ensure thick vegetation in the green belt. The Board was directed to consider applications seeking CTO.

Consent to operate

S. Niyas Ayirakuzhy & Otrs.
Vs.
State of Kerala & Otrs.

Application No. 406 of 2013
(W.P. 15674 of 2012 – Kerala High Court)

Coram: Shri Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Consent to operate
Decision: Application closed (no costs)
Date: October 5, 2015

In absence of any representation on behalf of the applicant, the Tribunal directed the Kerala PCB to verify validity of consents to operate and take necessary steps in furtherance of the same.

OCTOBER

Mrs. Anamika Amerkar & Anr.
v.
Goa Coastal Zone Management Authority

Appeal No. 06 of 1015 (WZ)

Corum: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Tenant, agricultural land, illegal construction, CRZ area
Decision: Disposed Of (With Costs)
Date: 1st October, 2015

By this Appeal, Appellants impugned the legality and correctness of order dated 19th, 2015, passed by Respondent No.1- Goa Coastal Zone Management Authority(GCZMA). Case put forth by the Appellants was that they were members of traditional fishermen community. By order dated 13th March, 1990, the Mamletdar of Salecete Taluka, declared Appellant No. 2- Gurudas, husband of appellant no.1- Anamika, as agricultural tenant of one-third part of land Survey No. 35/19 of village Colva, Salcete under Section 18 of Goa, Daman and Dio Agricultural Tenancy Act, 1964. He became a deemed owner as being protected tenant of one-third part of the land. On 25th April, 2000, a notice was served by the Administrator of Communidade, South Goa, under Article 371(2) and Article 372 of the Code of Communidades, directing them to vacate the property. The notice also called upon Gurudas to show-cause as to why he should not be evicted and why small structure erected in the land should not be dismantled. The Deputy Collector, Margao, demolished two parts of the structure without any notice. This was challenged before the Goa High Court. The writ petition was disposed of because only questions of fact were required to be determined and therefore, the appellants could approach the Civil Court. Appellants approached the Civil Judge, the suit was partly decreed against the administrator. Judith Almeida (Respondent 3) filed a complaint with GCZMA alleging the appellants had raised new construction with CRZ area without obtaining permissions of the Competent Authorities. A show-cause notice was served on Gurudas and thereafter demolition order was passed. This order was challenged before the NGT (Principal Bench), the appeal was disposed of with certain directions. The GCZMA again issued notice the Appellants and Judith Almeida. After assessing the records again, GCZMA came to the same conclusion. Order for demolition of impugned structures was passed as a result. The Appellants took an appeal to the NGT (PB) on technical deficiency of the required quorum. A re-hearing was required after availability of the due quorum in GCZMA. The original complaint of Respondent 3 filed against Respondent 4 with all other relevant documents were indicated in the show cause notice issued to the Appellants by GCZMA. The GCZMA held that the construction by Appellants was illegal and issued a fresh order of demolition under Section 5 of Environment(Protection) Act, 1986. In the Civil Court, Gurudas claimed legal right of tenancy to the extent of1/3rd area and that he was declared an agricultural tenant. Gurudas claimed that he was using 1/3rd of the land for agriculture where he had built a farmhouse which was being used as residence, store and a restaurant. His witness stated that Gurudas was using the land as Paddy Field and had put up a farmhouse which could be permitted under Section 33 of Agrarian Law.

The Goa High Court in reply of the Write Petition held that the one remaining structure should be protected from demolition for one month till Gurudas approached the Civil Court

for appropriate relief. Gurudas was asked not to construct any more structures. Despite this order again 3 structures were found- 2 newly built structures- being used for commercial purposes. The land was supposed to be used only for agricultural purposes and not for commercial purposes. Despite the knowledge that the construction of the 2 new structures was illegal and against the order of the High Court the Appellants went ahead with it. Gurudas had requested for regularization and permitting unauthorized encroachment of land, including construction standing over the tenanted area to be regularized, Administrator Communidade rejected the request. The site plan prepared by the Director of Settlement of Land Records showed that the impugned constructions were within CRZ area and constructed in contravention to provisions of the CRZ Notifications. The case of the Appellants that they were from the fishermen community had no standing as they had only talked about agricultural activities. The Tribunal held that the demolition of the illegal structures was correct. The Tribunal found no merit in the appeal and the case was dismissed with costs of Rs.20 lakhs as exemplary costs payable within 4 weeks to be deposited in the account of Collector, Goa to utilize the same for environmental reliefs and like activities, out of which Rs.2Lakh was to be paid to original complainant - Judith Almeida, as litigation costs.

B. Harikrishnan
v.
Kerala Environmental Impact Assessment Agency

Application Nos. 226 and 295 of 2014

Coram: Justice Dr. P. Jyothumani , Prof. Dr. R. Nagendran
Keywords: Kerala State Pollution Control Board, Crusher units, consent to operate
Decision: Disposed of (Without costs)
Date: 26th October, 2015

In the two applications, which were connected, the running of the crusher units was being challenged by the applicants.

The Tribunal took note of the fact that the applicants had been consistently not appearing before the Tribunal and on one occasion the learned counsel which was appearing for the applicants had also withdrawn his vakalat. Registry had sent notices to all the applicants. Therefore, it was clear that the applicants had no interest in prosecuting the application.

The Tribunal was informed that the Respondents 7&8 were carrying on the crusher units with licence and "consent to operate" from the Kerala State Pollution Control Board with certain conditions.

The Tribunal held that if on inspection it is found by the Board that there had been some deficiencies in complying with some of the conditions the Board shall take action by giving appropriate show cause notice. In so far as it related to the carrying on of the operations, the learned counsel appearing for the 8th respondent submitted that the quarrying operations were stopped.

The Tribunal directed the Board to continue to monitor and ensure that the said crusher units are operated only after obtaining necessary permission from the authorities concerned. The applications stood closed.

Bio Diversity Management Committee
v.
Union of India

Application No. 28/2013 (CZ) & Application No. 17/2014(CZ)

Coram: Justice Dalip Singh, Mr. B.S. Sajwan
Keywords: Biological Resource, Coal, Biological Diversity Act, 2002
Decision: Disposed of (Without Cost)
Date: 6th October, 2015

The application was filed under Section 14 & 15 of the NGT Act, 2010 by the Bio Diversity Management Committee (BMC), seeking certain reliefs. The prayer was amended why Miscellaneous Application by the Applicant. Respondents 1 & 2 opposed to the prayer sought on the ground that the Applicant was introducing an entirely new prayer arising out of an entirely new cause of action. The Tribunal permitted the Applicant to withdraw the Misc. Application with liberty to file new application seeking relief which was being sought through the Misc. Application. Accordingly, both the Original and Misc. Application were dismissed as withdrawn and a new application was filed.

The Applicant is a committee constituted under Section 41 of the Biological Diversity Act 2002 and Section 23 of the Madhya Pradesh Biodiversity Rules, 2004 for the purpose of promoting conservation, sustainable use, preservation of habitats, etc. such purposes. It was the case of the applicant that although Section 21 of the BD Act, 2002 confers powers on the NBA for determination of equitable sharing benefits even after more than 10 years of its constitution and after 7 years of constitution of the State Biodiversity Board (SBB) neither Respondent 1&2 obtained approval for commercial utilization not started sharing benefits with the BMC. The Applicant further contented that although Respondent 5 issued notice under section 7&24 of the BD Act the respondents did not share the benefits with the BMC and did not pay the fee levied by the BMC. Primarily, the Applicant stated that coal is a biological resource because its of plant origin. The main element in the plant material is carbon which gives coal most of its energy and, therefore, the Respondents No. 1 & 2 fall within the ambit of the BD Act, 2002 and are thus liable to share benefits with the Applicant. It was also submitted that Respondent no. 4, NBA, had failed to discharge their duties of determination of equitable benefits under Section 2 (g) read with Section 21 of the Act. Even Respondent 5 failed to discharge their statutory obligation of taking action against Respondents 1&2 for extracting coal without prior intimation to SBB. The applicant was also aggrieved by the letters issued by the Ministry of Environment and Forest and Climate Change and Respondent No. 3. The respondent clarified that coal is not a biological resource and would not fall within the jurisdiction of the BD Act, 2002. The Applicant drew attention to Section 21 of the BD Act, 2002 which confers power on the NBA for determination of equitable benefit sharing and Section 24 (2) of the BD Act which confers powers on the SBB to prohibit any activity which in its opinion is found detrimental to the sustainable use of biodiversity. Applicant stated that the statutory authorities like NBA and SBB had failed in their legal obligations. Applicant also drew attention to the notification issued by the Respondent No. 3 which excluded certain items of biological resources from the preview of the BD Act, the notification did not exclude coal from the purview.

Respondents 1&2 submitted that coal is governed by Mines and Mineral (Development and Regulation) Act, 1957 (MMDR). The Act confers powers to make rules and levy charges on coal upon the Central and the State Government. The Respondents No. 1&2 submitted that categorizing coal as a biological resource will lead to confusion between two statues. The Respondents further went on to contend that coal is combustible, sedimentary and organic rock and, therefore, cannot be compared to a living organism. It was also contended by the Respondents No. 1 & 2 that coal being a "value added product" is outside the scope of the Application of the in terms of Section 2 (c) of BD Act, 2002.The Respondents invited attention to the Supreme Court Cases, namely, Nelson Motis v UOI (AIR 1992 SC, 1981) and State of Jharkhand v Govind Singh (AIR 2005 SC 294) to aver that when words of statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning. The Respondents have further contended that although BMC may levy charges by way of collection fee from any person for accessing or collecting any Biological Resource for commercial purposes from area falling within its territorial jurisdiction, the Applicant has never been prevented by the Respondents from this right. The Respondents 3&4 further contended that since coal does not qualify to be a "biological resource" it is automatically excluded from the purview of the BD Act Rebutting the contention of the Respondent No 1 and 2, the Applicant in the Rejoinder points out that mere fact that coal is covered under the Mines and Minerals (Development and Regulations) Act 1957 does not take away the right of the Applicant Committee to claim their right under the BD Act, 2002 as coal is a biological resource.

The Tribunal after keeping in mind the various arguments and rebuttals given by both the parties arrived at the conclusion that coal does not have any genetic structure and therefore is neither a genetic material nor a genetic resource and does not qualify to be called biological resource. They also concluded that coal cannot be treated as a part of the plant or a by- product thereof and object of the BD Act, 2002 was to provide for conservation of plants, animals and other organisms and their genetic material. The Tribunal held that NBA had formed its own independent opinion on categorization of coal as a biological resource and no breach of BD Act 2002 had been committed by Respondent 3. The Tribunal held that Respondents 1&2 were not liable to pay any collection fees for accessing or collecting coal from the area falling within the territorial jurisdiction of the Applicants nor are entitled to levy any fees for collection of coal on Respondent 1&2. The Application was disposed of with no costs.

Conservation Action Trust
v.
Union of India

Application No. 35 of 2013

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Forest (Conservation) Act, 1980, Mangroves area, Gujrat
Decision: Disposed of (Without costs)
Date: 17th October, 2015

Applicants were asking for certain directions against the Respondents who are State Government Authorities, to carry out geo mapping of the Mangroves area in Gujarat. The Applicant No.1 claims to be Charitable Trust and the Applicant No.2 claims to be an Environmentalist, as well as concerned with activities of the organization of the Applicant No.1.

Briefly stated, Applicant's case was that coastline of Gujarat is large with extensive Mangrove cover. A large tract of mangroves were gradually being destroyed for non- forest use of the land and therefore, such mangroves become endangered. A total area of approximately 7770Ha (Navlakhi Cher Forest) was notified as Reserved Forest, Navlakhi is an important coastline for Gujarat and there are major industries In the shore- front which previously were saltpans. A forest cover was destructed without any proper exercise of control by the Respondents. The Applicants were shocked to notice that a violation of provisions of the Forest (Conservation) Act, 1980. Respondent No.2 permitted a private individual to use 5000Acres of land, which came within boundaries of Reserved Forest for use of non-forest purpose. The Respondent Nos.1 to 3 were legally not at all empowered to permit conversion of Mangroves area by giving leases or use thereof for saltpans.

Respondent 2 stated that the averments of the Application were incorrect. The saltpan activity had been permitted in notified Reserved Forest area of Gujarat. The order dated 19th September, 2009 granting lease to JPCL for saltpan activity. The said area did not fall within Reserved Forest area as alleged by the Applicants as submitted by the Respondent 2. The map of Forests (Reserved) was prepared by the Settlement Officer, under Section 20 of the Indian Forest Act, 1927, declaring reserved forest area for district Rajkot, Maliya Taluka, Mouje: Navlakhi Cher Forest and clearly excluded the area which was alleged in the Application. The activities of Saltpans and manufacturing thereby carried out by JPCL in the said area as per Report of Range Forest officer were not within boundary limits of Navlakhi Cher Forest, Therefore, the Applicants had no cause of action to allege that there is violation of provisions of the Forest (Conservation) Act, 1980 in any manner, according to the Respondents. The Forest Department noticed that some area was diverted to Dharmji Morarji Chemicals Ltd. as per MoEF notification. The Forest offence was registered against 2 persons who cut those Mangroves.

Respondent 1 submitted that MoEF examined question of transfer of 5000Acres of Reserved Forest, as sought by the State of Gujarat, to private party for saltpan production. His affidavit further showed that further directions were given to stop destruction of Mangroves and violation of the Forest (Conservation) Act, 1980. The Report made after inspection that was conducted showed that the MoEF had not received any proposal for

grant of permission to Gujarat to convert 5000Acres of Reserved Forest land cover of Mangroves.

Respondent 3 submitted that firstly the objection regarding the Application was on the ground that application itself showed that the Applicant No. 1 was a Public Trust dealing with Public Interest Litigations affecting State of Gujarat in general and Applicant No.2 – an environmentalist as well as –trustee of the Applicant No.1. Secondly, the Application did not fall within ambit and cope of Section 15 read with Section 18 of the NGT Act, 2010, inasmuch as neither of the Applicants was affected directly or indirectly by any action or inaction on part of the Respondents.

The Member Secretary of Gujarat Ecology Commission was asked to examine complaints of the Applicants and to submit a detail report. The Gujarat Ecology Commission was asked to complete the assignment with participation of Bhaskaracharya Institute of Space Application and Geo-Information (BISAG). The report did not show destruction of Mangroves in any notified Reserved Forest.

The Tribunal submitted that the Applicants had not taken steps to add necessary parties, which were required to be brought on record without whom final and effective adjudication could not have been made. The Application failed on this preliminary ground. Thorough examination of the record showed that though a part of destruction of Mangroves forest was done at Adani Port, yet action was taken by the Competent Authority against the culprits. The Tribunal held that the in the present case the Applicants had approached the Tribunal at belated stage and had not joined the necessary parties and had only played general prayers in the application. Application was disposed of without costs.

D.V. Girish Kaleshwara Estate
v.
National Tiger Conservation Authority

Review Application No. 5 of 2015 in Appeal No. 5 of 2015 (SZ)

Coram: M. Chockalingam, Prof. Dr. R. Nagendran
Keywords: Review, maintainability
Decision: Review Application Dismissed (Without costs)
Date: 1st October, 2015

This review application was filed seeking a review of the Judgment of the Tribunal in Appeal no. 5 of 2015. The averments made in the affidavit along with the grounds in support of the Review Application were looked into and also the reply affidavit as filed by the 1st and 8th respondents.

Originally, the applicant herein who seeked the review of the Judgement made Application No. 53 of 2015. At the time of admission, the application was converted into an appeal and taken on file as Appeal No. 5 of 2015. While the matter stood so, the applicant filed Application No.154 of 2014 seeking amendment of the prayer clause and the contesting 8th respondent therein in the appeal filed R.A. No. 1 of 2015 seeking to set aside the order of conversion of the application into an Appeal No. 5 of 2015 was made. After hearing both sides, the Appeal No. 5 of 2015 was dismissed and Application No. 154 of 2014 was also dismissed while R.A. No. 1 of 2015 was disposed of.

The 8th respondent put forth the first objection on the maintainability of the application stating that he had produced his submissions even before the application was converted into an appeal.

The Applicant stated that be it an application or an appeal, what was required was the representation made by the applicant to the authorities. The Tribunal held that it was true that the appellant in Appeal No. 5 of 2015 originally filed on application and the same was converted into an appeal and taken on file. After notice was ordered, all the respondents appeared and filed their respective replies. It was not the appellant, who was originally the applicant but the 8th respondent who filed R.A. No.1 of 2015 to set aside the order of conversion. Thus, by the said conversion, according to the 8th respondent, he is an aggrieved party.

No appeal was made by the 8th respondent challenging that order of conversion from application to appeal. But strangely, the applicant, whose application was converted into an appeal being a party to the appeal and after all the replies were put forth and argued the matter at length and after the Judgment was made in Appeal No. 5 of 2015 at no stretch of imagination can be permitted to say that the conversion was without jurisdiction and hence, the Review Application now put forth by the applicant / appellant had to be dismissed.

The review application was disposed of without costs.

Dileep B. Nevatia
v.
Union of India

Appeal No. 4/2013 (WZ)

Coram: Mr. Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: CRZ Clearance, Environmental Clearance Regulation, 2006, Mumbai Trans Harbour Sea Link, Sustainable Development
Decision: Appeal Allowed (With costs)
Date: 15th October, 2015

The Appeal had been filed challenging CRZ clearance granted by Ministry of Environment and Forest (MoEF) for construction of Mumbai Trans Harbour Sea Link. The appellant was concerned that the proposed MTHL project would adversely impact coastal ecology, mangroves and mudflats which support several endangered species of flora and fauna of Mumbai and Navi Mumbai. The Appellant submitted that originally in 2005, environmental clearance was granted to this project by MoEF and MMRDA could not initiate the work within the validity of the EC. The Tribunal directed the project proponent not to undertake any construction without obtaining fresh EC from the competent authority, but the project proponent went on with the construction.

The Appellant had raised several contentions objecting to the interpretation of the CRZ Notification, violation of the procedure prescribed for grant of CRZ clearance, both by Maharashtra Coastal Zone Authority (Respondent No.4) and MoEF. The Appellant contended that the EIA report was prepared by the Consultant by name ARUP CES KPMG and the said report was not in the terms of MoEF and were non-accredited consultants. It had been prepared without any terms of reference and also without following the norms prescribed by MoEF.

Respondent No. 1, MoEF submitted that the EAC considered the project and also the mitigation measures proposed by project proponent and considering that, the competent authority in MoEF granted the clearance under CRZ Notification 2011.

Respondent No.3 submitted that the Respondent No.5 had not applied for fresh consent to establish for the proposed project. Respondent No.5-MMRDA submitted that the MTHL project received its first clearance in 1995 and the Appellant could have raised all the issues in the current Appeal at that time only.

The Tribunal held that the appeal was well within the limitation period. The Tribunal was of the opinion that the project in question was needed to be examined by the authorities, regarding applicability of environmental clearance as per Environmental Clearance Regulation 2006 based on the criteria stipulated in the said regulations. The Tribunal felt that it was necessary to ensure that any such major infrastructure development has to be within the precincts of Sustainable Development based on Precautionary Principle.

Tribunal allowed the Appeal and set aside the impugned order of CRZ clearance, after its suspension period, unless replaced by afresh CRZ clearance, and directed further to remit the matter to MoEF to consider the CRZ clearance application of the project proponent (in

question) afresh, as per provisions of the CRZ notification, particularly in view of the issues related to applicability of Environmental Clearance Regulation, 2006.

The Tribunal also directed that MoEF should take decision independently on merits, without influenced by any of the observations made in this order. In the meantime, the CRZ clearance granted to the project by the impugned order stood suspended and kept in abeyance for six (6) months. The Appeal was allowed with Costs of Rs. 20,000/-.

Edith D'Sa & Anr.
v.
Department of Forest, Government of Goa & Ors.

Application No. 166/2013 (WZ) with (M.A.Nos.4/2014, 5/2014, 6/2014, 7/2014, 8/2014, 184/2014 and M.A. No. 79/2014)

Coram: Justice V.R. Kingaonkar , Dr. Ajay A. Deshpande
Keywords: Forest Conservation Act, Private forests, Felling of trees
Decision: Disposed of (Without costs)
Date: 29th October, 2015

The issue involved in this case was narrowed down by virtue of earlier orders passed by the NGT from time to time. The order in question indicated that demarcation of the private forest land would be varied out in a particular time frame.

The State of Goa is thickly covered by forest area and is a tourist destination due to is forests and beaches. The record of the Director of Land Records showed certain private lands are forest areas, certain lands are partly forest areas whereas some of them are enlisted as not part of any private forest. It was necessary to locate the area of the forest land in the private properties. This exercise had to be completed within the given time frame.

According to Respondent 7 his land was not shown in the list of private forest and therefore his name should be deleted from the Application. According to Respondents 6&9 there was an error committed by the authority while showing the lands bearing S.No. 135 and 151 as private forest lands. There was a clear identification of the private forest and Mr. Kirkham's, Dy. Conservator of Forest, was present in person and stated that such interim report about the private forest identification by the Committee headed by Mr. P.T. Thomas had been submitted after field inspection. The Tribunal directed that it would be proper to accept the statement and the Report and also directed that demarcation of the remaining private forest land to be carried out within period of 6 months. The Tribunal also directed that the Forest Authority is needed to take serious endeavor to maintain status- quo about the identified private forest in the lands at each place in the villages by counting of the trees species and giving identity Bar Code No., etc. so as to ensure that there would be no tree felling in such areas without permission, and no permission would be given to convert private forest area for commercial use under Forest Conservation Act. The Tribunal also held that any aggrieved party would have separate remedy as may be permissible under the Law.

The Application and Misc. Applications were accordingly disposed of. The Forest Department was directed to file further report of compliance, after six (6) months.

G. Vijaya Kumar
vs.
Health and Family Welfare Department

Application No. 117 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Disposable sanitary napkins/diapers, Solid Waste Management, Municipal Solid Wastes (Management and Handling) Rules, 2000
Decision: Application Disposed of (Without costs)
Date: 15th October, 2015

The applicant brought this application seeking a direction to the respondents 5-10 who manufactured disposable sanitary napkins and diapers to evolve a sound waste management system for safe collection of used disposable sanitary napkins and diapers.

The applicant stated that disposable sanitary napkins and diapers were disposed either by flushing it out through the sewerage system into the sea and inland water bodies, incineration or deposited in land fill sites and thereby pollutants were continuously being deposited in the sea through sewage waste and also air pollution is caused from the incinerators.

The applicant stated that as the respondents 5-10 were manufacturers of disposable sanitary napkins/diapers, and were bound by the Extended Producer's Responsibility (EPR) Rule, as such they should have ensured methods for collection and disposal of the used disposable sanitary napkins /diapers in an efficient and eco-friendly manner.

The 1st respondent, Health and Family Welfare Department of the State stated in its reply that necessary steps had been taken by the department for proper collection and disposal of the sanitary napkins. The Commissioner of Municipal Administration provided health facilities to manual scavengers/sanitation workers in co-ordination with the concerned Deputy Director of Health Services. Corporation of Chennai, who was the 3rd respondent, stated that the Corporation was taking necessary steps to prepare an Integrated Solid Waste Management Strategy in co-ordination with its NGO partners and in consultation with leading environmentalists. As per the Municipal Solid Wastes (Management and Handling) Rules, 2000(MSW Rules, 2000) in order to safeguard the workers from health hazard, during the process of waste collection, Corporation of Chennai had provided mouth/nose mask and gloves and the workers were constantly insisted for consistent usage of protective gears and the corporation conducts health screening every year for all the conservancy workers. The 4th respondent stated in its reply that the manufacturers of disposable sanitary napkins and diapers have a social responsibility of educating the users about the safe and proper disposal of those materials in an environmentally safe manner but the used disposable sanitary napkins and diapers cannot be considered as plastic waste according to the Plastic Rules, 2011. Respondents 5th, 6th, 7th, 9th and 10th said that Waste management is purely the responsibility of the State and the civic authorities who are responsible for proper waste and garbage management in local and municipal areas. The responsibility of protecting health workers was that of the municipal authorities by providing them with proper protective gears and apparatus and screening them.

The Tribunal held that waste management was purely the responsibility of the State and the civic authorities who were responsible for proper waste and garbage management in local and municipal areas. The responsibility of protecting health workers was that of the municipal authorities by providing them with proper protective gears and apparatus and screening them so that there would be no outbreak of any epidemic.

It was held to be the responsibility of respondents 1 to 3 to follow the Municipal Solid Waste Rules, 2000 and the Plastic Waste Rules, 2011 and take action to ensure door to door collection of the Municipal Solid Waste, its segregation, transportation and disposal.

K. Devdas, Kasargode
v.
State of Kerala

Application No. 452 of 2013(SZ)
W.P. 25274/2010 – Kerala High Court

Corum: Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Waste material disposal, solid waste treatment plant
Decision: Application Disposed of (without costs)
Date: 1st October, 2015

This application was filed for a direction against the 4th respondent- Kasargode Municipality to implement the modern and permanent waste and waste water disposal system and a plant in Kasargode municipal area and its surroundings for the disposal of waste materials and to ensure that no show owners, including hotel, lodge, hospitals, barber shops, slaughter shops and commercial or non- commercial establishments and private individuals shall be allowed any control aver any building or land or drainage to become the public place. Also to implement the modern and permanent proper system of collection, transportation, segregation, storage, processing and disposal of waste, and to clean the drainage periodically and remove the waste contained. The 4th respondent municipality had filed an additional status report wherein it was stated that that in respect of the following seven hotels- (i)Hotel Sagar, (ii) Indian Coffee House, (iii) Daira City, (iv) Lums Bakery, (v) Bedariya Hotel, (vi) Home Links Lodge, the Pollution Control Board had invoked the powers under Section 31(A) and 33(A) of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 respectively and issued show cause notice. The Municipality also stated that in respect of the collection of municipal waste, several campaigns had been conducted and the plastic waste collected was being handed over to Clean Kerala Company. It was further stated that a plastic recycling unit had been established is the Kasaragod municipal area and the plastic waste were handed over to the said unit for recycling. The Municipality stated that they took all possible steps necessary to prevent any pollution in the municipal area.

The Tribunal in the said case issued a direction, apart from the direction issued by the State Pollution Control Board, to the Municipality to take all necessary steps for the purpose of setting up of a solid waste treatment plant in the place acquired and also proceed to monitor the other systems and their functioning in a efficient manner to see that the pollution is averted in Kasargode municipal area. The application was disposed of with no costs.

K.S. Sivakumar
v.
Union of India

Application No. 96 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Environmental Clearance, quarry lease, Limitation, NGT Act, 2010
Decision: Application Dismissed (Without costs)
Date: 1st October, 2015

The counsel for the 4th respondent questioned the very maintainability of the application on the point of the limitation stating that it was time barred. The Application had challenged the Environmental Clearance granted by the 2nd respondent in an order in favour of the 4th respondent with a prayer to restrain all quarrying operations pursuant to it and also the consequential reliefs.

According to the counsel for the applicant, the applicant was an aggrieved person due to extensive quarrying operations being done by the 4th respondent- M/s. Delta Msand Private Ltd.- causing severe degradation to the environment in the area. The Applicant had originally filed an application for cancelling the quarry lease and other documents and the same was disposed of in view of the grant of EC by the 2nd respondent- State Environment Impact Assessment Agency, Kerala. The applicant further stated that the EC had been granted in violation of law and without application of mind.

The 4th respondent submitted that the before going into the merits of the grant of EC the application had to be dismissed on the ground that the application was out of time and filed beyond the period as prescribed under the NGT Act.

The Tribunal was of the view that the application had got to be dismissed as one barred by time. In the instant case, the applicant, who was an aggrieved person, had neither preferred an appeal within the prescribed period nor within the extended period of 60 days which could be condoned. Thus, it is clear that the application filed by the applicant could not be maintained in accordance with the provisions of National Green Tribunal Act, 2010. The application was dismissed.

M. Kumaravel, Kancheepuram District
v.
The Collector, Kancheepuram District, Kancheepuram

Application No. 273/2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Open defecation, Ground water pollution, Effluent Treatment Plant
Decision: Disposed of (without costs)
Date: 10th October, 2015

The applicant had filed this application with a prayer to direct the respondents to prevent the environmental degradation being caused due to open defecation by the fishermen community at Muttukadu Tsunami relief tenements located in S.F. No. 97/3, Muttukadu Village, Kancheepuram District and to construct an Effluent Treatment Plant (ETP) to treat the effluent being discharged from the bathrooms and latrines in order to prevent ground water pollution and to maintain hygienic conditions in the said area and prevent communicable diseases.

The onslaught of Tsunami in the year 2004, State Government had decided to build *pucca* houses for the tsunami victims of Karikattukuppam Village and about 500 residential tenements were built with lavatories and bathrooms. No ETP was constructed by the State Government and only soak pits were provided which was bound to pollute the ground water as drainage or sewage facility was not provided. The inhabitants soon started defecating in the open in and around the Muttukadu Lake leading to acute stench and environmental degradation. The well water became polluted due to such activities and the inhabitants were consuming the same polluted water.

The Applicant had issued notice to the Respondents 1-3 to take urgent steps to prevent defecation in the open and to put up and ETP but they had not even acknowledged the receipt of the notice. The World Bank was willing to allocate funds for the construction of ETP but the respondents did not pursue the matter and the scheme got lapsed. The Applicant filed a PIL before the High Court of Madras and the writ petition was disposed of and Respondents 2-3 were directed to take appropriate steps in accordance with law. The applicant by a notice addressed the respondents 2 & 3 to call upon the 4th respondent to furnish a copy of the action taken report within 1 week failing which contempt proceedings would be initiated against the respondents 2&3; there was no response. The 1st and the 4th Respondents replied that under Rajiv Gandhi Rehabilitation Package (RGRP) scheme houses were constructed and handed over to the beneficiaries in December, 2009. Septic tanks with soak pits were provided and there was no necessity of providing ETP to individual homes. They, moreover, said that the total population is only 1320 and providing and ETP was not necessary. The respondents also denied the statement that the World Bank was willing to allocate funds for the construction of ETP. TNPCB in their reply had put forth that the petition was forwarded to the Executive Engineer, Tsunami District Implementation Unit, Kancheepuram for taking necessary action as the project was under the control of the said Engineer. The 4th Respondent had replied stating that the Project had been completed and each house had been provided with a toilet and a septic tank. Disputing the averments made in the reply of the 1st respondent, the applicant filed rejoinder stating that the so called Septic tanks built with cement plastering cannot be termed as Septic tanks. During the course of hearing Project Director, District Rural Development Agency

(PD, DRDA), was directed to inspect the site in question. According to the inspection a report was filed stating that maintenance of the buildings is vested with the beneficiaries itself. The factual position submitted by the respondents was disputed by the applicant and it was felt necessary to appoint an Advocate Commissioner to make an inspection of the site. His report indicated that some of the inhabitants had converted the toilets into stores/pooja rooms and had constructed toilets outside their houses in open areas. He also observed that the construction of individual Septic tanks by the occupants is going on in some units. The applicant filed memo of objections on Advocate Commissioner's report.

The Tribunal held that it was unfortunate that despite being provided such well laid out settlement colony with good civic infrastructure including individual toilets, the inhabitants still preferred open defecation and hence in this case building an elaborate sewage system and construction of STP would not be a solution. Further, no material evidence had been before the Tribunal to substantiate the allegations of causing pollution in the area. The Tribunal gave following directions: i) The District administration shall constitute a team of Grama Panchayat, Panchayati Raj Officials including a Civil Engineer, Environmental Engineer of the TNPCB to conduct door to door survey, inspect toilets and septic systems; ii) District Administration shall ensure that local Grama Panchayat makes the inhabitants use the toilets and that all septic systems function properly; iii) There should be constant interaction with the inhabitants and awareness should be created; iv) There should be a system of periodic collection and analysis os samples of underground water as well as the adjacent surface water bodies by the TNPCB.

M. Manibalan
v.
Union of India

Application No. 47 of 2015 (SZ) & M.A. No. 124&149 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Environmental Clearance, construction, felling of trees, afforestation, Special Economic Zone, EIA Notification, Andhra Pradesh Water, Land and Trees Act, 2002
Decision: Application Allowed (Without costs)
Date: 29th October, 2015

The application was filed by an environmentalist seeking an order of permanent injunction against the 4th respondent from felling of trees in certain villages of Andhra Pradesh without obtaining necessary permission in law. He also wanted directions issued to respondents 1, 2, 3 & 5 to initiate appropriate action against the 4th respondent also afforest the area. The applicant filed M. A. No.149/2015, praying for an amendment to the main prayer including a prayer for a permanent injunction against the 4th respondent from putting up any construction in the project area without a valid Environmental Clearance (EC).

It was the case of the Applicant that the Government of AP entered into a MoU to establish an Integrated Township including Special Economic Zone and Domestic Tariff Area. According to the applicant, certain land acquisition proceedings were initiated. It was the case of the applicant that the lands acquired were situated in less than 10 km away from Pulicat lake which is a Ramsar protected area. It is the further case of the applicant that a clearance was sought for under Environment Impact Assessment (EIA) Notification. It was also stated by the applicant that the EC granted had expired after the lapse of 5 years. The SEZ and DTA should have been established within 5 years of the date of EC which was granted on 16-10-2008 and therefore, the period has expired on 15 -10-2013 and the 4th respondent could not carry on any activity. These activities were causing environmental degradation. As per the Andhra Pradesh Water, Land and Trees Act, 2002 (WALTA Act) of A.P, prior permission ought to have been obtained before felling the trees and such permission had not been granted to the 4th respondent.

The 1st Respondent submitted that as per EIA notification Industrial Estates/Parks, Export Processing Zones, SEZs, etc. for change in process and technology should be undertaken only after obtaining EC from the Central Government or SEIAA. The 2nd respondent Government of AP in its reply, denied the allegations raised in the application and also stated that the boundary of Pulicat lake was nearly 4.50 km away from Sri City and the 1st respondent had declared the Eco Sensitive Zone as 2 km by a Notification. Andhra Pradesh Pollution Control Board (APSPCB) replied that 4th respondent had established multiproduct SEZ and DTA and EC had been granted by the 1st respondent. The industry representative had informed the Board that as per EC they were monitoring the ground water level and quality through consultants hired by them and reports are being filed. It was also stated that the project proponent ought to have obtained prior permission from the competent authority before felling of trees under the WALTA Act, 2002.

It was denied that the 4th respondent was not having EC under EIA Notification, consent under Water Act 1974, The Air Act 1981, Forest (Conservation) Act, 1980 and WALTA

Act, 2002. It was also denied that the EC granted by the Government in 2008 expired after 5 years. There was no such restriction of period since the project involved construction of infrastructure and therefore the EC was valid till the completion of development of the projects. The 6th respondent District Forest Officer while denying the allegations raised in the application had stated that while it was true that the 4th respondent had not put up the compound wall, it was a fact that fencing had been provided surrounding the parts of SEZ area. The Applicant submitted that the 4th respondent had no legal right to cut trees for constructing an SEZ without authorisation from the appropriate authorities. The general conditions of EC also contemplated statutory clearance from other authorities including the forest department.

It was also stated that against the conditions of EC which provided for residential accommodation of the workers and staff, the 4th respondent was promoting the housing projects with independent villas and luxury apartments, building schools, golf courses etc., as if it was a residential project for which no EC was granted.

The 4th Respondent submitted that to restrict such a big project within 5 years would cause more of environmental problems. He further submitted that when EC was given as early as in 2008 the present application was filed in the guise of opposing tree cutting but in effect challenging the EC from 2008 which was not permissible in law, especially before this Tribunal.

The Applicant had submitted that several trees cut by 4th respondent were covered by the WALTA Act, 2002 which is the State Act and is not covered under any one of the Statutes under 13 schedule 1 of the NGT Act, and the applicant had not raised any substantial question relating to environment arising out of any one of the 7 Acts and therefore the application as such was not maintainable.

The Tribunal said that EC was granted in accordance with the provisions of EIA Notification 2006 and at the time of issuance of EC the NGT Act, 2010 had not come into effect which was effective subsequently from 02-06-2010. However, at that time it was not as if the applicant or any other person had no opportunity to challenge the EC in appropriate forum.

The Tribunal stated that there is saving clause under NGT Act which enables the NGT to take up those appeals which were pending before the National Environment Appellate Authority on the date of commencement of NGT. Therefore, in the absence of any appeal having been filed by the present applicant before the National Environment Appellate Authority against EC granted to the 4th respondent, the applicant cannot be allowed in this application to raise anything about the validity of the EC granted. The Tribunal also held that even if the proposal for cutting of trees require approval under the local Acts through the State authority the EAC or SEAC can definitely impose restriction or regulations regarding cutting of trees and that can be never termed as double jeopardy

The following directions were given by the Tribunal:

(i) The 4th respondent to effect afforestation by planting native trees as per the advice of the District Forest Officer.
(ii) No further tree cuttings in the SEZ area by the 4th respondent.
(iii) The 4th respondent to follow all conditions of the EC.

(iv) The interim Order in respect of cutting of trees to be continued and made absolute.
(v) There was no order as to the cost. M. A. No. 149/2015 stood allowed.

M. Murugan, Shevapet, Salem
v.
Maravar Mahajana Sangam

Application No. 76 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Water Pollution, Air Pollution, Noise Pollution, Electric Power, Noise Pollution (Regulation and Control) Rules, 2000
Decision: Application Disposed of (Without costs)
Date: 13th October, 2015

The Applicant had filed this application to restrain the respondents 1, 9, 10, 11 and 12 from carrying on building and manufacturing silver articles which adversely affected the environment and health of the residents in Shevpet area. The first respondent was maintaining a Nandavanam (garden) for supplying flowers and meeting the needs of the Vinayagar temple and in 2009 put up constructions in the trust property and leased it to 9th and 10th respondents who started using the buildings to manufacture silver articles. The 9th and 10th respondents brought in heavy machinery powered by electric motors to forge and work on silver items and have created chimney and burn enormous amount of cow dung cakes to make fire. The same caused unbearable noise, air pollution and water pollution in violation of the laws.

The applicant had sent a representation to the District Collector, Salem, the Health Officer, Salem Corporation, Tamil Nadu Pollution Control Board, the respondents 2, 4 and 5 who did not take any action. The 1st respondent did not allow the 11th and 12th respondents for illegal construction in the Nandavanam of the 1st respondent. The Respondents 1, 9 and 10 carried on their business in manufacturing and forging silver bars, rods and other such items without obtaining consent orders, clearance, No Objection Certificate and necessary statutory permission and approval from the TNPCB and the 11th&12th respondents intend to start and commence silver dyeing units without obtaining necessary statutory permission and approval from the TNPCB according to the applicant. The 1st respondent had filed its reply stating that the application was not maintainable as it was barred by limitation. The respondents claimed they were not using cow dung cakes to make fire and there was no heavy machinery in the premises. Though chimney was available there was no need to use the same and the chimney was not being used at all. The applicant had not complained about any noise or air pollution by the similar activities being carried in other premises in the same street. The 5th, 2nd and 4th respondents claimed that the 9th and 10th respondents had installed facilities in the building to manufacture silver jewelry. Heating, pressing and molding were being carried out using electric power. The 9th, 10th & 11th respondents stated that they had established their micro units with license from Salem Municipal Corporation to carry on traditional trade. They stated that the volume of the work done by them was too small to cause any kind of pollution. They also stated that they were using electric heaters which do not emanate any smoke and hence they did not require Environmental Clearance. In view of the controversy the Tribunal had issued a direction to the concerned District Environmental Engineer of the Board to make the inspection of the units and file a status report in respect of the noise pollution. A perusal of the report made it clear that the 9th respondent purchased silver rods from outside and processed them into required shape by heating by electric heater followed by pressing. It was noticed that the noise levels were within the prescribed limits. It was also noticed that the noise levels in both the units of the

11th and 12th respondents' units were within the prescribed standards under the Noise Pollution Rules, 2000 as they did not exceed the ambient noise standards. It was carried out by the Advance Environmental Laboratory, TNPCB, Salem. The Tribunal noted that both the sides were permitted to put forth their respective cases but the applicant could not maintain the application as against the 1st respondent. In so far as the complaint of air and water pollution made against the respondents 9-12, they were thoroughly unfounded.

The Tribunal felt that though the allegations of air, water and noise pollution made against the respondents were unfounded certain other issues raised in the application had got relevance as they may have affected the environment such as allowing the construction of buildings in the Nandavanam which as per the applicant was against the law. The Tribunal held that the PCB should issue certain directions and guidelines, if no yet issued. The Respondents 2-4 and 6-8 should also examine whether the installation and operation of electric motors up to 9HP capacity in residential localities was permissible as per law. The Tribunal also held that the Applicant may lodge complaint with the concerned authorities under the Noise Pollution (Regulation and Control) Rules, 2000 if the notified noise levels exceed the prescribed limits for day time as well. The Tribunal disposed of the Application with no costs.

M/s. Brinda Blue Metal, Thirumangai Alwarpuram
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.13/2015 (SZ) in Original Application No. 227 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Chandra Blue Metal
v.
Tamil Nadu Pollution Control Board

Appeal No. 96&97 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Stone crushers, Appellate Authority, Pollution Control Board,
Decision: Appeal Dismissed
Date: 13th October, 2015

The Appellants had applied for consent for establishing a stone crushing unit using granite boulders by its application. The appellants stated that the aforesaid land fell under unclassified area. The appellants were running the stone crushing unit in the said site from October, 2006. The applications submitted by the appellants for consent was rejected by the 3rd respondent. As against the rejection of application for consent, the appellants, M/s. Chandra Blue Metal filed the appeal before the 1st respondent, Appellate Authority under Sections 31 of Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981) and Section 28 of Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) respectively. The 1st respondent dismissed the appeal by following the 1km distance criteria. The Appellants challenged this as invalid and unsustainable in law on the grounds that it was not formulated as stipulated in Section 17 (1) (g) of the Air Act, 1981. They also challenged the 1km criteria as unwarranted and arbitrary as it contravenes the recommendations of the National Environmental Engineering Research Institute.

The Respondent Board in its reply to the appeals filed before the Tribunal stated that the rejection was based on the decision of the Appellate Authority imposing 1km criteria between the stone crushers. Since 25 stone crushers were already operating within a distance of 1km from the appellants' unit, they cannot be permitted to run the same. The respondent Board further stated in their reply that it fixed norms for the location of stone crushing units based on studies conducted by Central Pollution Control Board and subsequently this decision was followed by the 2nd respondent Board based on the report of the Committee constituted by the TNPCB under order of the Madras High Court. According to the 2nd respondent, the subsequently issued decision by the 1st respondent did not clearly specify that the relaxation was applicable to the existing stone crusher units. The 2nd respondent stated that the units of M/s. Chandra Blue Metal did not comply with the siting criteria prescribed by the Board. The units were located within 1 km from the existing stone crusher units functioning in the cluster. After consideration, the report of NEERI was decided to be implemented by the Board in its meeting and issued a subsequent decision. As per this decision if the distance between two crushers was more than 100 metres, it would be considered as a single crusher and if the distance between the crusher boundaries is less than 100 metres, it would be considered as a cluster. Thus, the criterion of minimum distance of 1 km between two crushers was removed by the 1st respondent Board in their subsequent decision. Subsequently, the Supreme Court of India, in SLP No. (C) No.13564 of 1998, permitted the existing units to continue, but made it clear that it was open to the Board to take into account of the report of NEERI for framing appropriate rules. Taking into consideration the nature of the dust pollution likely to be caused by the stone crushing units fixing the minimum distance criteria of 1 km is highly reasonable in order to avoid the dust pollution influence over one another. Thus, contentions put forth by the learned counsel for the appellants do not carry any merit whatsoever. The Tribunal has to

necessarily consider the order of the Appellate Authority whereby the order of the Tamil Nadu Pollution Control Board was affirmed. The appeal was dismissed.

M/s. J.K.R. Blue Metal, Thirumangai Alwarpuram
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.10/2015 (SZ) in Original Application No. 322 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Jagesh Dhamuja
v.
Tamil Nadu Pollution Control Board
Application No. 89 of 2015 (SZ) and M.A. 247 OF 2015 (SZ)

Coram: Justice Dr. P. Jyothimani , P.S. Rao
Keywords: Tamil Nadu, Pollution, unlicensed activities, factory
Decision: Disposed of (Without costs)
Date: 28th October, 2015

Judgment:
The Applicant had filed Miscellaneous Application for amendment of main prayer in the main application to incorporate the words 'Unlicensed Activities' by removing the words 'unlicensed premises' which was originally mentioned in the main prayer. Considering the fact that the amendment sought for was only technical in nature as the words 'unlicensed premises' had been included, the Tribunal was of the view that the amendment had to be allowed in the interest of justice. Accordingly, the amendment application was allowed and the Miscellaneous application was disposed of.

The prayer in the main application was for issuing a direction to the respondents 1 and 2 to seal and lock that portion of the premises where the alleged unlicensed activities of the 3rd respondent were being carried on in T- Block, Chennai. It was stated that the 3rd respondent had been carrying on a factory in the name of AGM Sportswear for manufacturing of garments in the said premises which was located in primary residential area as per the Chennai Metropolitan Development Authority (CMDA) classification.

On an order of appointment of Advocate Commissioner, the Advocate Commissioner had visited the spot to find out as to whether the alleged activities are going on. The Advocate Commissioner in her report had stated that she was unable to find any name board at the entrance of the premises and she had also stated that the ground floor premises and the area inside the compound was fully dumped with bundled piles of cloth. There was an office room in the right side piled with files and there was a hall next to the office room where four female staff members were seen working manually with the equipment. The hall was leading to the back door where a generator with MCP-3P-15KVA was installed but it was found not functioning. It was stated that the generator might had been installed just a month prior to the inspection. The 3rd floor was being used for residential purposes. Though no flooring and electrical work had been done, the second floor was being put to usage by dumping the materials, screen print blocks and screen printing revolver machinery. However, the said machinery was not in usage at the time of inspection. It was admitted that the 3rd respondent had remove and shifted all the machinery and equipment which were used for the purpose of screen printing and manufacturing activities. The 3rd respondent was not carrying on any activities in the premises except that he was residing in the first floor with his family. It was also admitted that on the second floor, large quantity of bundles of cloth material was stored and the explanation given was that as per the Second Master Plan for Chennai Metropolitan Area 2026, even in respect of primary residential zone, certain permissible activities like garment industries employing not more than 25 workers could be allowed to be carried on and the 3rd respondent may make appropriate efforts in this regard.

The Tribunal made it clear that as per law if permission from the Tamil Nadu State Pollution Control Board and the Corporation of Chennai was required for carrying on the activities in the said premises, the same should be obtained before the 3rd respondent proceeds to get permission from the authorities under the Second Master Plan for Chennai Metropolitan Area 2026.

The Tribunal disposed the application with the following directions: i) the 3rd respondent should not carry on any activities relating to screen printing blocks, wooden screen printing in the said residential house; ii) it would be open to the 3rd respondent if permitted under the Second Master Plan for Chennai Metropolitan Area 2026 to make necessary application to the competent authorities and if such authorities grant permission, only then the 3rd respondent would be entitled to carry on such permissible activities alone; iii) till such permission is obtained from the authorities concerned, the 3rd respondent should remove all the dumped materials in the second floor to some other place; iv) In case the 3rd respondent violates any of the portion of this order, it would be always open to the applicant to resort to legal remedies as permissible under law.

The Application was disposed without costs.

M/s. Jayam Blue Metal
v.
Tamil Nadu Pollution Control Board

Appeal No. 98&99 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Stone crushing unit, Pollution
Decision: Appeal Dismissed
Date: 13th October, 2015

The Appellants had applied for consent for establishing a stone crushing unit using granite boulders by its application. The appellants stated that the aforesaid land fell under unclassified area. The appellants were running the stone crushing unit in the said site from October, 2006. The applications submitted by the appellants for consent was rejected by the 3rd respondent. As against the rejection of application for consent, the appellants, M/s. Jayam Blue Metal filed the appeal before the 1st respondent, Appellate Authority under Sections 31 of Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981) and Section 28 of Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) respectively. The 1st respondent dismissed the appeal by following the 1km distance criteria. The Appellants challenged this as invalid and unsustainable in law on the grounds that it was not formulated as stipulated in Section 17 (1) (g) of the Air Act, 1981. They also challenged the 1km criteria as unwarranted and arbitrary as it contravenes the recommendations of the National Environmental Engineering Research Institute.

The Respondent Board in its reply to the appeals filed before the Tribunal stated that the rejection was based on the decision of the Appellate Authority imposing 1km criteria between the stone crushers. Since 25 stone crushers were already operating within a distance of 1km from the appellants' unit, they cannot be permitted to run the same. The respondent Board further stated in their reply that it fixed norms for the location of stone crushing units based on studies conducted by Central Pollution Control Board and subsequently this decision was followed by the 2nd respondent Board based on the report of the Committee constituted by the TNPCB under order of the Madras High Court. According to the 2nd respondent, the subsequently issued decision by the 1st respondent did not clearly specify that the relaxation was applicable to the existing stone crusher units. The 2nd respondent stated that the units of M/s. Jayam Blue Metal did not comply with the siting criteria prescribed by the Board. The units were located within 1 km from the existing stone crusher units functioning in the cluster. After consideration, the report of NEERI was decided to be implemented by the Board in its meeting and issued a subsequent decision.

As per this decision if the distance between two crushers was more than 100 metres, it would be considered as a single crusher and if the distance between the crusher boundaries is less than 100 metres, it would be considered as a cluster. Thus, the criterion of minimum distance of 1 km between two crushers was removed by the 1st respondent Board in their subsequent decision. Subsequently, the Supreme Court of India permitted the existing units to continue, but made it clear that it was open to the Board to take into account of the report of NEERI for framing appropriate rules. Taking into consideration the nature of the dust pollution likely to be caused by the stone crushing units fixing the minimum distance criteria of 1 km is highly reasonable in order to avoid the dust pollution influence over one another.

Thus, contentions put forth by the learned counsel for the appellants do not carry any merit whatsoever. The Tribunal has to necessarily consider the order of the Appellate Authority whereby the order of the Tamil Nadu Pollution Control Board was affirmed. The appeal was dismissed.

M/s. K.G. Constructions, Thirumangai Alwarpuram
v.
The Chairman, Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.15/2015 (SZ) in Original Application No. 224 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Ponmanam Blue Metal Unit- II, Thirumangai Alwarpuram
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.17/2015 (SZ) in Original Application No. 296 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Ponmanam Blue Metal Unit- I, Thirumangai Alwarpuram
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.12/2015 (SZ) in Original Application No. 295 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Sree Brindhavan Blue Metal, Thirumangai Alwarpuram
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.18/2015 (SZ) in Original Application No. 244 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Srinivasa Blue Metal, Alandur Taluk, Kanchipuram District
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.14/2015 (SZ) in Original Application No. 217/ 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

M/s. Srinivasa Blue Metal, Alandur Taluk, Kanchipuram District
v.
The Chairman Tamil Nadu Pollution Control Board, Guindy, Chennai

Review Application No.16/2015 (SZ) in Original Application No. 226 of 2013 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Review petition, air pollution
Decision: Disposed of (without costs)
Date: 9th October, 2015

(Common Order)
The applications had been filed by the applicants in their respective applications to review a common order dates 14.09.2015 made in the aforesaid original application seeking to expunge that part of the order imposing penalty to the applicant's units with a direction to make a payment within the stipulated time.

The Tribunal took into consideration the contention of the applicants that all the required Air Pollution Control (APC) measures were taken and also the report filed by the Tamil Nadu State Pollution Control Board (Board) to that effect, had set aside the respective orders under challenge and had also directed the Board to consider their application seeking for the grant of renewal of Consent to Operate and pass suitable orders. After ascertaining the fact that the damage had been caused to the environment by the units in the past, the Tribunal thought it fit to apply the relevant principle of 'Polluter Pays' following the dictum of the Apex Court referred to in the judgment and had assessed the penalty considering the date of commissioning, nature of activity, capacity to handle the raw material and turnover of the units and imposed penalty as found in the order. The imposition of the penalty was in appraisement of the circumstances and a reasonable quantum was fixed by taking into consideration of the above factors. No reason or ground was noticed to review that part of the order imposing penalty. All the review applications were disposed of.

Mahalaxmi Baker's & Anr.
vs.
Member Secretary, State Environmental Impact Assessment Authority & Ors.

Original Application No. 12/2015

Coram: Mr. Justice Swatanter Kumar, Justice M.S. Nambiar, Prof A.R. Yousuf, Mr. Ranjan Chatterjee
Keywords: Air Pollution, Principle of Strict Liability, Maharashtra Pollution Control Board, Poisonous dust
Decision: Application Disposed of (with directions)
Date: 10th December, 2015

The applicant got a plot by taking a loan under 'Corporate Encroachment Scheme' in 2004 in village Kushire. He started a bakery business under the name of "Mahalaxmi Bakers" in the same plot. In the same village respondent bought 10 Guntha of land and started the business of Foundry.

Applicant claimed that this unit was generating poisonous black dust and iron particles and were falling in the vicinity of the bakery products. It was also found that the Foundry was not disposing the waste properly and as required. This was brought to the notice of the respondent without any avail. The Gram Panchayat had no right to issue permission and the permission of the Pollution Board was not taken before the forming the Foundry. Complaints were filed in the Maharashtra Pollution Control Board Regional Office and it issued a Show Cause Notice, after the which the Foundry was even inspected and a report was submitted. The Member Secretary of the Board examined the matter and issued directions to take required measures which the respondent failed to comply with. The said area was not an industrial area and hence the Foundry had to be closed. In its reply the Board stated that it had granted consent to manufacture CI Casting 500 metric tonne per month and later permission was given for modernization of plant. But after complaints from the applicant the Board found out that the expansion was without consent from the Board. Respondent no. 9 has taken the stand that the complaints were false and has even opted to question to some extent the correctness of the inspection reports. The Tribunal in similar cases has held that the principle of strict liability would be applicable and the onus of proof in such cases is on the party which wants to carry on the activity which would generate pollution and to prove that the activities are in accordance with the environmental law. It is to be noted that despite repeated cautions and directions issued by the Board the respondent failed to take appropriate measures.

In view of the above facts, the following order was passed:

i. Respondent 9 was directed to close its manufacturing activity.
ii. It should comply with all the directions issued by the Board.
iii. Upon compliance of the directions, the industry may approach the Maharashtra Pollution Control Board for grant of permission.
iv. Consent will be granted only after the unit is found to be compliant.
v. If the consent is granted, the same shall become operative subject to the approval of the Tribunal. A Show Cause Notice is also issued to the industry as to why it should not be directed to pay compensation to the applicant and why environmental compensation should not be imposed.

Mr. K. Indrani
vs.
District Collector, Erode

Application No.180 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. P. Nagendran
Keywords: Satyamangalam Reserve Forest, Quarrying licence, Environmental clearance
Decision: Disposed of (Without costs)
Date: 27th October, 2015

The issue involved in this case had already been covered by our earlier order passed in Application No. 165 of 2013. In that case the Tribunal made it clear that as per the previous judgment of the Supreme Court in the case reported in *Goa Foundation v. Union of India*, the mining activities were not prohibited within 10 km from the National Park or Wildlife Sanctuaries. It was on the representation made by the learned Senior Counsel Mrs. Nalini Chidambaram that many of the project proponents have made necessary applications to SEIAA and the same were pending without taking any decision because of the pendency of the above case, the Tribunal directed SEIAA to give priority to those cases, where applications had been made and pending before it, seeking environment clearance for mining operations in Satyamangalam Reserve Forest, giving 4 weeks' time.

However, this application related to the granting of quarrying license which was within the purview of the first respondent District Collector, Erode and also consent which was within the purview of the 2nd respondent, Pollution Control Board, apart from granting of Environment Clearance (EC) which was within the purview of the 5th respondent.

Applicant had submitted that the applicant herein had already made application asking for quarrying licence in respect of 3.18.5 hectares at Goundampalayam, Konganpalayam, Gopichettipalayam Taluk, Erode District. The said application had not been processed by the District Collector, Erode so far. He had also submitted that the Environmental Clearance (EC) was granted earlier till 2014 and the applicant had made an application for renewal and that was also not considered by the 5th respondent.

The Tribunal directed the District Collector, Erode to process the application for issuance of quarrying licence in respect of above said Survey numbers and the extent and pass appropriate orders expeditiously in accordance with law. On the basis such order passed by the District Collector, 5th respondent should process the application for renewal of EC. The Application was disposed of without costs.

Munnar Restoration Society, Mankulam
v.
State of Kerala

Application No. 462 of 2013(SZ)
WP.No. 14790 of 2007 Kerala High Court

Corum: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Munnar, River Quality, Sewage Plants, pollution
Decision: Disposed of (without costs)
Date: 1st October, 2015

The Tribunal on 26th August, 2015 informed the applicant that the matter would be heard even if the applicant fails to appear. The postal acknowledgment indicating that the applicant had received the notice had been received by the Tribunal. The applicant was not present on the day this judgment was passed by the Tribunal. Accordingly, the Tribunal took up the application on merits.

The application was filed by the Munnar Restoration Society for a direction to appoint a committee of experts in environmental, architectural and watershed management aspects to assess the damage and destruction that had been caused to the principal rivers and streams by the encroachers and others with reference to he litho maps pertaining to the first survey of the land of Munnar, apart from a direction to implement the provisions of the Municipal Acts. The petitioner has also asked for a direction against the respondents 1 to 5 to take appropriate steps to remove all encroachments and constructions put up on the river banks against the circulars issued under the Highway Protection Act. The District Collector, Idukki, on behalf of the 2nd respondent enumerated certain steps taken by the Government to protect the flora and fauna of Munnar. The Collector also stated that based on Section 2 of Kannan Devan Hills (Resumption of Lands) Act, 1971, and also according to the law laid down by the Court, the unauthorized encroachments in Munnar are not regulated. The Kerala State Pollution Control Boards in its Additional Report dates 23rd April, 2015 stated that the Board made monthly assessment of the water quality of rivers by analyzing regular river monitoring parameters along with traces of pesticides and heavy metals. They also stated that after scrutinizing the analysis report, directions are being issued to individual establishment/Local Self Government institutions to take remedial measures so as to achieve the river quality well within the limits prescribed.

The Tribunal disposed of the application with a direction the Government to make follow up actions and see that the decisions are implemented in their proper spirit. The Trinunal also directed the Pollution Control Board to take steps for the purpose of setting up of treatment plant at Munnar.

Niraj Pratap Singh
vs.
Ministry of Environment and Forests & Ors.

Application No. 58/2015(CZ)

Coram: Mr. Justice Dalip Singh, Prof. A.R. Yousuf
Keywords: Air pollution, Water Pollution, dust emissions, MPPCB inspection report
Decision: Application Disposed of (Without costs)
Date: 14th October, 2015

The original application was registered after a Writ Petition filed by the applicant in the High Court of Madhya Pradesh. It was transferred to the Tribunal by an order by the High Court. When the matter was listed, none had appeared on behalf of the applicant and respondents sought time to file replies. In the meanwhile, the Regional Officer of Madhya Pradesh Pollution Control Board (MPPCB) was directed to carry out an inspection of the premises of Respondent No. 5(owner of marble factory) and submit the report with details with regard to the adjoining areas since the Applicant had filed documents to show that as a result of dust emissions the trees and orchards had become covered with dust from the factory of Respondent No. 5. In the original application the Applicant also claimed that the slurry from the said factory is being allowed to flow into the river Narmada. In reply, it was submitted that Respondent No. 5 does not indulge in the extraction of marble slabs from the rocks. Respondent No.5 is operating a plant for production of dolomite chips, dolomite rough powder, soap stone powder by jaw crusher. Respondent No. 5 further submitted that he has installed required air pollution control measures to mitigate the pollution. The following air pollution control equipment had been installed: (i) Two Raymond mills along with Cyclone and Filter Bags; (ii) shed for the Jaw Crusher; (iii) screen covers for rotary screen; (iv) Cyclone and Filter Bags for the pulverizer to act as dust collectors; (v) covered sheds for all the plants and machinery. The report by MPPCB showed that all the anti-pollution measures were operating satisfactorily at the time of inspection. It was submitted that no dust particles at the time of inspection was noticed on any of the vegetation on the leaves and branches of trees on and around the factory/plant of Respondent No. 5. It was also submitted that waste water is collected in the soak pits and septic tanks which have been developed and that there is no discharge from the unit. The slurry that is generated is being collected on the farm of Respondent No. 5 itself.

Since there was no material or proof to contradict the submissions of the MPPCB, the Court accepted their report and directed that the premises of Respondent 5 shall be inspected at regular intervals and the records and photographs of such inspections to be submitted to the Tribunal for six months. The Tribunal also held that if the reports show any kind of pollution being caused, the Tribunal may take the matter up again and pass orders against Respondent 5.

P. Abdul Rahiman
v.
State of Kerala

Application No. 458 of 2013 (SZ) (W.P.No. 36725 of 2004- Kerala High Court)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Stone crusher, pollution, consent to operate
Decision: Application Dismissed
Date: 19th October, 2015

There was no representation on behalf of the applicants and neither were they present. The prayer in the application was to set aside the "Consent to Operate" granted to the 6th Respondent in the name of P.M. Crusher Metals, in the year 1999. The Kerala Pollution Control Board (the Board) submitted that the consent granted was periodically renewed. However, the application for consent could not be processed due to want of man power, even though inspection had been carried on.

In the report filed by the Board it was stated that the stone crusher unit of the 6th respondent was located in Narukara Village and they had filed renewal application and the validity of the previous consent had expired. The District office of the Board had 2 permanent staff- the Environmental Engineer and an Assistant Environmental Engineer in Technical Section. It was stated by the Board that its District Office was grossly under staffed as a result of which several applications were pending.

The Environmental Engineer who has filed the additional report on behalf of the Board has submitted that it is because of the shortage of staff and not due to the shortage of fund, the applications could not be processed in an appropriate manner and in accordance with law. While dismissing the application on the ground that the applicants was not interested in prosecuting the same, the Tribunal took serious note of the stand taken by the Board to the effect that the Board was grossly under staffed.

The Tribunal was of the view that certain appropriate directions were to be given to the State Government of Kerala to immediately sanction the required strength to the District office of the Board so as to enable the Board to function effectively. The Tribunal was told that there were a large number of cases regarding pollution covered under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 pending with the Board for clearance. In this regard Chairman of the Board addressed a letter to the Additional Chief Secretary of the Kerala State Government which was attached in the judgment.

The Application was dismissed.

P.K. Alavi Parappur
v.
State of Kerala

Application No. 398 of 2013 (W.P. No. 24952 of 2012- Kerala High Court)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Illegal sand mining
Decision: Disposed of (Without costs)
Date: 19th October, 2015

There was no representation on behalf of the applicants, and they had not been appearing throughout. The relief claimed in the application which was filed as a writ petition in the High Court of Kerala was for a direction against the respondent 5 to 8 to take immediate action to seize and destroy the unauthorized canoes engaged in removal of river sand in Kadalundi river along Parappur Grama Panchayath and also for a direction against respondent 5 and 6 to establish police out posts at Kavinmunpil Kadavu, Illipilackal Kadavu, Kanjirakadavu and at Kuzhippuram bridge of Parappur Grama Panchayath deputing police personals and also for other reliefs.

The 3rd respondent submitted that Separate squads were being constituted by the Revenue and Police Departments for checking illegal sand mining and illegal transportation of river sand in the District. Frequent raids were being conducted by the Revenue Squad in the area in question in order to ensure the full implementation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

Within the station limit of Vengara police, they had seized 502 vehicles which were used for illegal transportation of river sand and 55 country boats had been taken into custody. It was further submitted that 161 cases had been registered by the Vengara Police under the provisions of Kerala Protection of River Banks and Regulations Removal of Sand Act.

After reading the reply submitted by the Respondent 3, the Tribunal was satisfied that the official respondents were taking appropriate action for the purpose preventing the illegal sand mining. Therefore, the application was disposed of without costs.

P.R. Pandian
v.
Oil & Natural Gas Corporation

Application No. 136 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Fresh Application
Decision: Application withdrawn
Date: 8th October, 2015

The applicant in Application No.136 of 2015 made a request and he had also made an endorsement that he may be permitted to withdraw the application with liberty to file fresh application. Accordingly, giving liberty to file fresh application, Application 136 of 2015 stood closed. As Application 136 of 2015 stood closed, M.A.240 to 242 of 2015 were also closed.

Ratandeep Rangari
v.
State of Maharashtra & Ors.

Application No. 19/2014(WZ) and M.A. No. 66/2015

Coram: Mr. Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande
Keywords: Thermal Power Plants, Pollution, Environment Protection Rules, 1986, Environment Protection Act, 1986, Ash content, coal, sub-judice
Decision: Application Disposed of (without costs)
Date: 15th October, 2015.

This Application was filed by Applicant, alleging inaction by Environmental Regulatory Authorities of Ministry of Environment and Forest (MoEF)-i.e. Respondent No.6 and Maharashtra Pollution Control Board (MPCB)-i.e. Respondent No.10, regarding violation of the terms and conditions of consent to operate granted to the Coal Based Thermal Power Plants of Respondent No.9 i.e. Maharashtra State Power Generation Company Limited (MAHAGENCO) and the resultant environmental pollution. The Applicant submitted that his village is being affected due to air pollution from the nearby coal based power stations. He submitted that coal supplied by Respondent 7 & 8 to Respondent 9 is in violation of Rule 3(8) of Environmental (Protection) Rules as amended by a MoEF notification, as well as consent granted by MPCB. The information collected under RTI indicates that MAHGENCO is regularly using the coal from Respondent 7&8 having coal ash content more that mandatory requirement. MoEF and MPCB have not taken any measures against this non- compliance despite having knowledge.

Respondents 7&8 submitted that MAHAGENCO was procuring coal from different sources and not just the respondents, and such allegations did not deserve any consideration. Respondents submitted that the order of Competition Commission of India has been appealed before the Competition Appellate Tribunal and status-quo has been granted. They further claimed that the coal and ash content report prepared by CIMFR has been rejected by Hon'ble High Court. Respondents claimed that there were notified Indian standards for such analysis of the coal which were required to be strictly complied with for such coal sampling and analysis, which was not met by CIMFR. Respondents further submitted that they were a Government Company and were strictly following the Rules and Regulations. The respondents also claimed that MAHAGENCO had filed a statutory complaint against Respondents 7&8 for supply of inferior quality of coal. The statutory authority investigated the complaint and gave its report to indicate that the ash content at the alleged mines is well within the prescribed limits. It was further submitted that coal was a commodity which was nationalised and controlled by M/s. Coal India Ltd. under the administrative control of Ministry of Coal. As a consumer of the coal, Respondent No.9 did not have any control over the quality of coal which was mined by M/s. Coal India Ltd. and its subsidiaries. They further claimed that they took appropriate measures to control pollution and even switched to washed coal, without any success. They had resorted to blending of imported low ash coal. MPCB contended that they had already imposed necessary conditions in the consent granted, and they also submitted that they had limited control as coal was a product of coal mines. MoEF stated that it had directed all the thermal power plants to submit their compliances to MoEF and SPCB concerned and further the Ministry's Regional Offices and SPCB shall ensure the compliances and in case of non-compliance, the same was required to be brought to the notice of MoEF and CPCB. While

opposing the Application, the Respondent Nos.7, 8 &9 contended that there was an ongoing proceeding before the Competition Appellate Tribunal and therefore the matter was sub-judice. They also contended that there are certain PILs in the High Court of Bombay, Bench at Nagpur where similar issues had been raised and that matter was also sub-judice.

The Tribunal held that the NGT Act bestows power to adjudicate environmental disputes. The present application was related to effective implementation of the MoEF Notification, this fell within the ambit of the NGT Act. The PILs in the High Courts dealt with import and pricing of coal and the issues raised in the present application were altogether different.

The Tribunal partly allowed the Application with some directions – (i) The SPCB and CPCB shall incorporate necessary conditions for use of coal quality; (ii) The SPCB and CPCB are responsible for implementation of Air (Prevention and Control of Pollution) Act and shall develop necessary capacity for sampling and analysis of coal; (iii) SPCBs shall take monthly samples for the coal ash content and ensure the compliance of MoEF notification.

The Tribunal, in response to the Misc. Application, directed the Ministry to incorporate all such requirements while issuing any Notification in future which will go a long way to ensure that the Notifications particularly related to Environment Protection, are properly and effectively implemented to achieve the intended results.

S. Muthu Chinnaillayam
v.
The District Collector, Tripur District

Application No. 73 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keywords: Water pollution, ground water, consent
Decision: Disposed of (Without costs)
Date: 14th October, 2015

The applicant filed this application being aggrieved over the inaction of the Respondents 2&3 who were the officials of the Tamil Nadu State Pollution Control Board (Board) against the 5th respondent who had been carrying on it coir fiber industry causing pollution of ground water by soaking coconut shell with the fiber in the water. The defence put forth by the 5th respondent had flatly denied all the averments as were found in the application.

According to the Board, initially an inspection of the unit was made and since deficiencies were found a show-cause notice was served. In the instant application reply was filed by the Board stating that the 5th respondent had not obtained consent from the Board. It was subsequently brought to the notice by the 5th respondent that the application for consent was made and the same was pending before the Board.

It was brought to the notice of the Tribunal that the unit had complied with all the direction of the Board and made improvement works and made an application for consent, directions were issued to the Board on the request of the 5th respondent to consider the application for consent.

According to the Board, application for consent was resubmitted by the respondent and the concerned District Environmental Engineer (DEE) made inspection of the unit and consent was issued by the Board.

Pointing to the date of grant of consent the counsel for the applicant argued that when the application was resubmitted by the 5th respondent on 19.09.2015 the alleged inspection was done on 23.09.2015 and consent was issued shortly thereafter on 30.09.2015 in quick succession and all this showed that inspection was not taken up in a fair manner and a copy of the inspection report had not been filed either before the Tribunal or served upon the applicant.

In answer to the above submission on behalf of the 5th respondent, the Board submitted that the original inspection was made on 03.06.2014, a show cause notice was served on the 5th respondent. The matter stood thus during that time, the application was pending before the Tribunal. Hence the application was not considered. Pursuant to the directions issued by the Tribunal on 11.09.2015, the application was considered followed by inspection made on 23.09.2015 and the consent was given on 30.09.2015 along with the general and specific conditions to be strictly complied with by the 5th respondent. Hence the Board submitted that it would not be correct to state that the inspection was not properly done. The 5th respondent submitted that the industry submitted that the application filed before the Tribunal by the applicant deserved an order of dismissal on the ground of limitation. Secondly, the 5th respondent stated that the applicant is the brother's son of the 5th

respondent and between them a number of litigations were pending and the application was filed with a personal vendetta. Thirdly, the respondent stated that the applicant was operating a Rice Mill nearby without providing any Effluent Treatment Plant and without obtaining any consent from the authorities and there was high level of water pollution being caused because of the activities of the applicant. But the Board had not taken any action in that regard. While the matter stood so, the applicant had brought forth this application before the Tribunal as if there was a pollution caused by the 5th respondent unit.

The Tribunal was of the view that the application had to be disposed of on the simple ground that the application filed by the 5th respondent before the Board seeking consent was granted on 30.09.2015. The validity whether all the procedures required were followed by the Board before it issued consent could be canvassed before that forum where the consent had got to be challenged and it could not be done before the Tribunal as per the provisions of the Act.

Sandip Badrinarayan Kayashtha
v.
Alandi Municipality & Ors.

Application No. 62 of 2015

Coram: Justice V.R. Kingaonkar, Dr. Ajay Deshpande
Keywords: Municipal Solid Wastes (Management and Handling) Rules, 2000, Water pollution, River Indrayani
Decision: Disposed of (With costs)
Date: 1st October, 2015

Sandip Badrinarayn Kayastha filed an Application under Section 14(1) with Section 18(1) of the NGT Act, 2010, expressing grievances against pollution of River Indrayani at Alandi and also for reliefs. River Indrayani is considered as holy and a revered water body. There is pollution of River Indryayani at Kamshet. The river water is also used for drinking purpose by residents of Alandi. Pilgrims also visit Alandi and take a dip in the River. The State Government had proposed to grant 100% subsidy to residential accommodation (Dharamshalas) for use of pilgrims to constrict toilets, although this was not being effectively used. Sandip further alleged that the Alandi Municipal Council(AMC) did not take due care for disposal of solid waste. The garbage generated at the nearby burial ground was directly thrown in River Indrayani. Smoke generated due to burning of garbage adversely affected the health of the residents. Resultantly, water of the River required treatment for making it free from pollution. Despite sufficient financial aid, AMC failed to implement the solid waste. The AMC did not obtain NOC from the concerned authorities and hence the garbage dumping work and solid waste disposal at the site could not be effected. Flora and fauna of the river was greatly affected and many fish stock mortality was reported. Due to laxity of AMC and other respondents, Sandip asked for implementation of Solid Waste Management Act and Rules.

MPCB submitted that it had granted provisional authorization to MC for development of secured landfill site and processing plant subject to certain provisions under the Municipal Solid Wastes (MSW) law, which was valid for a specific period of time. AMC did not comply for renewal of authorization. Despite various directions AMC did not taken effective steps for identification and acquiring suitable site for purpose of MSW disposal management and sewage of untreated waste category. AMC claimed that they submitted an application to the MPCB to carry out inspection and grant its approval for the site, the Collector handed over the possession of the land and NOC was also issued by the Archeological Department, Town Planning and Senior Geologist and the airport Authority. AMC thereafter requested MPCB to grant consent but before the process could be completed a suit was filed against the AMC by Maharaj Sanstha claiming possession of the property. The Civil Court asked the parties to maintain status quo. By way of rejoinder, Sandip filed an affidavit indicating that garbage and soil is being dumped within the redline area of the River. The Tribunal held that the case of Sandip was more corroborated by the Reports of the MPCB. The Tribunal held it important to note that the land in question is government land, which was allotted to the AMC by the Collector. Earlier the Civil Court had ordered status- quo in this matter which was changed due to the delivery of the possession to the AMC. The Civil Judge after that had no jurisdiction according to Section 29(2) of the NGT Act. The Tribunal was of the opinion that the MPCB is duty bound to ensure that the industries situated in the proximity to the River are not allowed to discharge

effluents in the River. The industries which are found discharging effluents and contaminate water of River 'Indrayani', be directed to pay amount of Rs.5Lakhs each, which may vary in accordance with nature of quantity of effluent, as per the report of MPCB.

The Tribunal allowed the application and directed the Respondents to implement MSW (M & H) Rules, 2000. The Tribunal asked the programmed to be submitted by AMC with due approval of the MPCB and District Collector, Pune within 4 weeks and AMC was directed to pay costs of Rs. 10,000/- to the Applicant as litigation costs.

State Environment Protection Council
v.
Kannur Municipality

Application No. 464 of 2013 (W.P. No. 5 of 2008- Kerala High Court)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Municipal Solid Wastes (Management and Handling) Rules, 2000, Solid waste management, waste processing and disposal facility
Decision: Application Disposed of (Without costs)
Date: 14th October, 2015

The application was originally filed as a writ petition before the High Court of Kerala, praying for the issue of writ of mandamus, directing the 1st respondent- Kannur Municipality to set up and make functional a waste processing and disposal facility and other requisites for the management of solid wastes as under the Municipal Solid Wastes (Management and Handling) Rules, 2000 within a stipulated time.

It was laid on the ground that a duty is imposed on the Municipality under the Municipal Solid Wastes Rules (Rules) and also a judgment of the Supreme Court in the case of *Municipal Council v. Vardhichand* held hat providing sanitary facility is an utmost duty of the municipality.

The 3rd Respondent District Collector had filed a status report wherein he had stated that Kannur Municipality was having solid waste management in more that 20 acres if and in Chelora Grama Panchayath. It was also stated that 'Padannathode' a natural stream filled with solid waste had been renovated completely and the same had been made clean.

There was a specific direction to all the local bodies to treat the bio-degradable household waste in a decentralised manner. The Kannur Municipality had already formulated a project to provide bio-gas plants and pipe composting units under subsidised rates to households. There was a strict direction given to the municipal authorities by the District Collector to take immediate action and accordingly a notice was given to the Secretary of the Kannur Municipality to appear before the District Collector to explain the solid waste management issue before the municipality. It was also stated that a meeting was convened by the District Collector in his chambers for the purpose of discussing the issue relating to the removal of solid waste and the steps were also being taken in respect of the implementation of the same. It was also stated that for the year 2015 the target was set up as two lakh units and there was a good progress in this regard. An amount of Rs.2,62,00,000/- had been allotted by the Kannur district administration for the purpose of implementation of the project. The District Collector had also stated that he was periodically supervising the proper implementation of the decisions taken regarding the solid waste management within Kannur Municipality.

In view of the categoric stand taken by the District Collector and also the assurance given on behalf of the Collector that proper steps will be taken by way of monitoring for the purpose of implementation of the decision taken for the solid waste management in Kannur Municipality, the Tribunal was of the considered view that the prayer of the applicant was met with. The Tribunal was also of the view that there had been many directions given and they were satisfied that if these directions were implemented in full spirit, the same would

suffice to meet the demands of Kannur Municipal Solid Waste Management Disposal Scheme. The application stood disposed of without costs.

State Human Rights Protection Centre
v.
State of Kerala

Application No. 450 of 2013 (SZ)
W.P. No. 15997 of 2010- Kerala High Court

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Extraction of minerals, Kerala Minor Mineral Concession Rules, 1967, jurisdiction
Decision: Application disposed of
Date: 19th October, 2015

The application was to strike down Exhibit P3 which was a Notification issued by the Government of Kerala to amend the Kerala Minor Mineral Concession Rules, 1967 wherein the proviso it was provided that in the case of application for extraction of minerals from the lands specified in the Government Orders issued from time to time. The prayer was also for a declaration that the said amendment Exhibit P3 was illegal, ultra vires. Further, the prayer made in the application was to quash Exhibit P2 as illegal and ultra vires of the Kerala Conservation of Paddy Land and Wet Land 2008 and also against the Constitution of India apart from many other reliefs. A reference to the relief claimed in the application showed clearly that the applicant seeked a direction of the Tribunal for the purpose of setting aside an amendment carried out to the Kerala Minor Mineral Concession Rules 1967 as unconstitutional and ultra vires. This was not within the jurisdiction of this Tribunal.

The Application was disposed of.

T.K. Kunhamu Haji
v.
The Puthige Grama Panchayat

Application No.436 of 2013 (SZ)
W.P.No.972 of 2012 (Kerala High Court)

Coram: Justice Dr. P. Jyothimani , Prof. Dr. R. Nagendran
K**eywords:** Sand mining
Decision: Application Disposed of (Without Costs)
Date: 19th October, 2015

The prayer in the application was for a direction against 3rd and 5th respondents to close down the Kandalkody, Perimugar and Puthige Kadavus sanctioned in Angadimogru and Puthige river in the 1st respondent Panchayath and also for a direction against the above 3rd and 5th respondents to ensure that only permitted load and quantity of sand were removed from the river beds and river banks as stated above apart from other reliefs.

It was submitted by the 3rd Respondent, the District Collector, that there had been many complaints regarding the illegal sand mining from the authorized Kadavus. The Special Squad consisting of Police and other officials with the Tahsildar, Kasaragod as the head had conducted a surprise inspection at the Kadavus of Puthige Panchayath and found out that sand was being mined from the river and brought to shore by way of JCB and lorries and therefore the above mentioned vehicles were seized by the squad. Reportedly complaints regarding the violations of the Act and Rules had been obtained from various sources and therefore removal of the sand from all authorised kadavus of Puthige Grama Panchayath had been suspended by this respondent.

The Tribunal stated that reading the Respondents reply they saw no reason to keep the application pending as the prayer asked for by the Applicant had already been met by the Respondents. The Application was closed with a direction to the official respondents to continue to supervise to prevent illegal sand mining.

Shri. Varad Co-Op Housing Society (Ltd.),
v.
Deepak Engineering Works

Application No. 54/2015 (WZ)

Corum: Mr. Justice V.R. Kingaonkar , Dr. Ajay A. Deshpande
Keywords: Residential area, Noise pollution, Noise Pollution (Regulation and Control) Rules 2000, Pune Municipal Corporation.
Decision: Application Disposed of (with directions)
Date: 1st October, 2015

By this application, applicants Shri Varad Co-operative Housing Society and its members had approached the Tribunal raising an environmental dispute relating to noise pollution caused to industrial activities of Respondents 1 to 4 and inaction on the part of Government Authorities- other respondents. The issue had gone on for long and show cause notice under Section 133 Cr.P.C. was issued to Respondents 1-4 in 1993 to reduce the noise pollutions or relocate the manufacturing operations within 15 days. This notice was made absolute by a subsequent order. Applicants approached various authorities on several occasions. Health Department of the Municipal Corporation had carried out inspections of the disputed area in March 2014 and April 2014 when certain non- compliances were observed. Based on this, notices were issued to the Respondent industries and Pune Municipal Corporation informed the Maharashtra State Electricity Distribution Company to disconnect the supply to Respondents 1-4. PMC failed to take effective action against the violators in terms of Section 7(2) of the Noise- Pollution (Regulation and Control) Rules, 2000.

The jurisdiction available to the NGT is very specific under Section 14(1) of NGT is very specific therefore the alleged non-compliances of other regulations like Maharashtra Municipalities Act, Land Revenue Code, Maharashtra Regional Town Planning Act, etc. cannot be entertained by the Tribunal. Respondents 1-4 did not file any written reply but their counsel submitted that the Respondent industries are in fact very small or cottage industries, and submitted that the industries had been functional for 26 years. He also submitted that the cause of action had arisen long ago and therefore barred by Limitation. The Counsel for Respondents also pointed out that the Society is located along the Sinhgad Road which is a very heavy traffic road. Dnyanganga School is also in the proximity of the applicants and have never complained about any noise. Respondent 5 submitted that the noise monitoring data presented was not measured according to he prescribed procedural standards. She also submitted that the application was barred by Limitation. Respondent 9- MPCB did not file any affidavit, however, they stated that the activity carried out by Respondent 1-4 requires consent from the MPCB under provisions on Water (Preventions and Control) Act and Air (Prevention and Control) Act. It was further submitted that the Respondents 1-4 did not have the consent from the MPCB, neither had they applied. Respondent No.6- PMC had not filed any affidavit and the advovate agreed that the OMC had received several complaints from the applicants against the Respondents regarding the noise pollution. The PMC also submitted that they had already notified the silence zones for the city of Pune. They further submitted that the PMC has carried out necessary investigation from time to time in the matter and had even recommended the Maharashtra Electricity Board to disconnect the electric supply for erring industrial units. Respondents No.8- Maharashtra Electricity Board replied that the electric supply provided to the

respondent industries is commercial in nature and cannot be discontinued without Court or statutory orders.

According to the map of the disputed area, the Applicants society is abutting Singhad road which experiences heavy traffic. The PMC had already declared the area, particularly around the Dnyanganga School, as a silence zone and hence certain restrictions were applicable as per Noise Rules 2000. The Court further held that the industry is surrounded by residential areas and environmental issues were bound to occur. But since both the applicants and the respondents had been existing prior to Noise Rules 2000, none could be benefitted from it. The Tribunal further held that according to Section 14(1)(3) of the NGT Act the Application was barred by Limitation, and was dismissed. However under Section 18, 19 and 20, i.e. precautionary principles, the NGT issued some directions:

(i) Respondent industries to apply to the MOCB for consent with 15 days;
(ii) If consent granted, MPCB to ensure the compliances of conditions;
(iii) if consent refused, MPCB to issue directions for closure of industries;
(iv) silence zones were ordered to be clearly defined with a map;
(v) PMC to give publicity to the notification within 7 days and send a copy to concerned authorities.

The Application was disposed of with no costs.

Videocon Towers ACHS
vs.
Environment Dept. & Ors

Appeal No. 05 of 2013 (M.A.No.9, 33 of 2013, M.A. Nos. 54, 119 of 2014 and M.A. No. 29 of 2015)

Coram: Justice V.R. Kingaonkar , Dr. Ajay A. Deshpande
Keywords: State Environmental Impact Assessment Authority (SEIAA), Environmental Clearance, Residential Buildings, Parking spaces
Decision: Disposed of (With Costs)
Date: 15th October, 2015

By this appeal the Appellant sought to challenge decision of the State Environmental Impact Assessment Authority (SEIAA), Environment Department, Government of Maharashtra as well as Prohibitory Injunction against other respondents from interfering with their use of existing parking arrangements for buildings of Videocon Towers A and B. Appellant- VT**A**CHSL and Respondent No.10 VT**B**CHSL claimed that 158 parking spaces for their two buildings. It was a case of the Appellants that residents of building A, whom the Appellant represented, were entitled to 78 parking spaces as per the terms of Agreement between the original owner and the Chief Promoters of the two housing societies which was entered in about 2003. Appellant alleged that during 1995- 2006, original owner-cum-developer (VRIL) commenced construction of buildings 1 and 2 (A and B) over land CTS Nos. 724, 783, 764 and 784, Mumbai. The members of Co-operative Housing Societies purchased residential flats for valuable consideration and with intention that all facilities as per the agreement between developer and Housing Societies would materialize. The Occupancy Certificate was granted by Municipal Authorities to VTACHSL and VTBCHSL in 2003.

In 2006, VRIL had assigned development rights in respect of remaining plot area to Nikunj Developers Saaz. The conditions stipulated by the Municipal Authorities stipulated various amenities for those buildings namely swimming pool, health club, parking spaces, etc. Notwithstanding the non-compliance of such conditions of the previous CC, granted by MCGM, Nikunj Developers started construction of additional building Nos. 5 and 6, by way of expansion of the existing project, extending structures in excess of threshold limit for which EC was absolutely necessary as per EIA notification. According to the Appellant such violation was brought to the notice of SEIAA, a show case notice was issued and subsequently withdrawn due to submission of incorrect and untrue information. Such withdrawal triggered VTACHSL for filing of writ petition and in the meanwhile Nikunj Developers submitted an Application to SEIAA for grant of ex- post facto EC for construction of building nos. 5&6. The application by Nikunj Developers (ND) was considered by the High Court and the writ petition by VTACHSL was disposed of. SEIAA issued direction under Environment Protection Act for ND. The appellant submitted that excessive vehicle movements in the residential areas was likely to cause environmental degradation. The Municipal Corporation submitted that owner of the property, namely, VRIL, (Respondent No.6) submitted construction proposal of two buildings styled as VTA-CHSL (Building No.1) and VTB-CHSL (Building No.2) on the plots under reference the construction plan was approved by the Corporation. Subsequently, VRIL assigned development rights in respect of remaining plot area and use of TDR in favour of Nikunj Developers- Veena Saaz for building Nos. 5 and 6. The built up area of building Nos. 5 and

6 do not exceed limit of 20,000Sq.m. So, the Municipal Corporation did not insist approval of the MoEF or SEIAA, as required under the EIA Notification.

The Appellant further filed Writ Petition in the High Court of Bombay. The High Court dismissed that Writ Petition with direction that the Appellant was at liberty to make a representation to Environment Department within a week and Environment Department, shall take an appropriate decision. The Municipal Authorities said that parking space already constructed for building Nos.1 and 2, prior to expansion, would not be joined to the project expansion plan. Nikunj Developers i.e. Veena Developers (Respondent No.7), filed a reply in which a preliminary objection was raised on the ground that the Appeal was barred by limitation, Also VRIL entered into an agreement with Nikunj Developers/ Veena Saaz where all rights of development and TDR, had been assigned.

The High Court directed Nikunj Developers to make an Application to SEIAA for modification of condition requiring it to provide 351 parking spaces and directed that SEIAA should consider such Application. They came to the conclusion that maximum parking spaces required to be provided could be only 227 for all the six buildings and not 351 as per the Minutes of SEIAA and therefore, claim of the Appellant in respect of 97 parking spaces was unacceptable. Being aggrieved by such Judgment the High Court in Writ Petition, VTACHSL filed Special Leave Petition. This Tribunal directed the matter to be kept in abeyance until decision of SLP was informed. The conditions, which are reproduced, categorically show that till parking of the building was approved and completed, no possession was given to occupy any construction beyond 9th floor in building No.6.

There was no dispute about fact that VTA-CHSL and VTB-CHSL were similar projects and the buildings were of identical nature. Chief bone of contention of the contesting developer (Nikunj Developers/Veena Saaz Developers), was that there was illegal amalgamation of two flats by owners of VTA-CHSL as well as VTB-CHSL, on basis of which parking spaces were being claimed. It was further contention of the developer that originally in 2003 when the project activity was under consideration, the Appellant could have claimed only 26 parking spaces as per DCR, 1991. The area below 35sq.m of flat could not have any right to claim parking. The area of 46sq.m, which was between limit, as per the DCR-1991, totally could claim 11.50 parking space and, therefore, each of the building Nos.1 and 2, even after addition of 10% for visitors, could be permitted to claim 26 parking spaces.

The Tribunal stated that the project proponent violated the Environmental Clearance Regulation 2006 by undertaking construction before EC was granted. The Tribunal also held that it was necessary to not allow further occupation of building No. 6 unless proponent makes necessary amends. Following directions were given: i) Respondent 7 were needed to pay Rs.5 crores to the Authority specified under Public Liability Insurance Act to be credited to Environmental Relief Fund; ii) The Respondent No.7 shall provide 351 parking spaces as per the original EC; iii) Respondent 7 to inform prospective buyers of the flats in building no. 6 from 6^{th} floor onwards; iv) The SEIAA to expedite the proposal of Respondent 7 as and when submitted for modifications and ensure its disposal. The SEAC/SEIAA shall further ensure that the parking to be provided shall not adversely affect the common utility and amenities, which are detrimental to the rights of the occupants.

The appeal was disposed of with costs of Rs.1Lakh payable to the Appellants by the Respondent No. 7.

NOVEMBER

Mrs. Ambiga And Anr.
V.
Mrs. Rajeshwari And Ors.

Review Application No. 19 Of 2015
In
Application No. 137 Of 2014 (Sz)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Review application
Decision: Application Dismissed
Dated: 4th November 2015

The applicant had sought for review of an order of the Tribunal made in Application No.137 of 2014(SZ) made on 05.08.2015. The grounds and reasons along with the supporting averments put forth in the application were perused and considered. No acceptable or convincing reason or ground was noticed.

Hence, application was dismissed as devoid of merits.

K.S. Rajan
V.
Ministry Of Environment And Forests & Ors.

Application No.177 of 2014 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Quarrying, granite, environmental clearance
Decision: Application was disposed of
Dated: 4th November 2015

The only grievance ventilated by the applicant was that the 11th respondent has been carrying on quarrying of granite building stone in the aforesaid Survey Numbers at Malayalapuzha Village, Pathanamthitta District in violation of law and thus it was illegal. Under the circumstances, there arose a necessity for filing the application. It was not in controversy that the permit which was granted in favour of the 11th respondent was for a particular period ending on 28.10.2015 and thus there was no permit available in favour of the 11th respondent for carrying on any quarrying activities thereafter. Hence, in order to avoid the avoidable delay, the Tribunal was of the considered view that the application could be disposed of by restraining the 11th respondent from carrying on any quarrying activities in the aforesaid Survey Numbers except by obtaining Environmental Clearance (EC) as required by law.

However, it was made clear that the respondents 4 and 6, who were vested with supervisory powers and the respondents 8 and 10, who were the local authorities in whose jurisdiction the quarry site exists, were directed to monitor that the 11th respondent shall not carry on any quarrying activities and if any circumstances warrant so, there was no impediment for the applicant to make necessary action and to approach the authorities for necessary relief there for.

Therefore with that, the application was disposed of.

Animal Rescue Squad And Others
V.
Goa Pollution Control Board And Others

Application No. 30/2015 (WZ)

Coram: Justice V.R. Kirgaonkar, Dr. Ajay A. Deshpande
Keywords: Environmental pollution, solid waste disposal, water pollution, illegal slaughtering
Decision: Application disposed of
Dated: 6th November 2015

The Applicants approached this Tribunal alleging illegal slaughter of animals in the State of Goa in violation of the Law, and in contravention/violation of basic principles of Environmental Law.
According to them illegal slaughtering of animals was continuing without any provisions of Pollution Control, Solid Waste Disposal and ultimately all the waste, including blood and other body fluids, is finding its way to the natural water bodies directly or through the drains. The solid waste including the body parts, bones etc. is also disposed of unscientifically which cause environmental pollution and contamination.

The Applicants further submitted that only one slaughter house i.e. Goa Meat Complex exists in the State and even the same is not in operation due to absence of licences from the concerned authorities. The Applicants alleged that said slaughter house also does not have necessary effluent treatment plant and solid waste disposal system. Applicants relied on the R.T.I. inquiries to show that the Goa State Pollution Control Board has not given consent to any other slaughter house in the State.

The tribunal framed following issues pertaining to the application:
1) Whether there was a need to direct the State of Goa and GSPCB to prohibit all forms of slaughtering animals in the State of Goa, except in slaughter house/s with functioning effluent treatment plant and without legal or valid consent to operate of GSPCB?
2) Whether the slaughtering and meat supply activities were required to follow certain environmental safeguards to avoid instance of pollution and contamination?
3) Whether any directions were required to be given to the authorities or other parties?

The Tribunal in its discussion also pointed out that the slaughter house, being a polluting activity, needs to comply environmental Regulations, particularly, Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and Environmental (Protection) Act, 1986. It concluded that in absence of an approved slaughter house in the State of Goa and further in absence of any information about verification or enforcement of the Rules ascertaining the claims of import of slaughtered animals for the supply of meat in the State of Goa, there is a reasoned apprehension of illegal slaughtering activities going on without the necessary environmental safeguards.

The application was disposed of making following orders:
1. The State of Goa through the Chief Secretary i.e. Respondent NO.2 shall ensure that the existing slaughter house at Goa Meat Complex Ltd. is made functional with

necessary environmental safeguards and permission of the GSPCB within period of six (6) months.

2. The Respondent Nos.1, 5 and 6 shall ensure that an appropriate record of sourcing of slaughtered animal along with necessary details like consent/clearance available with those slaughter houses is available and maintained by the Municipal authorities in view of the precautionary principle and the burden of proof principle, laid down by the Apex Court. The Municipal Authorities and the District Collector shall ensure the compliance of these directions with immediate effect.
3. The GSPCB, Collector and the Municipal Authority shall ensure that the meat shops do not cause any pollution and the waste generated in the process is disposed of scientifically. Further, they shall ensure that the instances of waste disposal located either through inspections or complaints are properly investigated and stringent actions be taken against the defaulter.

Ravindra Bhusari
V.
Ministry Of Environment And Forests And Ors.

Application No. 98 of 2014

Coram: Justice V.R. Kirgaonkar, Dr. Ajay A. Deshpande
Keywords: Noise pollution, firecrackers, Polluter Pays Principle
Decision: Application disposed of
Dated: 6th November 2015

Vide this application, the applicant bought into picture the issue of noise pollution due to bursting high decibel noise creating firecrackers, in spite of enactment of necessary Regulation in the form of noise standards for the firecrackers, which are allegedly to be blatantly violated and thereby, resulting into non-compliance of ambient Noise Standards stipulated in the Noise Pollution.

The case of the Applicant was that though the Noise Standards for the firecrackers have been promulgated as per entry No.89 of Schedule-I, of the Environment (Protection) Rules, 1986 that stipulates certain noise standards restrictions on manufacturing, sale and use of the firecrackers, and also, the Noise Rules have been notified in the year 2000 where restrictions on use of firecrackers are stipulated, the Authorities have failed to ensure its due compliance. He submitted that ill effects of the firecrackers in the form of noise pollution, toxic air pollution, hazardous contents of solid waste generated after busting of the firecrackers, pose a serious threat to human health and environment.

Contesting Respondents Nos. 1,2,3 and 6, which were government authorities filed their affidavits, that mainly described steps and efforts taken by these Government Authorities for implementation of Noise Standards for the firecrackers, as well as the Noise Rules, 2000. MPCB, especially, had filed an affidavit contending that it was regularly monitoring ambient air quality in terms of noise as well as air pollution during festive seasons.

The Tribunal stated that it did not find any concrete or proactive actions from Respondent-6, either by issuance of Directions of closure or seizure of non-complying firecrackers or closure of such manufactures. It only found submission of various excuses, particularly the manpower shortage. The authorities responsible for environmental regulation enforcement had special responsibility as such noncompliance were likely to cause serious threat to human health and environment.

Tribunal stated that since the matter was being dealt by the apex court, it did not feel the need to deal with the reliefs claimed in the prayer, still, however, it was necessary to ensure effective enforcement of Noise Standards for the firecrackers as well as the Noise Rules, 2000, besides taking certain steps to restrict/ameliorate ill-effects of firecracker bursting.

The application was disposed off with following directions:

i) The Government Authorities, particularly, the Environment Department, MPCB and Municipal Corporations/Councils, shall give wide publicity to ill-effects of the fire crackers, as per the orders of the Apex Court.
ii) The MPCB shall conduct noise and air monitoring during 'Dipawali' period, in order to assess adverse noise impacts of the firecrackers bursting by involving the local

Municipal and Police Authorities and shall share on-line information, particularly, high observed values, with them for effective and timely intervention.

iii) The Respondent No.6 and MPCB, shall conduct random test of various brands of the firecrackers, in order to verify their compliances of stipulated standards. In case of non-compliance, the Explosives Department i.e. the Respondent No.6, with the help of District Magistrate, shall ensure that such firecrackers are not sold in the market.

iv) Respondent-6 shall display names and brands of firecrackers which are found to be non-complying on their website immediately and also, give Newspaper advertisement about such information.

v) The District Level Committees, constituted vide order dated 14th October, 2014, shall work for this years 'Dipawali' Festival period also.

vi) The MPCB and local Authorities shall also conduct necessary sampling and analysis of solid waste generated from bursting of the firecrackers, in order to verify its hazardous contents, so that necessary waste disposal practices can be adopted

vii) On basis of the 'Polluter Pays Principle' all the firecracker sale agencies/shops, shall pay amount of Rs.3,000/- (Three Thousand) to Municipal Authority as Environmental cleanliness charges, which be exclusively used for cleaning of the solid waste generated from bursting of the firecrackers and safe disposal thereof and remainder if any, be exclusively used for environment activities like plantation, construction of Toilets for women, school level awareness etc. In case of default, Municipal Authority, shall take stringent action against such defaulting agencies/shops, including black-listing or not renewing their licences in future.

Shri Rakesh Jain
V.
Delhi Pollution Control Committee

APPEAL NO. 46 of 2015 &
M.A. No. 570/2015 IN APPEAL NO. 46 of 2015
AND

Connected matters:

APPEAL NO. 47 of 2015 &
M.A. No. 571/2015 IN APPEAL NO. 47 of 2015
AND
APPEAL NO. 48 of 2015 &
M.A. No. 572/2015 IN APPEAL NO. 48 of 2015
AND
APPEAL NO. 49 of 2015 &
M.A. No. 573/2015 IN APPEAL NO. 49 of 2015
AND
APPEAL NO. 50 of 2015 &
M.A. No. 574/2015 IN APPEAL NO. 50 of 2015
AND
APPEAL NO. 51 of 2015 &
M.A. No. 575/2015 IN APPEAL NO. 51 of 2015
AND
APPEAL NO. 52 of 2015 &
M.A. No. 576/2015 IN APPEAL NO. 52 of 2015
AND
APPEAL NO. 53 of 2015 &
M.A. No. 577/2015 IN APPEAL NO. 53 of 2015
AND
APPEAL NO. 54 of 2015 &
M.A. No. 578/2015 IN APPEAL NO. 54 of 2015
AND
APPEAL NO. 55 of 2015 &
M.A. No. 579/2015 IN APPEAL NO. 55 of 2015
AND
APPEAL NO. 56 of 2015 &
M.A. No. 580/2015 IN APPEAL NO. 56 of 2015

Coram: Justice Swatanter Kumar, Justice U.D. Salvi, Mr. Ranjan Chatterjee
Keywords: Pollution, deemed consent, Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008, Principle of Sustainable Development
Decision: Application disposed of
Dated: 6th November 2015

These were the appeals challenging the directions passed by the Delhi Pollution Control Committee (for short DPCC), to revoke "deemed consent" under Section 27(2) of Water (Prevention and Control of Pollution) Act, 1974 (for short Water Act) and under Section 21(4) of Air (Prevention and Control of Pollution) Act, 1981(for short Air Act) and further to refuse the authorisation granted under Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008 (for short HW Rules) as well as for closing the

operations of the appellant units, disconnecting of water and electricity supplies and for cancellation of permissions and licences issued by North Delhi Municipal Corporation to operate the units, issued in exercise of powers conferred under Section 33(A) of the Water Act, 1974 read with Rule 34(6) of Water (Prevention and Control of Pollution) Rules 1975 and under Section 5 of Environment (Protection) Act, 1986 (for short Act of 1986) read with Rule 4(5) of the Environment (Protection) Rules, 1986 vide respective Notices/communications dated 14th May, 2015. All the appellants were Steel Pickling units situated at Wazirpur Industrial Estate within the limits of North Delhi Municipal Corporation, Delhi.

It was observed during the course of hearing that entire idea of handling and treating the spent acid/acid residue/spent liquor/acid bath sludge- Hazardous waste in ETPs was not compatible with the scheme of running CETP in as much as it was firstly negation of the accountability viz. a viz. Hazardous waste spent acid/acid residue/spent liquor/acid bath sludge and secondly the CETP was not designed and expected to handle watery sludge generated upon treatment of spent acid/acid residue/spent liquor/acid bath sludge and discharged through the conduit pipeline taking effluent from ETPs to CETP.

Thus, the Tribunal did not see any reason in the plea of the appellant units to allow the Appeals. Considering the Principle of Sustainable Development and the need of the appellants units, these Appeals were disposed of with the following order:

a. The impugned notice and the closure notice dated 14-05- 2015 and consequent closure orders shall remain suspended subject to the appellants complying with the terms and conditions as stipulated by the DPCC, particularly, as noticed herein above at para 7 for running their units.
b. Suspension of the respective impugned closure orders shall not come into effect till the respective appellants submit fresh application for consent under HWM Rules with agreements, surety bond, undertaking(s) and requisite consent/authorisation fees as applicable to the respective units in terms of the minutes of meeting dated 06-07-2015. In the event of such application being made the DPCC shall expeditiously dispose of such application preferably within one month in accordance with law.
c. The Appeal Nos. 46/15, 47/15, 48/15, 49/15, 50/15, 51/15, 52/15, 53/15, 54/15, 55/15 and 56 of 2015 were disposed of with no order as to costs. M.A. No. 570/15, 571/15, 572/15, 573/15, 574/15, 575/15, 576/15, 577/15, 578/15, 579/15, 580/15 also stood disposed of.

Shri. Bakerao Tukaram Dhemse And Anr.
V.
The Municipal Corporton, Nasik And Others

Narayan And Anr.
V.
The Municipal Corporation, Nasik And Others

Application No.16 Of 2014
With
Application No.58 (Thc) Of 2014
(Common Judgement)

Coram: Justice V.R. Kirgaonkar, Dr. Ajay A. Deshpande
Keywords: Waste Management, MSW Rules, environmental impacts
Decision: Application disposed of
Dated: 9th November 2015

The issues in both the applications were identical and hence they were disposed off via a common judgment. The issue was about mismanagement of MSW plants operated at Pathardi. It was alleged that the MSW plant is not operated in accordance with the MSW Rules, no proper waste management is done, and there are adverse environmental impacts and health hazards resulting due to activities of plant.

The respondent in its reply claimed that, the plant was properly managed and due care was taken to ensure that landfill site was being properly managed under the MSW (M & H) Rules, 2000. They also declared all the allegations of the petitioners to be untrue.

Although, it was found that several waste management units of the plant were not functional. There are MSW treatment and processing plants available, but they are not functional. Much of the machinery of the plant has become un-useful due to the fact that it has been depressed under the garbage and might have been rusted and could need more revamping and repairs.

Tribunal was of the view that in such a case more care is required to be taken by any Municipal Corporation/Municipal Council, to ensure that composting plant, landfill site, MSW plant like RDF plant and other such activities shall be designed for adequate capacity considering the possible expansion of city area and increase in waste quantity. Tribunal also discussed how failure to comply with the MSW rules led to the worsted conditions.

In pursuance of the entire matter, the Tribunal disposed of the matter with following directions:

i) NMC shall give work of contract to remove and dispose at least 2/3rd garbage heaped at the SLF with proper use of air masks to avoid unhygienic environment and strong odour problem to such workers. This work shall be completed in next four (4) months.
ii) The Collector and Concerned Gram panchayats are prohibited under Mandamus not to issue any construction permission to any Farm house / Societies/ commercial Project or like activities situated within 500m of the Plant, unless, they are provided

with their own MSW management, including composting plant/SLF plant, STP etc, which will avoid additional burden on the NMC MSW plant in question.

iii) NMC shall not issue any construction permission to any residential, commercial or industrial project within Municipal Corporation limits, unless and until, there is a provision shown in the approved map and in case of ongoing projects, the actual verification through an Architect, is carried out, before grant of Occupancy Certificate, to the effect that there is due provision for adequate internal STP, internal plant for Composting, internal plant for incineration and internal minimum greenery/plantation/afforestation, which shall be at least, in five number per person for one residential unit. Such restriction shall be applicable till the MSW plant is made functional as per MSW rules for a continuous period of six (6) months.

iv) The Farm House activity shall not be allowed within Municipal limits and no residential permission shall be granted to any construction activity, which is likely to enhance load on MSW facilities.

v) These directions will take effect immediately w.e.f. 26th November, 2015 and in the meanwhile, the Chief Secretary, State of Maharashtra shall promulgate all the directions stated above to the concerned Authorities and copy of this order be issued to the Collector, Pune as well as Commissioner, Pune by the Law Officer of Collectorate, Pune through their PAs, without fail and by the concern officer of the MPCB to all the concerned Authorities by email or by any other authentic mode.

M/S. Subhashri Bio Energies Private Limited
V.
Government Of Tamil Nadu And Ors.

Application No. 195 of 2015(SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Red category, waste management
Decision: Application disposed of
Dated: 18th November 2015

The applicant, M/s. Subhashri Bio Energies Private Limited, aggrieved over the pendency of its representation before the Tamil Nadu State Pollution Control Board (Board), the 1st respondent, herein, had brought forth this application.

There were hundreds of poultry farms in and around the District of Namakkal which generate huge quantity of waste of about 2500 MT of poultry litter per day. The applicant took up efforts on a personal level to hygienically dispose of the waste and established a waste to Energy Bio-Power Plant. It was the pleaded the case of the applicant that the project was only a waste management effort on an individual level by a single farmer in the District, which collected waste from the poultry farms, stabilized them and reprocessed them back to the farmers in a totally 'Nothing to Waste Concept'. By treating the unit under red category, the Tamil Nadu State Pollution Control Board had been charging huge consent fees every year. The Unit was declared as falling under red category as per the Board Proceedings Ms. No. 37, dated 10.3.2010. Subsequent to the same, the applicant approached the authorities of all the concerned Departments of Central as well as State Government and got their respective approvals. A new representation dated 2.9.2015 was made and presented before the 1st respondent Board, bringing to the notice of the authorities listing all the approvals given in favour of the applicant and the industry itself is eco-friendly and hence the necessity had arisen for its removal from the red category and listing it under green category. The said representation was pending consideration before the 1st respondent, which according to the counsel for the applicant had to be disposed of at the earliest.

The Tribunal, on hearing the counsels was of view that it was not in controversy that the applicant made a representation to the Board in the month of February, 2010 even before the applicant was declared as falling under the red category in the month of March, 2010 and informed the same to the applicant on 30.3.2010. It was true that the present representation had been given after lapse of nearly five years. But a satisfactory explanation was brought to the notice of the Tribunal by the applicant that after the applicant was declared as falling under the red category in the year 2010, he approached all the concerned authorities both at the Central as well as State Government level and got approval in his favour. After obtaining so, the present representation was submitted to the 1st respondent Board to consider his request for removal of the applicant's unit from the red category and consider it as a green project. Hence, no impediment was felt in order to avoid the avoidable delay, it would be fit and proper to issue a direction to the 1st and 2nd respondents to consider the representation dated 2.9.2015 of the applicant within a period of two months from the date of this judgement and pass suitable orders thereon in accordance with law.

Accordingly, the application was disposed of.

Suo motu application based on the News item appeared in the news paper Times of India dated 14.9.2015

Application No.152 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Illegal resorts/construction, Mudumalai Tiger Reserve, Private Forest Act, 1949
Decision: Application disposed of
Dated: 19th November 2015

Suo motu application was taken up, based on the report published in the news paper ''Times of India'' dated 14th September, 2015 that the illegal resorts have been put up in Mudumalai Tiger Reserve in the District of Nilgiris in the State of Tamil Nadu.

The status report filed by the respondents 2 and 3 stated that the construction of resorts which was referred to in Times of India, on enquiry, was found to be relating to the patta land situated at Pokkapuram in Old Survey No.394/1A corresponding to New Survey No.198/3A of Sholur Village owned by one B. Nijamudeen and this land had been notified as private land under the provisions of the Tamil Nadu Preservation of Private Forest Act, 1949. It was stated that subsequently as per the order of the High Court of Madras made in W.P.No.10098 of 2008 etc., batch, the entire area had been declared as Elephant Corridor by the Government vide G.O.Ms.No.125 Environment and Forests Department dated 31.8.2010, followed by a notification issued in the Nilgiris District Gazette dated 1.8.2011. As against the order of the High Court of Madras, the land owners moved to the Supreme Court of India and it was stated that the Apex Court had stayed the orders of the Madras High Court and directed the government to demolish the commercial buildings and dispossess the concerned. It was stated that by virtue of the stay granted by the Supreme Court, the construction of resorts made by the land owners based on the permission granted by the District Committee and Executive Officer to construct the building in the year 2007 stood valid.

Therefore it was clear that unless and until the Apex Court disposes the said SLP, no useful purpose would be served by keeping this application pending. Henceforth, the application was disposed of.

Sukumar Ballav And Ors.
V.
Union Of India And Ors.

Original Application No. 69/2015/EZ

Coram: Justice V.R. Kingaonkar, Prof. (Dr.) P.C. Mishra
Keywords: Noise pollution, amplifier system, Noise Pollution (Regulation and Control) Rules, 2000
Decision: Application disposed of
Dated: 19th November 2015

By this application, the original applicants had prayed for issue of mandatory direction against respondent No. 7 to prohibit the use of amplifier system for which permission was granted vide Memo No. 685/Con dated 20th June 2015 by the Sub Divisional Officer to use microphones/amplifiers for religious functions during the holy Ramjan month.

The Tribunal, in its observation stated that there could be no dual opinion to the ground reality that in particular circumstances, during religious activities like Azan in the month of holy Ramjan, there may be necessity of requiring amplification of sound, so temporary permission could be granted by the competent authority during the said period, as provided in the relevant Rules. In the present case, the competent authority granted permission in terms of the Noise Pollution (Regulation and Control) Rules, 2000 (for short Rules) under provisions of Rule 3, Rule 5 thereof. In rule 5 of the Rules there is restriction on the use of loud speakers/public address system and sound producing instruments. It is clearly provided therein that loud speakers/public address system and sound producing instruments shall not be used at night time except with prior written permission of the authority.

The Tribunal also made an important point that there was right to perform religious activity but it has to be balanced with environmental law and that is why the Noise Rules and other laws have been enacted. It could not be overlooked that before amplifier or loudspeakers were invented, religious activities were going on and similarly before the Dolby sound or DG system was introduced. With the above mentioned observations, the Tribunal ordered directed the authorities to immediately, within a week, remove the amplifier/microphone or any other system like Dolbi system/DJ system, from the premises in question. If there is any resistance from anybody, due protection shall be given to the executor of law in doing their work under police protection.

With this, the application was disposed of.

Powergrid Corporation Of India
V.
Ministry Of Environment, Climate And Forest Change And Ors.

Application No.118/2015(WZ)

Coram: Justice U.D. Salvi, Dr. Ajay A. Deshpande
Keywords: Felling of trees, electricity transmission line, Tansa Wildlife sanctuary
Decision: Application disposed of
Dated: 20th November 2015

The present Application was filed by Powergrid Corporation of India Ltd., a Government of India Enterprises, seeking permission of this Tribunal to cut some trees in 3 (three) mtrs. wide strip of land below the conductor 400 KV electricity transmission line, to be laid from Kala to Kudus falling within 10 kms. area from boundary of Tansa Wildlife sanctuary.

The High Court of Judicature of Bombay, Nagpur Bench in Writ Petition No.1277/2000 on 30th April, 2004 passed an order directing the State to comply with the policy decision taken by Central Government for protecting environment and therefore imposed restrictions on felling of trees within 10 k.m. area from the boundaries of National Park of Sanctuary, notified as eco-sensitive area. On 27th April, 2005, the High Court noted that the State Government had not come before the Court with comprehensive plan to protect and preserve the eco sensitive and eco-fragile zone around National Park and Wild Life Sanctuary and further directed that in case the State Government got any specific clearance to carry out non-forest activity from the Ministry of Environment and Forest, they could bring the notice from the Court and proceed in accordance with the working plan sanctioned by Central Government.

The Tribunal observed that the project proponent had necessary permissions and the forest department filed an affidavit stating that certain amount had been deposited for the re-plantation besides the CAMPA Fund. In addition, as a special measure, 3,54,200 medicinal plants would be planted at the approximate cost of Rs.5.12 Crores (Five Crores twelve lakhs). Other environmental measures like Soil Conservation, construction of Vanatalao, cement Bandhara etc. were also planned at the cost of project proponent.

The Tribunal also stated that the activities of tree cutting and plantation should be carried out *Paripassu*, if not possible, at least at the first available season suited for the plantation purpose. It was finally of the view that the number of trees which were to be cut was 275 only, when compared to forest area diversion of about 147 Ha. of area. Therefore, the Tribunal allowed this Application with additional condition that at least double the number of trees shall be immediately planted before starting of the project, at the cost of the Applicant which was over and above the funds which had already been deposited with the forest department. This plantation shall be carried out immediately by providing additional funds directly to the local forest office by the project proponent.

With this, the application was disposed of.

Mr. S. Dhanpal And Anr.
V.
Union Of India And Ors.

Application No. 104 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Environmental clearance, sand quarrying
Decision: Application disposed of
Dated: 20th November 2015

The applicants, an agriculturalist and environmentalist, respectively filed this application praying for a direction against the second respondent, State Environment Impact Assessment Authority (SIEAA), Tamil Nadu State to revoke the Environmental Clearance (EC) dated 27-02-2014 granted to the eighth respondent for the proposal of quarrying of sand in 19.00.00 ha in River Vellar at S.F. No. 98(P) of Neivasal Village, Thittagudi Taluk, Cuddalore District. The complaint of the applicants was that against the conditions stipulated in the EC, the PWD was extracting abnormal quantities of sand, more than 500 lorry loads of sands per day and mining beyond a depth of 10 m.

It was also the case of the applicants that there were no clear boundary marking of the quarry apart from the depth of the quarry and the roads laid were unauthorised and illegal and against the terms of EC. The applicants also narrated various instances to show that many of the conditions of the EC were violated. While the manual operations and transport operations were to be done by Bullock Carts as per the terms of EC, according to the applicant 12 JCBs and Hitachi machines were used in the River for 24 hours a day.

The 3rd respondent, Tamil Nadu State Pollution control Board (Board) in its reply stated that the sand quarry site was a Government leased area and EC had been obtained from SEIAA by the Executive Engineer PWD.

According to the Board, the quarry site was inspected on 15-07-2015 and it was found that 2 JCB machines were engaged in levelling the quarried site, 2 JCB machines were engaged in sand quarrying operation and 4 JCB machines were used for loading sand in the trucks to transport the sand to the stockyard and up to 1-2 m depth of quarrying operation were carried on. It is also stated that agricultural activities are done adjacent to the River bank and quarrying operations are being carried out at a buffer distance of about 50 m. According to the Board, quarrying was authorised, as prior EC had been obtained apart from the consent from the Board. It was stated by the Board that the depth of the sand quarrying operations were being monitored by PWD and the quarrying was not noticed up to 10 m apart from the fact that the boundary markings were done using stone pillars. It was further stated that the transportation through vehicles were made through temporary road laid in the River basin and a display board had been erected denoting the execution of work. There was no extraction of ground water illegally for mining activity.

The Tribunal in the current case made observations that in so far as it related to the conditions relating to manual mining and transportation by bullock cart, in the light of the Interim Order passed by the Supreme Court in respect of the mining in Cauvery Basin, permitting the Government to proceed with mechanised mining with conditions of using only 2 Poclains which order continues as on date, it was for the 2nd respondent SEIAA to

pass appropriate order if necessary after referring to State Level Expert Appraisal Committee (SEAC) and visit by its Subcommittee. In so far as it related to other allegations relating to violations particularly about the allegation that mining was effected to 10 m as against the permissible 1 m depth, there was factual contradiction, as the case of PWD was that it had only removed the accumulated sand above the River bed and from the River bed the mining was only up to 1m. This factual matrix and other alleged contradictions were to be considered by the 2nd respondent SEIAA in their proper perspectives after a thorough enquiry if necessary on sending to SEAC and a visit by Sub Committee for inspection and pass appropriate orders.

The Tribunal disposed of the application along with following directions:

i. The 2nd respondent shall pass appropriate orders regarding the use of mechanised mining as well as transportation of sand on the admitted factual matrix that such Poclains and Lorries are used for quarrying and transporting and in the light of the Interim Order of the Supreme Court in respect of the Cauvery Basin within a period of 2 weeks from the date of receipt of the copy of the order.
ii. In respect of the complaints about the extent of quarrying as well as the other breach of conditions 2ndrespondent shall refer the matter to SEAC which after inspection shall report to the 2nd respondent who shall pass appropriate orders after giving notice to 8th respondent expeditiously, in any event within a period of 8 weeks from the date of receipt of the copy of the order.
iii. Pending passing of such order the Interim Order passed by this Tribunal on 29-05-2015 shall continue. The said arrangement shall stand terminated on the expiry of the period mentioned in the Order or passing of appropriate Orders by the 2nd respondent, whichever is earlier.

The President, Karur Maavata Nilathadi Neer Pathugapu Matrum Saayakazhival pathikapatta Vivasayigal SangamKarur
V.
Union of India and Ors.

Application No. 366 of 2013 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Water pollution, Air pollution, lime sludge, industrial waste, Sustainable Development
Decision: Application disposed of (with directions)
Dated: 20th November 2015

This application was preferred against 7th respondent to stop dumping/storing of lime sludge and other industrial wastes in S. F. No. 176/1 and 177/ 2 & 3, Karupampalayam Village, Karur District and also for a direction against Respondent Nos. 1 to 4 to take action against 5th respondent for violation of the Water (Prevention And Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981 apart from direction to the respondents to carry out suitable remedial measures and 5th and 7th respondents to pay compensation for damage caused to the environment.

The 7th respondent had obtained a contract from 5th respondent for disposal of lime sludge and consent was obtained from the Tamil Nadu State Pollution Control Board (TNPCB) for dumping waste to the tune of 10,000 T/m since 02-03-2012 and it was stated that the consent had expired on 30-09-2012 and the applicant was not aware as to whether consent was renewed or not. It was the further case of the applicant that the site in question has been used by the 7th respondent without taking any precautionary measures for storing lime sludge. No step had been taken to prevent leaching or air pollution or spread of lime powder. Therefore, the activities of 7th respondent caused both water and air pollution and surrounding lands under cultivation are covered with the lime dust carried from the factory of the 7th respondent.

The unit was inspected on 01-10- 2012 and on satisfying the compliance, the consent order was issued on 01-10- 2012. The applicant made another complaint on 05-10-2012 against the storage of lime sludge stating that it was likely to have effect on water, soil and environment. It was stated by the Board that the 7th respondent had provided concrete platform, wind net arrester, compound wall, water sprinklers and therefore renewal of consent was issued to the 7th respondent under both Air and Water Acts, valid up to 30-09-2013. Based on further complaint dated 25-03-2013 and forwarded from the Chief Minister's Cell, the unit was again inspected on 08-04-2013 and it was found that the unit had stored the lime sludge over the ground in addition to the concrete platform provided. The lime sludge was stored inside the premises above the level of compound wall.

On analyzing the entire issue, the court was of the view that as per the Inspection Authority Report the ground water was not polluted by the storage of lime sludge. In so far as it related to the dust emission, even though it was stated that during inspection it was raining and therefore monitoring was not conducted properly, the result shown was not of alarming nature. It was on record to show that the 7th respondent had raised compound wall adequately on all the sides and there were not many crops being cultivated in the nearby area. In these circumstances, the Tribunal was of the considered view that by applying the

principles of Sustainable Development it was not proper to close the unit at this stage and it must be given an opportunity to comply with all the recommendations of the CPCB. This would serve the purpose at present, when it was not was in dispute that the 5th respondent had reduced the quantity of lime sludge sold to 7th respondent due to the reason that the 5th respondent itself had started its own cement plant and utilizing the lime sludge by itself except the residue which was transferred to 7th respondent.

Due to the reasons stated above the application was disposed with the following directions:

1. There was no necessity to close down the unit at this point of time.
2. The 7th respondent shall comply with all the required directions given by the CPCB in its report and findings to the satisfaction of the TNPCB particularly:
    a. The 7th respondent shall provide adequate number of sprinklers to the satisfaction of TNPCB.
    b. The 7th respondent shall not accumulate the lime sludge at any point of time to a height more than the height of walls.
    c. The 7th respondent shall make adequate cover of lime sludge apart from keeping the lime sludge on the elevated impervious platform and we make it clear that the lime sludge shall not be kept in the open without any covering.
    d. The 7th respondent shall provide adequate wind barriers on all sides including on the back side of storage yard within a period of 4 weeks from today and the same shall be done in accordance with the directions of the CPCB and the TNPCB.
    e. The 7th respondent shall take all adequate steps to dispose of the existing storage of lime sludge by transporting the same stored within its premises without any spillage or causing any environmental harm.
    f. The 7th respondent shall provide adequate storage facilities by providing settling tanks to collect storm water carrying lime sludge without abandoning lime sludge in the quarry site, for reusing for sprinkling purpose.
    g. The 7th respondent shall maintain proper log book showing the exact quantity of lime sludge stored and disposed of, to be kept for inspection by the officials of TNPCB at any point of time.
    h. The 7th respondent shall not proceed to purchase lime sludge until and unless TNPCB grants renewal of its consent that expired on 30-09-2015. The TNPCB is directed to conduct inspection and on having satisfied thoroughly on the compliance of all recommendations of the Committee, shall pass necessary orders of renewal.
    i. In the event of failure of following any of the above said conditions as per the Status Report of the CPCB dated 28-05-2015, the TNPCB shall pass appropriate orders including closing of the unit.

With these directions, the application was closed.

Endurance Technologies Pvt.Ltd.
V.
Maharashtra Pollution Control Board

Appeal No.26/2015(WZ)

Coram: Justice V.R. Kirgaonkar, Dr. Ajay A. Deshpande
Keywords: Water Pollution, remedial action plan
Decision: Appeal partially allowed and Misc. Application disposed off
Dated: 23rd November 2015

The Appeal arose out of closure order issued against the Appellant by the Respondent on 22nd July 2015. The Applicant is of the view that no fair opportunity of hearing granted to him before passing of the order and that the relevant documents were not replied due to absence.

Perusal of the records in this appeal showed that basic principle of "Audi alterum partem" was not applied in the current case and hence the impugned order becomes unsustainable. The Appellant has deposited amount of Rs.10 crores (Rs. Ten crores) in the escrow account of office of the Collector Aurangabad, for remedial purpose, in case it is so required, after considering the main matter for remedial action plan.

The Tribunal while discussing the appeal also talked about the prevalent corruption and the requirement of eradication of the same. The tribunal observed that in the present case, that for so many years till 2010 or 2013, the samples were collected privately by the industries and the reports were obtained by the industries which were provided to the MPCB and were accepted as if, they are reports of the MPCB. Needless to say the work of MPCB was practically high-jacked by the industries situated in Waluj for many years. Resultantly, only after the report of MS University, the Water Pollution and contamination of ground water is now brought on surface after long many years, and only now being it is being collected by MPCB for the purpose of getting its ground water analysis reports.

With these observations, the appeal was partially allowed and the impugned order was set aside.

M/s. Atra Pharmaceutical Ltd.
V.
The Member Secretary, Maharashtra Pollution Control Board and Anr.

Appeal No.28/2015(WZ)
with
(M.A.No. 189/2015 (WZ)

Coram: Justice V.R. Kirgaonkar, Dr. Ajay A. Deshpande
Keywords: Industrial unit, Water Act
Decision: Appeal allowed
Dated: 23rd November 2015

By filing this Appeal, the Appellant challenged the order passed by the Respondents dated July 22nd, 2015 directing Industrial unit of the Appellant to be closed and to stop manufacturing and the operation thereof. The impugned order passed by the Respondent showed that the Appellant was found non-complying as industry and failed to comply with directives of CGWB, as per the report of February 2014.

The Applicant now claimed that all the deficiencies have been complied with. It was also contended that the Appellant is not only in financial sufferings due to the closing of the unit but also the goodwill of the Appellant is at the peril. He contended that the MPCB is trying to punish the Appellant for taking further legal action and going up to the Advocate, with some kind of malafides. There were, however, no substantial reasons mentioned therein.

The Appellant's counsel also alleged that the MPCB collected samples twice after the impugned order and these samples are exceeding the norms, which is illegal activity. It is not permitted under Section 21 of the Water (Prevention and Control of Pollution) Act 1974. Regarding this point, the tribunal stated that the only assistance, on equitable basis, and to meet the ends of justice, that could be provided to the Appellant was that in case, if any closure order is passed against the Appellant, *suo motu*, the Respondent may keep it in abeyance for two (2) weeks so as to give time to the Appellant to approach this Tribunal or the Competent Authority to seek legal remedy.

The impugned order was set aside on the ground that it did not comply with the principle of natural justice. With this, the appeal was accordingly allowed.

R. Karthikeyan
V.
The Commissioner, Corporation Of Chennai, Chennai And Ors.

Application No.128 of 2015

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Environmental pollution, residential area
Decision: Application disposed of
Dated: 26th November 2015

The application was filed by the Appellant for a direction to the respondents to remove the unit from the premises, wherein the 4th respondent was carrying on the business of roasting and grinding of coffee seeds, on the ground that it was a residential area and the said activity caused nuisance. It was the case of the applicant that by the roasting process dust as well as smoke was being emitted and thereby causing environmental pollution affecting the people living in the said area.

It was stated in the inspection report of the Distrcit Environmental Engineer that the unit of the 4th respondent was surrounded by various residential and non-residential areas like shop etc., and the 4th respondent coffee works was operated in an area measuring 13.3 x 7.8 ft. The operation process includes feeding of coffee seeds into the roasting machine where coffee seeds are roasted with heat using LPG as fuel. During the roasting operation the skin of the coffee seeds gets removed and collected in a chamber which was provided below the roasting chamber. The roasting operation was carried out for about 45 minutes to one hour till the seeds turn dark brown in colour which indicated that the seeds are roasted. The report further stated that the emission arising out of roasting process was let out from the roasting chamber of the coffee seed roasting machine through an exhaust pipe having 10 cm diameter and connected to an intermediate dust collection arrangement to remove the dust carried out if any and finally let out at a height of 8.5 ft above ground level within the shop housing the coffee roasting machine and coffee seed grinding machine. The report ultimately stated that the roasting process was carried out in two batches between 5.45 pm to 7.45 pm in a day and no dust emission was noticed at the time of inspection. However, it was suggested by the 3rd respondent that as an additional measure and in addition to the existing pipe which was having 6.5 feet height could be increased to 15 feet above the ground level. It was also stated specifically by the Board that the smoke was exhausted from the coffee seed roasting machine by natural draught and not by forced draught and the smoke was also observed only during the last 10 minutes of the roasting process.

Following the report, the Tribunal ordered the Respondent no. 4 to increase the height of the exhaust pipe, without any damage to the structures of the premises and in the event of increasing the height of the exhaust pipe, the mouth of the exhaust pipe shall face the sky.

With this, the application was disposed of.

M/s. Velmurugan Blue Metals
v.
The Chairman , The Appellate Authority, Tamil Nadu Pollution Control Board and others

Appeal Nos. 17 & 18 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keywords: Pollution, consent to establish, distance criteria, Stone Crushing Unit
Decision: Appeal Dismissed
Dated: 27th November 2015

The Appeals had been filed to set aside the order passed in Appeal No. 40 of 2011 and Appeal No.41 of 2011 dated 23.01.2015 by the 1st respondent, Appellate Authority, Tamil Nadu Pollution Control Board (Board) under Section 31 of Air (Prevention and Control of Pollution) Act, 1981 and Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 respectively and the order passed by the 3rd respondent dated 29.06.2011 rejecting consent and to consequently direct the 2nd and 3rd respondents to grant consent to establish the appellant unit Facts of the case were that the appellant purchased the property in Survey Nos.1070/1A and 1070/2 in Koothampoondi Village, Oddanchatram Taluk, Dindigul District in the year 2004 to establish a stone crushing unit in the name and style of *M/s.Velmurugan Blue Metals* and he made an application dated 18.01.2011 under the Water Act, 1974 and the Air Act, 1981 before the 3rd respondent for Consent to Establish. As per the National Environmental Engineering Research Institute (NEERI) recommendations, the unit proposed to install the preventive measures which included Jaw crusher, Vibratory sever, ¼ Jelly conveyor, Dust conveyor, metal sheet covering and water sprinkler to prevent water and air pollution. The appellant also stated that there were no National Highways or State Highways or residential areas near the proposed unit and hence there was no fear of any person being aggrieved by pollution. The reports of Commisioner and Tehsildar stated that no residential areas, schools, temples, monuments, Government Offices or National or State Highways are situated near the proposed unit.

According to the respondents, the unit had not enclosed the topo sketch showing the details of nearby stone crushers, schools, colleges, temples, etc., located within a radius of 1 km and was addressed to furnish the same *vide* Letter 30.03.2011. In the topo sketch furnished by the unit, it was mentioned that there was a stone crusher located at a distance of 800m from their proposed stone crushing unit.

The Tribunal observed that it was not disputed by the appellant that following his application for consent, the District Environmental Engineer (DEE) of the Board made an inspection on 23.06.2011, wherein it was noticed that the site for the proposed crusher of the appellant was located at a distance of 800 meter from *M/s. Satyamurugan Blue Metals* which was an already existing stone crushing unit. Thus it would be quite clear that the proposed site for the appellant unit was less than 1 km from an existing stone crushing unit. The appellant who was unable to satisfy the distance criteria as found in Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004 could not have shelter under the certificates issued either by the Commissioner, Thoppampatti Panchayat Union or the Tahsildar, Oddanchatram that there were no residential houses, schools, temples, monuments, Government offices, National or State Highways situated within 500 meter distance of the proposed unit. Equally, the so called precautionary and preventive measures proposed to be taken by the appellant even if

taken, would not satisfy the requirement of the distance criteria as envisaged under Clause 2.2 of B.P. Ms. No.4 dated 02.07.2004.

In the view of above mentioned contentions, the appeal was dismissed.

Shri Bhavani Amman Aqua Industries
V.
Tamilnadu Pollution Control Board And Ors.

Appeal No. 29 of 2015 (SZ)

Coram: Justice M. Chockalingam, Shr P.S. Rao
Keywords: Pollution, manufacturing, safe zone, Consent to Operate
Decision: Appeal disposed of
Dated: 27th November 2015

This Appeal arose from an order passed by the 1st respondent, Tamil Nadu State Pollution Control Board (Board), Chennai dated 8.4.2015 whereby the water unit of the appellant in the appellant's premises was ordered to be closed under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31-A of Air (Prevention and Control of Pollution) Act, 1981.

The facts of the case were that the appellant, a Small Scale Industry registered with the Department of Industries and Commerce, Government of Tamil Nadu, originally commenced the business of manufacturing herbal drinking water during the year 2013 and subsequently started manufacturing carbonated water (Soda) and for this purpose, the appellant got a Licence from the Tamil Nadu Food Safety & Drug Administration Department for the period from 28.11.2014 to 27.11.2015.

On an inspection made by the District Environmental Engineer (DEE) concerned, a Show Cause Notice was served on the appellant on 8.12.2014 alleging violation of law in carrying on its operations. The appellant submitted the reply. But not satisfied by the same, the Board issued a direction to the 3rd respondent, the Tamil Nadu Electricity Board to disconnect the electricity supply to the appellant Unit and following the same closure order was served upon the appellant. Aggrieved over the same, the appellant preferred the instant appeal. The main contention put forth by the appellant in a sincere attempt of assailing the order of closure, was that the appellant had been purchasing water from nearby villages falling in the limits of safe zone notified under the G.O. Ms. No.52 and hence No Objection Certificate (NOC) was not required and only on purchase, the water was transported to the premises of the appellant unit, where the operational activities were being carried on.

It was submitted by the counsel for the Board that even for transportation of the water, NOC from the PWD was required and apart from that for carrying on the operation of the Unit of the appellant, Consent to Operate from the Board was mandatory without which the appellant unit should not be allowed to carry on.

Tribunal was of the view that no case was being made by appellant to interfere with the order of closure because: firstly, even though, the appellant had been purchasing water through lorries in the area situated in the safe zone for extraction and transportation of water, NOC from the PWD had to be obtained. Secondly, the appellant could not be permitted to carry on the activities of the unit without obtaining necessary Consent to Operate from the Board as mandated by law. Hence, in view of the same, the impugned order of the Board dated 8.4.2015 had to be sustained.

Accordingly, the appeal was disposed of.

Dr. Akeela Rehman And Anr.
V.
Tamil Nadu Pollution Controlboard And Ors.

Application No.186 & 188 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Odour emission, pollution, consent to operate
Decision: Application allowed
Dated: 27th November 2015

These applications were filed before this Tribunal challenging the order passed by the 2nd respondent District Environmental Engineer, Tamil Nadu Pollution Control Board (Board) dated 27.10.2015 in and by which the second respondent had issued Show Cause Notice to the applicants as to why penal action should not be initiated for the alleged offences stated to have been committed by the applicants and also direction should not be issued to close the unit under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act 1981, respectively.

The applicants, the qualified Dental Surgeons were running dental clinic with processing of artificial teeth by fixing acrylic Denture, Ceramic Crown and Bridges and Zirconium Crown in a leasehold premises at No.5/7, Habibullah Road, 3rd Street, T.Nagar, Chennai. According to them, there was no generation of obnoxious or harmful substance involved in the procedure. According to them, it was some of the neighbours who were stated to be influential and wanted to grab the property. The applicants also stated that inspite of the fact that the 'consent' was not required from the Board, as a matter of abundant caution and based on the earlier order of the Board, they applied for 'consent'.

Based on their application for consent an inspection was done by the officials of the board and it was found that the process of denture making emanated an odour and there was no proper ventilation system provided and requested them to provide adequate suction with hood arrangement connecting all sources of odour emission and disperse through stack of adequate height without creating any health problem to the public.

The Corporation of Chennai issued a direction in the notice dated 11.05.2015 under Section 44 of the Tamil Nadu General Health Act, 1939 directing the applicants to obtain:
1. License for running business from the Corporation
2. No objection certificate from the Tamil Nadu Pollution Control Board
3. No objection certificate from Fire and Rescue Department.

In the meantime, the applicants obtained No Objection Certificate from Fire and Rescue Department. However, the 2nd respondent issued the impugned show cause notice on 27.10.2015. According to the applicant, the notice was without jurisdiction not only due to the reason that the activity of the applicants did not require 'consent' from the Board and even otherwise absolutely no environmental hazard was being caused by the process carried out by the applicants as Dental Surgeons. It was also the case of the applicants that even though the area was primarily a residential zone, small industrial activities which are required for the day-to-day activities of the people living in the surrounding area were not prohibited. With the above contentions, the applicants had filed the applications challenging the impugned show cause notice issued by the 2nd respondent.

According to the respondent no. 2, repeated complaints were received from the neighborhood and due to that the show cause notice was issued.

The Tribunal in the judgment held that these small units run by the dental surgeons using 0.25 hp motor could not be considered to be hazardous either under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 or Section 31A of the Air (Prevention and Control of Pollution) Act 1981. It was also stated that according to the matter, there seemed to be no need to obtain any such “consent”.

Hence, the application was allowed and all the impugned orders set aside.

Thiagavalli & Kudikadu Agriculturists' Land Rights Protection General Welfare Society
v.
The Secretary,Ministry of Finance and Ors.

Application No.198 of 2015
And
M.A.No.272 of 2015

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Environmental Clearance, CRZ clearance, Environmental Hazard
Decision: Application Dismissed
Dated: 30th November 2015

This application was filed with a prayer to forbear respondents 1 to 3 and 10 to 13 from granting licence/permission to the 18th respondent to commence power plant or any other industry anywhere in Kudikadu or Thiagavalli Village in Cuddalore District.

It appeared that the government, for the purpose of giving to the 18th respondent, had purchased around 700 acres of land over a stretch of 10 square kilometres in the said area. The applicant society had stated that the land consisting of rich cashew groves along with vettiver in several acres of land. However there were no particulars about number of trees standing and number of trees to be cut by the 18th respondent. In the application filed by the 18th respondent, it was stated that nearly 700 acres of land which were continuous in nature have been purchased by the 18th respondent from various vendors and admittedly they also contained cashew plants. He stated that as a lawful owner of the property, it had every right to put the land for its convenient use.

It was brought to the notice of this Tribunal that the 18th respondent had environmental and CRZ clearance for the construction of marine facilities in R.S.No.328 and 336 at Thiyagavalli Village, Cuddalore Taluk in the order of MoEF & CC dated 11th June, 2009. In addition to that, the said communication of MoEF & CC dated 11th June 2009 showed that MoEF & CC had also granted E.C on 16.1.2008 for the thermal power plant proposed to be put up by the 18th respondent. It was seen that the said EC as well as CRZ clearance had been subsequently extended in the order of MoEF & CC dated 13.3.2014. Tribunal also pointed out that the authorities competent to grant EC under the EIA Notification, 2006, ought to have taken note of the existence of plants and trees in the area concerned while granting EC with the conditions protecting the green belt.

Finally, the Tribunal was unable to find any material in any of the pleadings made by the applicant to come to a conclusion that environmental hazard was being created by the 18th respondent. In the light of EC already granted, the Tribunal stated that the application could not be kept pending at all. If it was the case of the applicant association that against the terms and conditions of EC certain activities were being done by the 18th respondent, it was always open to the application association to work out its remedy in the manner known to law.

Accordingly, the application was dismissed.

Suo Motu Application
Vs.
MoEF

Application No.181 of 2013

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Environmental damage
Decision: Application disposed of
Dated: 30th November 2015

The issue involved in this case was taken up by this Tribunal *suo motu,* based on an Article published in "The Hindu" dated 1.8.2013 under the heading "Ecologists question right of way for petrol pump''. Notice was issued to the owner of the petrol bunk, making it as 7th respondent, apart from the District Forest Officer, as the 5th respondent and others, including MoEF & CC as the 1st respondent.

The Tamil Nadu Pollution Control Board stated that the 7th respondent M/s.VPC Auto Fuels, a HP dealer, is having the petrol bunk at 5/238, Bannari Main Road, Thottasalai, Pudukuyanoor, Bannari Post, Sathyamangalam Taluk, Erode District. The land measuring an extent of 2025 sq.mt was taken on lease by R. Palanisamy from the land owners Karuppusamy and Thangavel as per the lease dated 22.7.2010. Now it is stated that the lease is for a period of 29 years and 11 months.

The MoEF & CC in the letter dated 15.3.2011 stated that EC should be obtained from the National Board of Wildlife for the explosive projects adjacent to the protected areas and National Park etc., whereas the petroleum retail outlet units would not come under the purview of the explosive unit. The report further stated that the elephant corridor was far away from the said land and the petrol pump was permitted to run in the patta land. Taking note of the specific finding given in the report of the District Forest Officer as well as the Board that Sujjalkuttai – Bannari elephant corridor was far away from the land wherein the 7th respondent's petrol bunk is situated and also taking note of the fact that the reserve forest boundary covered only upto NH 209 and beyond that on the southern side wherein the 7th respondent's petrol bunk was situated, it was clear that the 7th respondent's petrol bunk was not situated within the reserve forest boundary.

In view of the stand taken by the authorities concerned viz., the District Officer and the Board and considering the fact that the elephant corridor was far away from the said place, the Tribunal opined that no further proceedings should be continued except to state that the 7th respondent petrol bunk, while carrying on its activities in future if there is any sign of environmental hazard caused by the activities of the 7th respondent, the same will be considered by this Tribunal and appropriate orders will be passed. The Board shall closely monitor the same and take necessary action in case of any violation based on the report of the Board as well as the District Forest Officer.

With the above direction the application stood closed.

Mr. Dipak Kisanrao Marne
v.
Mr. Rajendra Devrao Marne and Ors.

Application No.101/2015(WZ)

Coram: Justice U.D. Salvi, Dr. Ajay A. Deshpande
Keywords: Compensation, felling of trees, Maharashtra Felling of Trees (Regulation) Act, 1964
Decision: Application disposed of (with costs)
Dated: 16th November 2015

This was an Application for compensation of Rs. 4 lakhs (Rs. Four lakhs) for illegal and unauthorized act of cutting of 21 (twenty one) trees, one Khair tree-schedule tree under Maharashtra Felling of Trees (Regulation) Act, 1964 and other 20 (twenty) non-scheduled trees standing in a land property at post Andgaon, Tal. Mulshi, Lavasa road, Pune. According to the applicant, the above trees were illegally felled by Respondents 1 to 4 on his ancestral land. He also added that these respondents were involved in timber business and were often engaged in such activities.

The Applicant stated that the trees cut were full grown and he had lodged complaints regarding such illegal tree felling with Respondent No.5 Senior Police Inspector Police Station Paud, Respondent No.6 Forest Officer, Paud and Respondent No.7 Tahsildar, Mulshi (Paud), and as a result thereof the authorities had set the Law in motion in as much as :

1. Crime was registered against Respondent Nos.1 to 4 by the Paud Police Station.
2. Respondent No.6 conducted spot panchnama and directed Respondent Nos.1 to 4 to pay an amount of Rs.500/- (Rs. five hundred) each as and to do plantation double the number of trees cut in ensuing rainy season.
3. Respondent No.7 Tahsildar conducted proceedings under Section 25 of the Maharashtra Land Revenue Code, 1966 and directed Respondent Nos.1 to 4 to pay an amount of Rs.13,280/- being the cost of the trees cut and fine payable upon the said act of illegal felling of the trees.

In response to the specific case of the Applicant, about illegal and unauthorized cutting of 21 trees standing on the land of village Andgaon, the Respondent Nos.1 to 4 state that they did cut the trees but the trees were of local variety (*Raival)* standing on their landed property of village Andgaon and the said trees belonged to them. According to Respondent Nos.1 to 4, the trees were cut for religious purposes and there was no intention of committing theft or commercial exploitation. The Respondent Nos.1 to 4 pertinently revealed that the Forest Department proceeded against them and penalized them for such cutting of the trees, and they suffered the penalty imposed on them. They further pleaded that they were in impoverished financial condition and alluded to the intimidation on part of the Applicant to involve them in the legal proceeding.

The Tribunal decided the matter was more of an environmental loss than mere personal loss, and accordingly made following directions:

1. The Respondent Nos.1 to 4 shall pay an amount of Rs.15,000/- to the Forest Officer, Paud, Pune, within 15 (fifteen) days.

2. Range Forest Officer, Paud, Pune shall employ this amount for plantation of 42 (forty two) trees in degraded forest area in the vicinity of village Andgaon and shall further employ this amount for taking care of such plantation.
3. The Respondent Nos.1 to 4 shall pay costs of Rs.5000/- (Rs. Five thousand) to the Applicant.

With this, the application was disposed of.

Shaktisinh Gohil & Ors.
Vs.
Union of India, MOEF and Climate Change

M.A. No.82 of 2015 in Appeal No.23 of 2015

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande
Keyword: Condonation of delay, CRZ order
Decision: M.A. Allowed
Dated: 5th November 2015

The appellants filed for a condonation of delay as they had filed an application against the order after 37 days when the limitation period is 30 days stating that they got to know about the CRZ order they were appealing against only after it was published in a newspaper and they had very limited means to file the appeal. The court took a liberal approach and allowed the condonation of delay considering the grounds to be just and reasonable.

Thus, Misc. Application No.82 of 2015 was allowed with no costs and accordingly disposed of. The Appeal No.23 of 2015 to was allowed to proceed further.

V.Sankara Subramanian, Tirunelveli.
Vs.
The Union of India

Application No.192 of 2015 (SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Withdrawn
Decision: Application dismissed as withdrawn
Dated: 30th November, 2015

The learned counsel appearing for the applicant asked for permission to withdraw his application with a liberty to file fresh application. He also made an endorsement to that effect. Giving liberty to the applicant to file fresh application, this application was dismissed as withdrawn.

Mr. V. Magesh, Hastinapuram Chennai
Vs.
The Union of India

Application No. 420/2013(SZ)

Coram: Justice M. Chockalingam, Shri P.S. Rao
Keyword: Red Sanders, Wildlife (Protection) Act, 1972, maintainability of application
Decision: Application Dismissed
Dated: 19th November 2015

The counsel of the applicant sought the relief of adding Red Sanders in the schedule VI of the Wildlife Protection Act from the Tribunal. They further asked the Tribunal to direct the respondents to take necessary steps for the protection and conservation of Red Sander. To this, the counsel for the respondents replied by questioning the maintainability of the application before the Tribunal on the grounds that the relief sought for, namely, a direction to the respondent to include the Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 does not fall within the jurisdiction of the Tribunal as envisaged under the NGT Act, 2010.
After hearing the arguments by both the parties the tribunal opined that it was true that the Apex Court had issued a direction to the 1st respondent to take steps to include Red Sanders in Schedule VI of the Wildlife (Protection) Act, 1972 but the objections raised by the respondents and the application was not maintainable.

Hence, the application was dismissed.

Quilon Educv
Vs.
State of Kerala

Application No. 262/2014(SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Correction of name
Decision: Application disposed of
Dated: 19th November 2015

This application was taken up on "being mentioned" only for correcting the name of the learned counsel appearing for the 1st respondent. The name of the learned counsel appearing for the 1st respondent shall be Mr.George Zachariah. To that extent the correction is permitted.

Jojo John,Kulamavu, Idukki Dt.
Vs.
The Revenue Divisional Officer, Devikulam.

Application no. 408/2013(SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: No representation
Decision: Application Dismissed for non-prosecution
Dated: 9th November 2015

The application was to direct the respondents 1 to 4 to act upon the notice issued by the Department of Mining and Geology, Idukki, dated 9.11.2011 and to see that no mining and blasting work was being carried on in Idukki District without proper license from the Statutory Authority. The applicant had not been appearing throughout, either in person or through counsel. There was no representation on behalf of the applicant. The application was dismissed for non-prosecution.

M/s. Srinivasa Blue Metal
Vs.
The Chairman Tamil Nadu Pollution Control Board.

Application No. 14/2015(SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keyword: Extension of time
Decision: Application disposed of
Dated: 5th November 2015

The applicants whose review applications were dismissed, had sought for, their request for extension of time for payment of penalty imposed by the common order dated 14.09.2015. This request was considered by the Tribunal. The time was extended till the end of November, 2015.

Mohammed Anabagilu, Kumbala PO Kasaragod Dist.
Vs.
The State of Kerala

Application No. 147/2013(SZ)

Coram: Justice M. Chockalingam, Shri. P.S. Rao
Keyword: Illegal sand mining
Decision: Application Disposed of (no cost)
Dated: 4th November 2015

On the grounds stated in the Writ Petition, which was originally filed before the High Court of Kerala and subsequently transferred to this Tribunal and taken on file, the applicant had sought for the following reliefs:

1. Issue a writ of mandamus or other appropriate writ, order or direction compelling the respondents 2 to 5 to attend to Exhibit- P7 report and to initiate appropriate action against sixth respondent within a time frame
2. Issue appropriate direction to respondents 1 to 5 to protect the environment from the illegal exploitation of nature causing damage to human society and animal world from unlimited excavation of sand from the river mouth and port limits.

A reading of the status report of the 4th respondent, District Collector was indicative of the fact that stringent action was being taken by the District Administration to prevent illegal mining and transportation of sand and also filing the prosecution cases , which had also been charge sheeted and the offenders had been imposed with fine. Paragraph 3 of the status report was to the effect that at present no dredging activities had been taking place in Arikadi and Shiriya Kadavus under the jurisdiction of Kasargod Port and no illegal sand mining was also noticed in those areas.

It was opined by the Tribunal that no purpose would be served in keeping the application pending before the Tribunal and it was fit to be disposed. However liberty was given to the applicant if the circumstances warrant so, for taking necessary action thereon. It was also made clear that the 2nd and 4th respondents have to take all steps to ensure that no illegal sand mining takes place in the name of dredging in future. Accordingly, the matter was disposed of. No cost.

Mohammed Jainulabudeen, Appananallur
Vs.
The District Collector, Trichy

Application No. 426/2013(SZ)

Coram: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran
Keywords: Poramboke land, communal issue, cremation ground, peace talks
Decision: Application Disposed of (no cost)
Dated: 2nd November 2015

This application was for a direction against the respondents 2 and 3 from converting the poramboke land of Appananallur village as a cremation/burial ground. The petitioners, the residents of Appananallur village, were aggrieved by the attempt stated to have been made by the respondents 2 and 3 to put up a cremation ground which was a poramboke land and occasionally used as a burial ground by Adi Dravidar community people. The applicants submitted that in fact Kulakudi panchayat union was taking up the issue seriously and the matter was likely to be settled within three months time. On the other hand, the 1st respondent, District Collector, would submit that taking advantage of the pendency of the application the issue was not being resolved and there was a possibility for communal tension. Accordingly, the application stood disposed of with a direction that within three months from the date of this judgement, a settlement by way of peace talks should be effected and in the event of such settlement not brought about, it will be open to the respondents 2 and 3 after the period of three months to proceed to convert the poramboke land of Appananallur Village into to a cremation/burial ground.

DECEMBER

Krishan Kant Singh
v.
Haque Tanners, Jajmau, Kanpur

(And Other Respondents in Other Applications)
APPLICATIONS NO. 340, 332, 333, 334, 335, 336, 337, 338, 339, 343, 344, 345, 346, 347, 348, 349, 350, 352, 353, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 366, 367, 368, 370, 372, 373, 374, 375, 376, 377, 379, 380, 381, 382, 384, 385, 388, 389, 390, 391, 392, 393, 394, 396, 398, 399, 400, 401, 402, 403, 404, 405, 407, 408, 409, 410, 411, 412, 414, 415, 416, 417, 418, 419, 428 of 2014 AND 101, 104, 114, 132, 133, 185, 186, 187, 188, 189, 190, 191, 192, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 219, 220, 221, 222, 297, 98, 103, 105 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh
Keywords: River Ganga, tannery, Water Pollution, Consent to operate, environmental compensation
Decision: Application disposed of
Date: 10th December 2015

These 130 applications were filed by various industries, in response to the notices issued on May 6, 2014 by the Uttar Pradesh Pollution Control Board (UPPCB) following an order of this Tribunal (dated April 22, 2014). These notices were issued to industries polluting the River Ganga and its tributaries by discharging their untreated effluents into them.

On inspection by a joint team of the UPPCB and the Central Pollution Control Board (CPCB), it was found that some of the noticees were non-compliant (these were directed to cease operations), and some had installed anti-pollution devices and taken measures to ensure their effluents were within the prescribed parameters. These latter units had applied for de-listing from the list of polluting industries submitted by the Joint Inspection Team. These had obtained the consent of the UPPCB to operate. Their prayers, to allow them to operate in terms of these consent orders, were consequently granted, subject to regular inspections by the UPPCB.

Further, there was a third category of units, which had not prayed for specific directions. Nothing materially adverse was noted in the inspection report with regard to their functioning. Although their effluents had been found to be below the limits, heavy metal concentration was noticed with regard to 3 metals. The Joint Inspection Team had issued advisories to them to take various steps to improve their functioning. These units were also granted consent to operate in similar terms as the earlier group of compliant units, with the additional direction to comply with the advisory issued by the Joint Inspection Team within 3 months from the date of this judgment.

Within the ambit of the non-compliant industries, two categories were identified by the Tribunal – those which were lying closed and had applied for permission to recommence operations, and those which were presently operational. The Tribunal could not see any rational basis on which some of these industries had been allowed to operate, and some

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were directed to close down. The Tribunal finally directed that some of these industries may resume operations, subject to the Joint Inspection Team issuing a directive prescribing the steps they are to take in order to ensure that the effluents are within limits and chromium content is removed before they were sent to the CETP. This would have to be complied with within 3 months of issuance. In the event that they were found to be non-compliant, they would be directed to cease operations henceforth.

Two units were found to not only have been non-compliant but also failed to carry out the UPPCB directives (installation of anti-pollution devices etc.) These two units were directed to shut down forthwith, with liberty granted to re-apply to the UPPCB for joint inspection.

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Units which were lying closed on the date of inspection were dealt with separately. They were ordered to remain closed, with liberty to install anti pollution devices including chromium recovery units, and liberty to also apply to the UPPCB for consent to operate after complying with all norms and guidelines. The grant of consent would be subject to the further orders of the Tribunal after the inspection report in this regard is submitted to it.

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Certain units involved in these applications did not fall within any of the afore-mentioned categories - one of which was a Common Effluent Treatment Plant, which was in operation even after refusal of consent to operate. The Tribunal noted that its closure would mean whatever little treatment was being imparted to the effluents before discharge into the Ganga would also cease. Its management was directed to ensure proper operation of the plant until another application (O.A. No. 200 of 2014), in which the plant was also a subject matter of examination, was finally disposed of. Some of the units in this category were already operational (consent had been granted by the UPPCB). One of the units had been sealed by a bank for non-payment of dues – it was directed to apply for consent to operate once the seal was removed. Other units (mostly tanneries) were also examined on a case-by-case basis and specific directions issued in each case, laying down the conditions under which they could resume operations.

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The Common Effluent Treatment Plant was also directed to pay rupees one lakh to the UPPCB as environmental compensation for causing pollution and for improper operation and maintenance. The orders herein were also held to be strictly subject to the final orders in O.A. No. 200 of 2014 and 10 of 2015 (both on the issue of pollution in the Ganga basin).

M/s Narayan Polishing
Through its proprietor, Narain Dass
v.
Delhi Pollution Control Committee

(And Other Appellants in Other Appeals)

APPEALS NO. 132, 133, 134, 135 and 136 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Ranjan Chatterjee

Keywords: Consent to operate, Pollution, Principles of Natural Justice

Decision: Appeals disposed of

Date: 10th December 2015

The Appellants were small scale industries, engaged in electro plating/chroming work in the industrial area of Najafgarh. Some of these were operating with valid consent, and some were not. These units fell within the 33 categories of Seriously Polluting Industries (SPIs) identified by the Implementation Committee constituted by the Tribunal in O.A. No. 196 of 2014. All of them had been directed to shut down after show cause notices were issued by the Delhi Pollution Control Committee (DPCC).

It was the major grievance of the Appellants that the order for closure lacked a rational basis, was non-speaking and arbitrary. Moreover, an opportunity of hearing had not been granted before the order was passed. From a bare reading of the impugned order(s), it appeared that the contents of the reply to the show cause notice(s) had not been addressed. The Tribunal observed at this point that the power to order closure of a unit was one with serious consequences, and therefore required that proper procedure under S. 33A of the Water (Prevention and Control of Pollution) Act, as well as Rule 34 of the Rules issued thereunder, be followed. The Tribunal further opined that in the present case, the closure orders did not sufficiently record reasons and also suffered from lack of application of mind.

In view of the above, the Tribunal directed that the impugned orders be kept in abeyance and be treated as show cause notices. The DPCC, if it wished, was permitted to provide further grounds or documents in compliance with S. 33A of the Water (Prevention & Control of Pollution) Act. The DPCC was further directed to examine the applications and pass orders within six weeks from the date of this order – till which time the appellants would be permitted to operate.

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Eshan Group of Industries
Through its Chairman, Raj Kumar Agrawal
v.
NEPA Limited & Ors.

(And Other Applicants in Other Applications)
APPLICATIONS NO. 10, 11, 12, 13 and 160 (THC) of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal
Keywords: Fly ash, Thermal power plant, pollution
Decision: Applications disposed of
Date: 10th December 2015

These applications were originally filed as writ petitions in the Madhya Pradesh High Court, by industries involved in the manufacture of construction material (situated within 90 km of the NEPA thermal power plant). The short question which arose for consideration was whether the expression 'fly ash' (as per certain Ministry of Environment and Forests notifications) included ash containing high carbon value (i.e. ash which contains un-burnt coal and ash capable of use). The First Respondent filed an independent Application (O.A. No. 160/2014) before the Tribunal praying that the afore-mentioned Notifications (which mandated provision of fly ash with high carbon value to brick kilns, free of cost) would not be applicable to it.

The object of the September 14, 1999 Notification was to conserve top soil and mitigate pollution by the reduction of dumping and disposal of ash discharged from thermal power plants, by promoting the utilisation of ash in manufacturing building materials, within a 50 km radius of the power plant. A subsequent Notification issued on August 27, 2003 which increased the radius to 100 km. These stated that the coal ash would be made available free of cost, for at least 10 years from the date of publication of the Notification. In response to these, the applicants herein wrote to NEPA Limited in October 2004 (and again in August 2006) for permission to lift 40000 tons of coal ash as per the terms of the Notifications. These letters were not replied to. The First Respondent in the meanwhile was trying to sell the coal ash through the Fourth Respondent, which was in violation of the terms of the Notifications. The Applicants herein thereafter wrote to the Second and Third Respondents to cancel the licence/permission of the First Respondent to operate for violation of the terms of the Notifications. It was also the contention of the Applicants herein that no action was taken by the Second and Third Respondents in this regard.
A Dispute Committee had been set up as per the September 14, 1999 Notification to ensure the unhindered transportation of ash. A State Level Committee had also been set up by the State Government for unresolved disputes. It was contended by the Madhya Pradesh State Pollution Control Board (MPSPCB) that the applicant(s) had not presented their case before the committee(s). The MPSPCB also averred that it had issued a letter in November 2006 to the First Respondent directing it to comply with the September 14, 1999 Notification.

The First Respondent contended that its new thermal power plant used the latest technology and boilers, which results in 100% combustion. The by-product ash from these, thus, has nil carbon content. The First Respondent contended that this ash was not a waste product, and moreover the applications were not bona fide (for various reasons). It also stated that

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the ash has a commercial value and is a source of fuel which is not intended to be covered under the Notifications.

The National Environmental Engineering Research Institute (NEERI) had earlier also been asked to collect samples of the ash and place its report before the Tribunal (indicating the carbon content of the ash). The MPSPCB, in its additional affidavit, averred that the ash generated from the plant would come within the purview of bottom ash as per the Notifications (could not simply be excluded because it contained un-burnt coal particulates). The MoEF, in its additional affidavit, took a similar stand and contended that "fly ash" was intended to be a catch-all, generic term independent of un-burnt carbon content. The CPCB also concurred with this view.

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On behalf of the Applicant, it was argued that the object of the Notifications was to utilise all kinds of ashes, irrespective of their composition and carbon content. None of them defined or specified the nature or content of ash to be covered under it - and thus the term should not be construed restrictively.

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The Tribunal, on examination of the issue, first found the applicable notification to be the one dated November 3, 2009 (which amended the original 1999 Notification but only in a limited way). On a reading of this, it found that the term "fly ash" as used in the Notification included all ashes generated by the plant, as the objective was to utilise them all and conserve top soil. Applying the rule of purposive construction, the Tribunal saw no reason to distinguish ash by carbon content for the purposes of the Notification. It discussed the point of the carbon content and economic value raised by the First Respondent, and found there to be an intelligible distinction between un-burnt coal cinders (owing to the outdated technology employed by the power plant) and fly ash. The money already collected by the First Respondent by sale of this un-burnt residue should have been utilised in upgrading its technology and reducing the pollution it was causing. It was directed to do so, which would resolve the issue of high carbon content by-product. Until then, it was permitted to continue selling the high carbon content ash subject to the condition that it would first be filtered to segregate the fly ash, which would then be disposed of in terms of the November 2009 Notification. It was accordingly held, *inter alia*, that ash containing high carbon content (17-25%) would not be covered by the said Notification.

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Pushp Sanitory Appliances
Through Nand Lal Dhawan
v.
Delhi Pollution Control Committee

(And Other Appellants in Other Appeals)

APPEALS NO. 128, 129 and 130 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Consent to operate, Closure, Pollution
Decision: Applications disposed of
Date: 10th December 2015

The Appellants preferred these appeals against the order of closure, and disconnection of water and electricity supply, passed by the Delhi Pollution Control Committee (DPCC) in September 2015. The order was challenged on the grounds of violation of the Principles of Natural Justice and non-application of mind. It was contended by the Appellant in Appeal No. 128 of 2015 that it had established the Effluent Treatment Plant as required, and its discharges were within the prescribed standards as per scientific reports.

On examination, the Tribunal found merit in the Appellant's contentions. It considered the reply submitted by it to the show cause notice, stating that it had the consent of the DPCC to function, that its ETPs were functioning properly and its willingness to use relevant technology to ensure it became a zero discharge unit. In addition, requisite permissions were also in place for storing hazardous waste. However, in the final order passed by the DPCC, it was noticed that there was no deliberation of the issues raised in the reply, and the closure order was passed without any inspection or verification of whether the industry was actually polluting or not. The Tribunal reiterated the seriousness of a closure order – which amounted to the "civil death" of a unit – and the necessity of it to conform to the procedure prescribed under S. 33A of the Water (Prevention and Control of Pollution) Act and Rule 34 of the corresponding Rules. It found that the order was not a speaking one, and lacked application of mind. On these grounds alone, it directed the order of closure dated September 16, 2015 to be kept in abeyance for 6 weeks, within 2 weeks of which any additional grounds of closure would be furnished to the appellants, to which replies would be filed and duly considered (with hearings granted if necessary) – after which a final order would be passed in accordance with law.

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Yogendra Grit Udhyog
v.
State of Rajasthan & Ors.

Applications No. 411, 412 and 413 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Consent to operate, Stone crushing units, Constitution, pollution
Decision: Applications disposed of
Date: 10th December 2015

These applications were originally filed as writ petitions challenging the directions issued by the State of Rajasthan and the Rajasthan State Pollution Control Board (RSPCB) in August 2011, and the order of the RSPCB refusing consent to operate dated September 2011. They were subsequently transferred to the Tribunal.

An additional ground was raised in these applications, while impugning the order of August 2011. It was contended that the State Government's blanket ban on stone crushing activities was in derogation of Articles 300-301 of the Constitution of India. It was further contended that the Central Government alone had the power to issue such directions as per section 5 of the Environment (Protection) Act. The Tribunal did not find any merit in these contentions, seeing as how the power under section 5 had been delegated by the Ministry of Environment, Forests and Climate Change (MoEFCC). Further, the area in question had been notified as a reserved forest in 2009. It found no reason, therefore, to interfere with the impugned orders.

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S. Venkatesh
v.
The Corporation of Chennai & Ors.

Application No. 139 Of 2015 And Appeal No. 98 Of 2015 And Appeal No. 28 Of 2015 (Sz)

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Coastal Regulation Zone
Decision: Applications disposed of
Date: 10th December 2015

The appeal and application were filed against the order granting clearance under the Coastal Regulation Zone (CRZ) Notification, 2011 by the Tamil Nadu Coastal Management Authority, and praying that the road constructed by widening the Foreshore Estate Road on the seaward side of Marina Beach should be directed to be demolished and debris thereof should be ordered to be removed, restoring the beach to its earlier state. It was also prayed that the First Respondent be directed to pay compensation for the damage caused to the environment by the impugned decision.

It was contended in the Original Application, *inter alia*, that the road which was being extended was within 35 metres of the sea and closer to the High Tide Line. The area was also a turtle nesting site, and eligible for protection under Clause 7(i)A(g) of the CRZ Notification. It was further contended that the impugned activity was also prohibited under CRZ(II), as the areas which had been developed up to or close to the shore line fell within CRZ(II). As per the undisputed facts, the Second Respondent had granted clearance under the CRZ Notification to the First Respondent to carry out the project. It was alleged that this order was not published as required under law. It was communicated to the Applicant only in March 2015.

The order granting clearance was challenged on the basis that it had been granted in an arbitrary manner, without application of mind and in violation of Articles 14 and 21 of the Constitution of India. It was alleged to be in derogation of the principle of sustainable development. It was also alleged that the First Respondent had submitted false and misleading information in the DPR and Form I.

In its reply, the First Respondent denied making any misleading statement in the application to the Second Respondent. The project was prepared on the basis of expert opinions, after studying its various potential impacts on the ecology of the area. Further, the project area falling along the sea from the high tide line to landward side was in a CRZ(II) area and not CRZ I as contended by the Applicant – this was classified so by Respondent No. 2 which was the competent authority in this regard. It was also submitted by the First Respondent that guidelines issued by the Forest Department had been taken into account while implementing the project.

Respondent No. 2, in its reply, gave the details of the First Respondent's application. It also stated that representations were invited while considering the application from various fishermen welfare associations active in the area. These groups had stated that the proposal to extend the road would affect their livelihood activities. Mitigation measures were

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proposed to be incorporated for this and the turtle nests as per Forest Department guidelines. It was stated that clearance was granted subject to these conditions and an inspection.

On an examination of the Notification, the Tribunal observed that within CRZ I activities, regulated as per Clause 8, the construction of roads, drains etc could be permitted after approval of the Tamil Nadu Coastal Zone Management Authority (TNCZMA). It further observed that in the present situation, it was apparent that there was due deliberation and application of mind by the TNCZMA. It examined the conditions and objectives of the application duly, and observed that the contention of the applicant – that all or any activity of the sort contemplated by the First Respondent in the CRZ is completely prohibited – was unfounded. It was specifically stated that no activity other than the ones permitted under the impugned order would be allowed – thus no discretion was provided to the First Respondent to raise any construction or beautify the area in any manner.

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The contentions that there was non-application of mind and the decision was arbitrary were also found by the Tribunal to be lacking in merit. Nor was there found to have been any misrepresentation on the part of the First Respondent in its application to the TNCZMA. To the contention of the Applicant that the project required Environmental Clearance, being more than just a road laying project with an area of more than 20,000 sq. Km, the Tribunal observed that the order of clearance was only for relaying cement on the metal road with some additions – and any further permission for a new project would not be given. It thus disposed of these petitions without interfering with the impugned order of clearance, but with certain directions to the First Respondent to strictly adhere to the terms of the order.

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Parma Nand Klanta
v.
State of Himachal Pradesh & Ors.

Application No. 253 (THC) of 2015

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: Noise pollution, Shimla, principles of natural justice
Decision: Application disposed of
Date: 10th December 2015

This matter was filed with regard to noise pollution in a residential cum commercial locality in Shimla. Noise level prescriptions were being violated in some places, as per the report of the Himachal Pradesh Pollution Control Board (HPPCB). According to this, vehicular traffic as well as loading/unloading of goods were contributing to the high noise levels. Certain specific places were mentioned in this Report – to which objections were filed stating that the data had been collected in violation of the principles of natural justice, and suffered from non-application of mind. In view of the report of the Local Commissioners and HPPCB (in response to High Court directions), objections filed thereto and the counter-contentions – this Application was relisted before this Tribunal for arguments and final directions.

The Tribunal, on examining the facts, found that the noise resulting from the traffic and the loading/unloading activity was not only violative of prescribed standards, but is also disturbing the hospital or institutions which were within the silence zone. It referred to the 2005 Supreme Court Case regarding noise pollution, wherein the Apex Court had directed implementation of laws for restricting use of loudspeakers and high volume sound systems. The Ministry of Environment, Forests and Climate Change (MoEFCC) had issued a notification dated February 14, 2000 – the Noise Pollution (Regulation & Control) Rules, 2000 – in this regard, as well. These contain ambient noise standards for activity-based areas – industrial, commercial, residential and silence zones.

It was assured by the First Respondent that appropriate remedial and punitive steps would be taken to ensure that the noise levels were brought within the prescribed levels, and violators were brought to book. It was found, on an examination by the Tribunal of the results of related (Transferred High Court) petitions in the past, that the concerned authorities had been unable to enforce the directions issued by the High Court and the Tribunal effectively. It observed that even devoid of the specific prayers herein, there was a specific obligation on the state to ensure a decent and clean environment to citizens, under the Constitution as well as the Noise Pollution Rules of 2000. For all these reasons, the Tribunal saw fit to direct *inter alia* (i) the state government and its instrumentalities to take immediate steps to strictly comply with the past directions regarding noise pollution of the High Court and the Tribunal, (ii) the relevant authorities to declare the "silence zones" and ensure that no noise was permitted to be generated within 100 m of such zones, and (iii) the state government to revise the restricted and sealed roads of Shimla and restrict vehicular traffic on those roads.

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Kamlesh Stone Crusher
vs.
Rajasthan State Pollution Control Board

Baba Ram Dev Stone Crusher
vs.
Rajasthan Pollution Control Board

Applications No. 503 and 504 of 2015

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Mr. B.S. Sajwan, Mr. Ranjan Chatterjee
Keywords: stone crushing units, air pollution, inspection, consent to operate, compensation
Decision: Applications disposed of (with direction to deposit sum for past pollution)
Date: 10th November 2015

The Applicants in these matters were stone crushing units which were found to be polluting in excess and ordered to shut down, by the Rajasthan State Pollution Control Board (RSPCB) as per section 31A of the Air (Prevention and Control of Pollution Control) Act, 1981 (Air Act). Both these units filed the present applications praying that the RSPCB should be directed to conduct a joint inspection of these units, and their applications for consent to operate be considered. Proofs of their compliance with earlier directions of the Tribunal and the RSPCB had been filed.

The Tribunal consequently disposed of the applications with the following directions – that an inspection be conducted and a report submitted to the Tribunal, stating the status of compliance with the directions, and consent to operate may be subsequently granted (subject to approval by the Tribunal). Before operation could be permitted, the units were directed to deposit a sum of Rs one lakh in equal shares for past pollution.

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The Mand Area Protection Environment Samiti
v.
State of Himachal Pradesh & Ors.

Application No. 168 of 2014

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf

Keywords: Mining activities, consent to operate, Environmental Clearance

Decision: Application disposed of

Date: 10th December 2015

The Applicant filed this application seeking cessation of stone mining and crushing activities which were harming nearby agricultural fields, as well as river ecology of the Beas and Ray rivers (due to river bed mining). These units were operating contrary to the prescribed norms. It was also additionally prayed that fresh leases for mining not be granted to Respondents No. 6 and 7.

In the collective reply filed by Respondents No. 1 to 4, it was stated that the mining leases were granted for a 5 year period w.e.f June 2012. It was submitted that the mining activities had been suspended in September 2013 in accordance with the orders of this Tribunal dated August 5, 2013, and the lessees were required to seek environmental clearance before the mining activities could be resumed. Respondents No. 6 and 7 denied that any mining activities were being carried out at the time of hearing.

The Tribunal, after hearing all parties, observed that Respondents No. 6 and 7 were not carrying on mining, and could not do so without obtaining environmental clearance and consent to operate, and disposed of the application accordingly.

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Tribunal on its own motion
v.
Government of NCT of Delhi & Ors.

Application No. 253 of 2015

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Ground Water, Pollution
Decision: Application disposed of
Date: 10th December 2015

This matter was taken cognizance of on the basis of an article published in the Hindustan Times on June 19, 2015, stating that apart from supply, the quality of potable water was a problem in many areas owing to contamination of ground water. The Tribunal issued notices thereafter to various authorities. The Delhi Jal Board (DJB) and the Central Ground Water Authority (CGWA) were required to file a status report in this regard, in which it was indicated that DJB had nine water testing labs and treatment plants, as well as adequate staff and maintenance provisions for ensuring clean drinking water supply across Delhi. The report of the CGWA was much vaguer, as observed by the Tribunal – but it did still bring out the severity of the problem. In this regard, the Tribunal opined that a comprehensive study was required to be carried out, to identify the sites of contamination and prohibit extraction in those areas. Sources of contamination were also to be identified and precautionary and prohibitory directions required to be passed in this regard.

The Tribunal directed the constitution of a Committee headed by the Secretary, Environment, NCT of Delhi to submit a comprehensive report to the Tribunal within four weeks of passing this order, of contaminated groundwater sites and ensuring that they were adequately dealt with.

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Vikrant Kumar Tongad
v.
Environment Pollution (Prevention & Control) Authority & Ors.

Application No. 118 of 2013

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan, Mr. Ranjan Chatterjee
Keywords: Crop burning, air pollution, actions plans/proposed policies
Decision: Application disposed of
Date: 10th December 2015

This matter was filed with regard to the burning of agricultural residue in various parts of the country which was polluting the air of Delhi and causing smog. The Applicant contended that there was a specific obligation on the Ministry of Environment, Forests and Climate Change (MoEFCC) to issue directions with regard to the standards for discharge of pollutants, restrictions on operation of industries in certain areas etc.

Scientific arguments were advanced for the ill-impacts of crop residue burning – significant contribution to atmospheric aerosols (carbonaceous), greenhouse gases, volatile organic compounds and halogen compounds. It also contributes to brown cloud formation and has indirect radioactive impacts as well. Combine harvesting techniques which are common in the Indo-Gangetic plain leave behind large quantities of straw in the fields – the most cost effective way of clearing these for farmers is open burning. Various studies were referred to for these arguments in the application.

The Respondent states averred that they were trying their best to curtail this practice, through various policy and logistical measures. The state of Uttar Pradesh was seriously considering a ban on burning agricultural waste. The MoEFCC in its reply stated that a corrective, rather than a coercive approach, needs to be taken and awareness generated in this regard.

The Tribunal also discussed its own role in the matter, having had issued directions to the Ministry of Agriculture to convene a meeting with the relevant states, the CPCB and the National Academy of Agricultural Sciences and prepare guidelines for preventing and controlling the pollution resulting from burning of agricultural remnants in open fields. This direction was not complied with on time, but minutes of the meeting were submitted eventually – and the National Policy for Management of Crop Residues, 2014 was drawn up.

The states also filed their separate actions plans/proposed policies for crop residue management (action plans on behalf of Rajasthan, Haryana and Uttar Pradesh) before the Tribunal. The Tribunal discussed the adverse impacts of crop burning on air quality, and expressed its view that there were alternatives available, such as utilising the residue for other activities. It expressed its satisfaction with the action plans submitted by the Respondent states and directed their immediate and effective implementation, through various means – educating and advising farmers, developing a mechanism for collection and utilization of crop residue, provision of incentives for not burning and taking appropriate action against defaulters.

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Vimal Bhai & Ors.
v.
State of Uttarakhand & Ors.

Appeal No. 27 of 2014

Coram: Justice Swatanter Kumar, Justice M. S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan, Mr. Ranjan Chatterjee
Keywords: Forest Clearance, principles of equity, Limitation
Decision: Appeal Dismissed
Date: 10th December 2015

An earlier appeal had been filed against the order of Stage I Forest Clearance (FC) for diversion of forest land for a diversion dam across the Alaknanda River (near Hillong village in Chamoli, Uttarakhand), on the grounds that appropriate studies had not been conducted, particularly in relation to the efficacy of the mitigation measures and the e-flow calculations. This was dismissed by the Tribunal (in 2011), and later by the Supreme Court as well (in 2013) – both saw no reason to interfere with the FC as granted. An amended FC was issued by the state of Uttarakhand in 2013, which incorporated specific recommendations for maintaining a minimum downstream discharge, monitoring and protection of habitats etc. It was against this amended FC that the present appeal was filed.

The Tribunal noted some oversights on the part of the Appellant with regard to obtaining the copy of clearance, as well as in finding out the steps taken by the forest department in furtherance of the Tribunal's 2011 order – this was relevant, in its opinion, for determining whether the present action was barred by limitation. It discussed the rationale behind the law of limitation, emphasising that due diligence must be shown to have been exercised by the seeker of the condonation of delay, to file the action in due time. It elucidated further, using case laws, to support its assertion that the law of limitation was substantive and conferred a right, which was to be ascertained in accordance with the principles of equity.

Applying the aforestated principles to the facts at hand, the Tribunal came to the conclusion that the Appellant had failed to establish the 'sufficient cause' as required within Section 16 of the National Green Tribunal Act, 2010. He had not been vigilant of his legal obligation, and his conduct was not worthy of grant of condonation of delay. No explanation was forthcoming from him as to why he filed the RTI application for the copy of the impugned order so late, and why he chose to not collect it from its place of delivery (from where he had moved) for more than a month. Even after collecting this, there was further delay in filing the appeal which was not satisfactorily explained. For all these reasons, the appeal was dismissed as barred by limitation.

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Water Pollution
MSW, Compensation

Indian Council for Enviro-Legal Action
Vs.
National Ganga River Basin Authority & Ors.

And

M.C. Mehta
Vs.
Union of India & Ors.

Original Application No.10 of 2015
(M.A. No. 27 of 2015, M.A. No. 744 of 2015 & M.A. No. 1094 of 2015)
And
Original Application No. 200/2014
(C.W.P. No. 3727/1985)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Prof. A.R. Yousuf, Mr. Bikram Singh Sajwan
Keywords: River Ganga, trade effluent, sewage, dumping, municipal solid waste, seriously polluting industries, construction, demolition waste, Stakeholder Consultative Process, Sustainable Development, Doctrine of Public Trust, local commissioner, environment compensation
Decision: Application disposed of
Date: 10th December, 2015 (*Corrected vide order dated 18th December, 2015*)

These two cases, i.e., Original Application No. 10 of 2015 and Original Application No. 200 of 2014 were the lead cases before the Tribunal in relation to cleaning of river Ganga. Original Application No. 10 of 2015 primarily relates to pollution being caused by throwing of waste, particularly untreated or partially treated sewage being inducted into the river Ganga. Original Application No. 200 of 2014 relates to general cleaning of Ganga which flows nearly 2,525 Kms. in 5 different states, primarily in Uttarakhand, Uttar Pradesh, part of Jharkhand, Bihar and West Bengal. From Haridwar onwards the natural flow of river Ganga reduces. Also, there is simultaneous increase in pollutants being put into river Ganga, primarily including sewage and trade effluents of Seriously Polluting Industries (for short, "SPI") as well as other industries which leads to increase in pollution load tremendously.

The Original Application No. 200 of 2014 is an Application which was transferred vide order dated 29th October, 2014, and was originally registered with the Hon'ble Supreme Court of India vide Civil Writ Petition No. 3727 of 1985.

The Tribunal had adopted the mechanism of "Stakeholder Consultative Process in Adjudication", i.e. Secretaries from Government of India, Chief Secretaries of the respective States, concerned Member Secretaries of Pollution Control Boards, and other persons having stakes were required to participate in the consultative meetings to discuss the various mechanism and remedial steps for preventing and controlling pollution of river Ganga. In this backdrop, the Tribunal in its previous orders and in the consultative meetings held with the stakeholders, decided to deal with cleaning of river Ganga in

phases. It was decided to dissect the entire 2,525 Kms stretch of river Ganga into 4 different phases. In this judgement, the Tribunal only dealt with the prevention and control of pollution of River Ganga in Segment A of Phase-I, i.e. from Gangotri to beyond Haridwar towards the State of Uttar Pradesh, and restoration of the river and its bio-diversity to its pristine form.

It was an admitted position that from Gaumukh to Haridwar the main source of pollution was by discharge of untreated sewage into the river. The industrial or trade effluent discharge into River Ganga was quite minimal in this segment. However, another source of pollution was admitted to be indiscriminate dumping of construction and demolition waste and municipal solid waste and any other waste into the river directly. Uttarakhand Pey Jal Nigam submitted that out of 17 towns situated on the banks of river Ganga in this zone, only 5 were provided with Sewage Treatment Plants (STPs). The city of Haridwar and Rishikesh have been the biggest contributors of treated/untreated sewage into the river Ganga and the lowest discharge in this belt is from Kirti Nagar. The Tribunal observed that projects were being prepared for cleaning river Ganga without any data based upon physical verifications. The Tribunal had also passed orders on 10th March, 2015 and 9th April, 2015 directing constitution of a joint inspection team of Ministry of Environment, Forest and Climate Change, CPCB, UKPCB and other named officers to inspect large hotels, ashrams and functioning of the CETPs and STPs at Rishikesh and Haridwar. In relation to hotels, it was also stated that none of these hotels had obtained Central Ground Water Authority (for short, "CGWA") clearance and even the STPs, wherever constructed by the hotels and ashrams, were found to be poorly operated and maintained.

During the chamber deliberations, it was considered appropriate to have Bio Digester tanks to commonly meet the ends of a small sector. Thus, the Tribunal issued clear directions in that regard to all authorities including, National Mission for Clean Ganga (for short "NMCG") to clear this project immediately. The Tribunal also stated that the State of Utarakhand should submit a plan in relation to all the cities for ensuring that there is no untreated sewage to be put into river Ganga and proper system should be brought in place to recycle or distribute the effluent taken from the outlet of these plants for permissible activities like agriculture, horticulture, industrial purposes and such other allied purposes.

The handling of municipal and other waste in the entire State of Uttarakhand was not in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000 (for short 'MSW Rules'). According to the UKPCB, it had issued notices to Corporation and other public authorities who were responsible for dealing with municipal solid waste from time to time. The Tribunal was of the considered view that the UKPCB should have taken punitive action against all the defaulting bodies and could have issued directions under Section 5 of the Environment (Protection) Act, 1986 (for short "Act of 1986"). Mere issuance of notices or filing of complaint was not the real solution to the problem.

When Miscellaneous Application No. 1094 of 14 and 27 of 2015 had been filed in Original Application No. 10 of 2015, to contend that there were serious encroachments and construction activities were going on not only within 500 meters but even at the flood plain of the river, the Tribunal prohibited constructions on the flood plains vide order dated 2nd July, 2015. The Tribunal while dealing with maintenance of Ghats in Haridwar in an environmentally sound manner and in accordance with MSW Rules in the case of Indian Council for Environment Legal Action v. Union of India & Ors. O.A. No. 10/2015 had prohibited use of plastic in and around the Ghats and in fact in the entire city of Haridwar.

These directions were to be expanded to entire State. It was also an admitted case before the Tribunal by all the authorities and the applicant that more than 60% of the effluent (mixed of sewage and trade effluents) at Jajmau was being directly released into River Ganga without any treatment. Also, 40% effluent which was coming through the CETPs was not completely treated and brought within the prescribed standards. Furthermore, the joint inspection team which inspected Ashrams, industries and adventure tourism activity in its report of 16th February, 2015 had pointed out serious environmental concerns about each one of them.

It was evident that River Ganga has been highly polluted, the major sources of pollution being discharge of treated/untreated trade effluent, treated/untreated sewage and dumping of municipal solid waste and other wastes directly or indirectly into River Ganga. The Tribunal stated that if the resources are permitted to be exploited without due care and protection and without ensuring inter-generation equity then it will be a patent disregard to the Doctrine of Public Trust. All activities by the State itself or through other modes like public and private sector should be carried out in a way that there is no irreversible damage to the ecology, environment, rivers and its biodiversity. There has to be reasonable restriction, the Principle of Sustainable Development has an inbuilt element of reasonableness or doctrine of balancing. The Tribunal observed that if the Ghats were not maintained hygienically, preventive and precautionary steps were not taken, and if the commercial activity was not regulated appropriately, then it would give rise to serious environmental issues, particularly with reference to pollution of River Ganga. Thus, the Government, UKPCB, Public authorities and every individual citizen of Haridwar, as well as pilgrims visiting Haridwar were said to be responsible for keeping the Ghats absolutely clean and river Ganga free of pollution, as per the constitutional obligation placed upon the State in terms of Articles 21 and 48A and similar constitutional duties imposed upon the citizens under Article 51 A(g).

The Local Commissioner appointed in the matter had filed his report, which depicted very sad state of affairs prevalent in at the ghats in Haridwar and river banks at Haridwar and Rishikesh but more particularly, the STP at Haridwar, Jagjeetpur.

From the above discussion, it was clear that the authorities had not been able to implement the law and directions of the Supreme Court or the Tribunal over the years. The Tribunal observed that the remedial measures that were being taken were ineffective because of ill and faulty planning and implementation. Thus, the matter was said to require issuance of directions of diverse dimensions and of stringent character.

DIRECTIONS IN REGARD TO COLLECTION AND DISPOSAL OF SEWAGE:

1. The Executing Committee, appointed under this judgment, to be directly and personally responsible for execution of works specifically stated and compliance of the directions enunciated in this judgment.
2. No work in relation to sewer line network to be carried out by the State of Uttarakhand and/or any public authority/ body except at Gangori and Gopeshwar where sewer line work was completed and were to be connected to the STP. Also, the Tribunal directed that no fresh work would be undertaken by the State or Public Authorities without approval of the Tribunal in relation to collection, treatment and disposal of the sewage.
3. Every effort would be made to provide a common Bio- Digester for hamlets.

4. All the concerned public authorities and the district administration would be responsible for proper operation and maintenance of the new Plant capable of treating Faecal Coliform Bacteria, as well as both the existing STPs.
5. All the established and to be established STPs, to ensure that the treated sewage released from these STPs adheres to the prescribed parameters.
6. All hydro-projects in operation or under construction were directed to provide their own STP's and make them operational within 3 months from the date of this judgment, upon which, the joint inspection team would inspect such STPs. However, this direction was subject to the orders that may be passed by the Hon'ble Supreme Court of India.
7. No drain carrying sewage or any untreated effluent in any of the cities/towns forming part of Segment A of Phase-I would be permitted to join river Ganga or its tributaries. All the drains shall be tapped and the sewage would be brought to the common bio-digesters/STPs.
8. To ensure that the treated sewage water from the town close to the industrial clusters is recycled for industrial purposes or other permissible purposes.
9. Proper management scheme or protocol to be prepared and notified by the State and all its agencies to ensure that the sewerage or sewage effluent collected for appropriate treatment and its consequential release. The manure collected in the bio-digester to be distributed free of cost to the farmers around the area.
10. A team constituted of senior officers from Uttarakhand Pey Jal Nigam, UKPCB and representatives of the Government from Department of Urban Development to submit quarterly reports to the Tribunal in regard to operation and management of the STPs and biodigesters and in regard to the implementation of the action plan.
11. Every officer and head of the department of the public authority or body responsible for maintaining and operating the STPs/Bio digesters would be personally responsible for default.
12. The Executing Committee to be responsible for completion of upgradation of the six existing STPs, as well as establishment of another 15 STPs and 24 Bio-digesters, and would ensure that the projects are completed and operationalised within the time noticed in the Judgement, under the supervision and control of the Principal Committee.

DIRECTIONS IN RELATION TO INDUSTRIES:

1. All the Seriously Polluting Industries and Grossly Polluting Industries (10 in number) operating without consent of the UKPCB to be closed down forthwith.
2. After remedial and rectification steps are taken by these Seriously Polluting industries and Grossly Polluting Industries, and they install anti-pollution devices, they would be at liberty to approach UKPCB for grant of 'consent to operate'. The consent granted would become operative subject to the orders of the Tribunal.
3. The State Government and District Administration to ensure that all the Seriously Polluting Industries mentioned above were closed forthwith.
4. In case of industries defaulting, their premises were to be sealed.
5. The industries which are in the process of complying with the directions issued by UKPCB and/or are installing antipollution devices like ETPs or other mechanism would not be closed and permitted to do the needful within three months.
6. Applications of some of the Grossly Polluting Industries (15 in number) pending with UKPCB shall be disposed of in accordance with law not later than six weeks.

7. The Industries operating without consent of UKPCB and were not seriously or grossly polluting, could apply for obtaining 'consent to operate' from UKPCB.
8. All industries located anywhere in any part of Segment-A of Part-I to obtain consent of the Board irrespective of nature of their business and quantity and quality of discharge of their trade effluent.
9. In the case of grossly and seriously polluting industries, UKPCB could grant consent only after a joint inspection by the joint inspection team consisting of representatives of CPCB, UKPCB, Directorate of Industries, State of Uttarakhand and nominated a lecturer from IIT Roorkee.
10. The joint inspection team to collect effluent samples and analyse them and recommend grant of consent, only if their parameters are found to be within the prescribed limit. They would be permitted to operate subject to the orders of the Tribunal.
11. The CETP at SIDCUL, Haridwar was directed to become zero liquid discharge unit.
12. The joint inspection team to also conduct a survey and submit a report to the Tribunal stating whether the established CETPs have been capable of treating the effluent discharged in terms of quantum and quality from the respective industrial cluster.
13. The State Government and all concerned authorities and public bodies to ensure that the industries located under any industrial cluster should be connected to the CETP through the existing common conveyor belt.
14. Steps to be taken by the agency operating CETP as well as all concerned authorities to channelize effluents into the lagoon through the reverse osmosis system and recycle the same so that least effluent is discharged into river Sukhi.
15. BHEL was directed to install its own STP of 11 MLD capacity by January 2016.
16. 226 kinds of industries (total being more than 4000) have been operating without the consent of UKPCB due to exemption granted to them by the Industries Department of the State. It was stated that the Department of Industries has no jurisdiction to exempt the industries from operation of the Water Act and Air Act. Due to the substantial increase in the work load of UKPCB, the State Government to consider providing more posts in the hierarchy of UKPCB.

III. DIRECTIONS IN RELATION TO HOTELS/ DHARAMSHALAS / ASHRAMS:

1. All the Hotels which have not established their own STPs, operating without consent of UKPCB and releasing their domestic waste and sewage into river Ganga or its tributaries to be shut down forthwith.
2. The hotels which have applied for consent of UKPCB to be granted and/or refused consent within 1 month from the date of pronouncement of this Judgment.
3. Ashrams/Dhramshalas which have been discharging their sewage or domestic effluent directly into the River Ganga or its tributaries, whether or not they have their STP, would be directed to stop such discharge within 1 month.
4. Ashrams/dharamshalas which do not have their own STP would be required to establish such STP within 3 months from the date of pronouncement of this Judgement.
5. Any hotel, dharamshala or ashram found violating these directions by the inspection team, would be liable to pay environmental compensation for causing pollution of River Ganga at the rate of Rs. 5000 per day.

IV. DIRECTIONS IN RELATION TO MUNICIPAL SOLID WASTE:

1. Complete prohibition on use of plastic, i.e., plastic carry bags/plastic plates, glasses, spoons, packages and allied items in all the cities/towns falling on the river Ganga and/or its tributaries in Segment 'A' of Phase-1.
2. These restrictions would become operative w.e.f. 1st February, 2016. Furthermore, the State of Uttarakhand in co-ordination with Ministry of Textile and other agencies would provide bio-degradable materials, use of which would be permitted from the specified date in the entire Segment 'A' of Phase-1.
3. All the directions contained in relation to MSW in Original Application No. 10 of 2015 to remain in force.
4. The MSW dumping site at Chandi ghat, located on the flood plain, to not be used any longer for dumping MSW. The State Government was directed to develop and construct MSW dumping site at Sarai Village, Haridwar in terms of the stand taken by the State before the Tribunal in the case of Gram Sarai Samiti v. MoEF & Ors., Appeal no. 106 of 2015. Transportation and segregation of the MSW at this site to be strictly in accordance with the conditions of the Environmental Clearance and the Municipal Solid Wastes (Handling & Management) Rules, 2000.
5. A Supervisory Committee to be constituted under this judgment to submit a report to the Tribunal for construction of MSW dumping sites and plants within one month.
6. Prohibition on throwing of any municipal waste, construction and demolition and other wastes into river Ganga and its tributaries and even on its banks. Any person/body, if found violating this condition, to be liable to pay environmental compensation at the rate of Rs. 5000 per event.
7. The Tribunal further directed the State Government, and its instrumentalities and all public authorities to ensure that public facilities like toilets are provided on the appropriate places in colonies abutting river Ganga all along Segment-A of Phase-I.
8. During the interregnum, the local authorities to ensure a proper system in place for cleaning of these toilets and bringing the sewage and other waste from these toilets to the existing STPs for treatment.
9. Uttarkashi to also have its own site for STP.

V. DIRECTIONS IN RELATION TO FLOOD PLAINS:

1. The State of Uttarakhand was directed to prepare and submit to the MoEF, Tourism-cum-Plain map, Flood Plain map and zoning of flood plain, which was to be in accordance with the Notification dated 18th December, 2012 issued by the Ministry and the Act of 2012, within 3 months from the date of pronouncement of this judgment. Upon submission, MoEF would have to approve such plans with amendments or otherwise within 1 month thereafter. Thereafter, it would be notified and brought in the public domain.
2. Keeping in view the Notification of the MoEF, intent of the Act of 2012, orders passed by the Tribunal in other matters, High Courts and the Hon'ble Supreme Court in various cases, it was directed that as an interim measure, at least 100m from middle of the river would be treated and dealt with as 'Eco sensitive and prohibited zone'. No activity whether permanent or temporary in nature will be permitted to be carried on in this zone including camping. The only exception would be the points for picking up and dropping the guests who are doing rafting in river Ganga. The area beyond 100 meters and less than 300 meters would be treated as regulatory zone in the hilly terrain, for which the State will comply with the above directions. The area upto 200 meters shall be the prohibited area in the plain terrain and more than 200 meters and less than 500 meters would be treated as regulatory zone. Area/river bank/flood plain 2 kms.

upstream to Rishikesh and till Border of the State of Uttarakhand towards Uttar Pradesh in river Ganges would be treated as plain terrain while upstream the above hilly terrain. The State Government while complying with its obligations under the Act of 2012 and this judgment in this regard would keep in mind 1 in 25 years flood to be the criteria for declaring flood plain and the regulated activities which would be permitted in that area. This is the guiding factor which has complete scientific and documented studies to impose such limitations.

3. Strict supervision in that regard to be enforced by the State agencies responsible for that purpose, primarily by the Secretary of Irrigation Department, State of Uttarakhand and the Chief Conservator of Forests, Uttarakhand.
4. Any activity or construction in the regulated area aforereferred where the gradient is beyond 350 should be further checked and preferably no activity should be permitted, to prevent ecological damage and land sliding in that area. All precautionary steps should be taken in that behalf.
5. In this prohibited area, no public authority or State department, including the panchayat would grant permission for any activity whatsoever, including ecotourism.

VI. DIRECTIONS IN RELATION TO MINING ON THE RIVER BED:

1. The river bed mining to be carried on in a highly regulated manner and under strict supervision of the authorities concerned.
2. No mechanised river bed mining to be permitted. No JCBs would be permitted to operate in the river bed.
3. No suction of the minerals from the river and the river bed would be permitted by the mechanical process like suction pumps etc.

VIII. DIRECTIONS IN RELATION TO BIO MEDICAL WASTE:

1. No throwing of any medical, bio medical or any other waste, into the river, on the river banks and anywhere in the areas forming part of Segment-A of Phase-I. UKPCB and the Municipal Authorities would recover Rs. 20,000 per violation from any person, Hospital or authorities on account of Environmental Compensation in terms of Section 15 of the NGT Act and on the basis of Polluter Pays Principle. These amounts would be deposited with the State Government and utilised for the project under this judgment.
2. The State Government was directed to construct and establish by itself, at least two more biomedical waste and hazardous waste plants to meet the requirement of 708 hospitals in the State of Uttarakhand.
3. All the 708 Hospitals would be served with a notice by UKPCB and the department of health of the State requiring them to ensure proper collection, segregation and disposal of such waste in accordance with the Bio Medical Waste (Management and Handling) Rules, 1998.

IX. GENERAL DIRECTIONS

1. For completion of the project and compliance of these directions, the State Government, its instrumentalities, public authorities and bodies would be entitled to invoke the Principal of ‘Polluter Pays’ and require the industries, hotels and Dharamshalas and even households to pay environmental compensation, and/or sewage charges in all events the State and its instrumentalities would ensure efficient,

and effective operation, maintenance and management of the various STPs/CETPs, and Bio-digesters, etc.

2. The Environmental Compensation payable under these directions would be directly proportionate to the discharge of the effluent from such premises. Fixation of this amount to be as per the discretion of the State Government.
3. The State of Uttarakhand and its various departments and public authorities to divert the balance funds provided for that purpose towards this project.
4. If the Government proposes imposition of such environmental compensation or environmental cess then that cess shall be used only for implementation of the projects covered under this judgment till completion. Thereafter, the State could use these amounts as it considers appropriate.
5. All other projects covered under this judgment shall be considered by the Ministry of Water Resources and NMCG on priority basis to decide the category of funding to be adopted.
6. All the works to be initiated, sanctioned, executed and maintained under the direct supervision of NMCG. The Executing Committee to directly supervise and be responsible for completion of the projects and report the matter to Principal Committee, which in turn, was directed to submit its final report to the Tribunal.

Air & Water Pollution
Environmental Compensation

Yogesh Nagar
Vs.
Union of India & Ors.

Original Application No.228 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Air pollution, water pollution, Chhapraula Industrial Area, contaminated water, effluents, ground water, environmental compensation
Decision: Application disposed of
Date: 10th December, 2015

The applicant was a resident of the area affected by water and air pollution being caused by the factories and the industries operating in Chhapraula Industrial Area (for short 'the industrial area'). According to the applicant, there were about 300 factories and industries operating in this industrial area that were carrying on the following activities:- chemical units discharging effluents without any treatment and contaminating the ground water; battery units working in lead which disposed acid directly, contaminating the ground water and also causing air pollution because of lead; paper mills discharging effluents in the open drain and disposed off their wastes in the open; rice processing units causing large scale pollution by discharging effluents in open drains and doing reserve boring for disposing of their effluents and other wastes; and LED unit discharging effluent in drains without any treatment.

The pollutants being released / discharged from these factories and industries in this industrial had adversely affected the ground water and water bodies of villages Khera Dhrampura, Bishnuli, Sadullapur, Sadopur, Achheja, Dujana, Chhapraula, Roja, Jalalpur of Bisrakh Block of Gautam Budh Nagar, Uttar Pradesh. These factories and industries had been operating for quite some time. The industries had been extracting ground water without any permission, thus depleting the ground water level on the one hand and on the other by discharging the effluents on the land resulting in contamination of ground water. The effluents discharged from the industries by carrying on the above stated activities were causing serious health hazard.

Having failed to get any relief at the hands of the authorities concerned, the applicant filed the present application under Section 18 read with Section 14 and 15 of the National Green Tribunal Act, 2010 (for short the 'NGT Act') with following prayers:
(i) To direct the Central Pollution Control Board, State Pollution Control Board or any other agency to properly assess the Bisrakh Block for pollution of groundwater and remedial measures.
(ii) To direct restoration and cleaning of ground water and other polluted area of the Bisrakh Block.
(iii) To direct closure of all illegally operating industries and factories for not complying with the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and other environmental laws and regulations.

(iv) To direct the health department to do proper health assessment of the residents of the Bisrakh Block and payment of damage and compensation for causing death and other diseases.
(v) To direct payment of damage and cost of restoration of the ground water on the polluting industries on the basis of polluter pays principle.

According to the Tribunal, the grievance of the applicant was not without basis and people of these villages were being exposed to various environmental and health hazards as a result of the pollutants existing in the hand pump ground water and air pollution. It was the duty of the State and Pollution Control Boards, as well as the State Government to ensure decent and clean environment to the people living in that area. The Joint Inspection Team specifically noticed that there were 30 red category, 29 orange category and 78 green category industries existing in the above mentioned industrial cluster.

It was established that so many industries had been operating without consent of the Board. There were Red Category industries working in non-compliance of directions issued by the Board. The concerned State Government and the Board were expected to carry out their statutory duties, so as to ensure that the people of these villages were not left without alternative but to use contaminated water for human consumption. Therefore, the Tribunal disposed of this application with following directions:
a. That all the industries which were operating without obtaining the consent of the Board and fall in the Red Category, to be closed.
b. The two industries which had expanded their plants and production without consent and discharged their effluents were directed to close their units forthwith, with liberty to move application for obtaining consent of the Board and permission from all other concerned authorities to carry on their activities. The remaining seven industries mentioned in the judgement would be served with the final notice by the UPPCB and directions would be issued to these units for compliance and requiring them to bring the effluents discharged by them within parameters, particularly, BOD to be within prescribed limits and they would be given a period of four weeks to become compliant and non-polluting industries.
c. After five weeks they would be inspected by the Joint Inspection Team of the CPCB and UPPCB and if found to be compliant and non-polluting, they would be issued Consent to Operate, subject to the prior approval of the Tribunal. If the industries were found to be non-compliant and polluting, they were to be closed with immediate effect.
d. In relation to all the industries, the UPPCB was directed to issue appropriate notices, issue directions for compliance to make all these units compliant and non-polluting, as well as maintain a record of their date of establishment, operation and the period for which they were operating without consent or in violation of the conditions of consent to operate.
e. All the industries falling in any category and extracting ground water would be required to obtain permission from the CGWA positively by 31st December, 2015. If they fail to obtain such permission and comply with the directions of the Board, the CGWA and the UPPCB was directed take action in accordance with law.
f. The CGWA, CPCB and UPPCB were directed to take immediate steps for preventing and controlling the contamination of ground water in all the villages. It was also recommended that the State of Uttar Pradesh should take steps to remove the pollutants from the groundwater and to fix treatment plants along with hand pumps, so that ground water being used for human consumption is free from any contamination.
g. If the industries failed to comply with the directions, they would remain closed. All these industries were liable to pay environmental compensation for the entire period, including for the past when they were polluting the environment.

No costs.

Air Pollution
Limitation

M/s Bharat Stone Crusher
Vs.
Rajasthan State Pollution Control Board

And

M/s Bharat Stone Crusher
Vs.
State of Rajasthan & Anr.

Appeal No. 99 of 2013
(Miscellaneous Application No. 1016 of 2013)
And
Original Application No. 216 of 2014
(Miscellaneous Application No. 1015 of 2013)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Stone-crushing, Air pollution, mining lease, show cause notice, limitation period
Decision: Appeal & Application disposed of
Date: 10th December, 2015

M/s. Bharat Stone Crusher (for short, "Appellant") was carrying on the business of stone crushing in Village–Bolkheda, Tehsil-Kama, District-Bharatpur, Rajasthan. The Rajasthan State Pollution Control Board (for short, "RSPCB") vide is order dated 13th July, 2006 granted consent to operate which was valid till 12th April, 2008. Vide its application dated 15th January, 2008, the Appellant requested the Board to grant extension of consent to operate. The stone crusher of the appellant was not found to be compliant to the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (for short, "Air Act"). The Board issued a Show Cause Notice on 6th January, 2009 to the Appellant for closure under the provisions of Section 31A of the Air Act, and passed appropriate directions in relation to closure of the stone crusher unit on 21st July, 2009.

Vide order dated 25th August, 2011, the RSPCB in furtherance to the powers vested under Section 5 of the Environment (Protection) Act, 1986 and Section 18 of the Air (Prevention and Control of Pollution) Act, 1981 issued directions to impose a complete ban on operation of stone crushing units in that entire sector in order to prevent air pollution. Against the order dated 25th August, 2011, the present Appellant had also filed an appeal before the Appellate Authority. However, the Appellate Authority vide its order dated 3rd July, 2013 dismissed all the appeals stating that it lacked jurisdiction to adjudicate the dispute raised.

The Original Application No. 216/2014 (originally Appeal No. 100/2013), challenge was to the order dated 25th August, 2011; while in Appeal No. 99/2013, the challenge was to the order passed by the Appellate Authority dated 3rd July, 2013.

On behalf of the State of Rajasthan and RSPCB, it was submitted that the present application and appeal both were barred by time and they deserved to be dismissed on that short ground alone. However, on merits, it was submitted that State of Rajasthan had vide its order dated 17th April, 2008 terminated all mining leases operating in the area 'Brij Chaurasi Kos Parikarma Marg'. It was further pointed out that all other stone crushers had shifted to the new sites allotted, and it was only the appellant who persisted with carrying on the stone crushing activity at the site in question. There was no challenge raised before the Tribunal to the order dated 21st July, 2009 and consequently no other orders could be challenged. Furthermore, vide Notification dated 13th November, 2009, the area in question was declared as 'Reserved Forest' and even that Notification had not been challenged in any proceedings. It was submitted that the Hon'ble High Court of Rajasthan vide a detailed judgment dated 20th August, 2010 had directed the State and the Board to ensure that pollution free environment remains in that area. If the appellants or the mines were permitted to operate, it would cause serious environmental pollution, particularly air pollution and would be illegal mining.

In the present case, there was no application for condoning the delay. Under Section 16(f) of the National Green Tribunal Act, appeal against the order of the Appellate Authority constituted under Section 31 of the Air Act lies to the Tribunal. The present appeal had admittedly been filed on 2nd November, 2013 and there was a delay of more than 3 months in filing the present appeal, which was beyond the prescribed period of limitation i.e., 30 days. It has been established in previous judgements that the Tribunal has no jurisdiction to condone the delay beyond the period of 90 days.

In light of the above stated position of law, it was held that Appeal No. 99 of 2013 was barred by time. There was no application for condonation of delay and in any case the Tribunal would have no jurisdiction to condone the delay in excess of 90 days. Thus, this appeal was dismissed on that short ground alone. Application No. 216 of 2014, had previously been instituted as Appeal no. 100/2013, wherein the challenge had been against the directions issued by the RSPCB vide its order dated 25th August, 2011. In this order, it was decided not to allow establishment of new stone crushing units in the area i.e. Tehsil Deeg and Kama of District Bharatpur to prevent and control pollution of air, to restore the environment and to save it from further degradation and to safeguard the lives of people and inhabitants of brij area. This appeal had to be filed again within 30 days from the date of communication to the appellant in terms of Section 16(g) of the NGT Act. There was a delay of more than two years in filing the appeal.

The Tribunal opined that the entire conduct of the appellant was such that would disentitle him for claiming any relief before the Tribunal either in law or on merits. Consequently, for the reasons afore-stated, both Appeal No. 99 of 2013 and O.A. No. 216 of 2014 were dismissed on the ground of limitation as well as on merits without any order as to costs. M.A. Nos. 1015 of 2013 and 1016 of 2013 did not survive for consideration as the main applications itself had been dismissed.

Air Pollution, Noise Pollution

Nidhi
Vs.
Govt. of NCT, Delhi & Ors.

Miscellaneous Application No. 1082 of 2015
In
Original Application No. 180 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Noise pollution, Air pollution, loudspeaker, musical instruments, wood & upale burning, Noise Pollution Rules 2000
Decision: Application disposed of
Date: 10th December, 2015

The Applicant being aggrieved from the use of loudspeaker, music system, DG system, dholak and other musical instruments that were causing disturbance, nuisance and noise pollution in the vicinity where she was living, filed this Application praying for issuance of appropriate directions to the authorities concerned, including the police, that such activity must be stopped. She also prayed that the wood and 'upale' (dung cakes) burning in the open should also be stopped as it was causing air pollution. This application was disposed of by the Tribunal finally vide its order dated 9th April, 2015, and the SDM of the area and all other concerned authorities had made a statement that they would carry out the directions issued by the Hon'ble Supreme Court of India in its true spirit and substance and would ensure that there is no noise and air pollution resulting from these above-stated activities.

Since the violations still persisted in the vicinity of the applicant, the applicant filed an application under Section 26 of the National Green Tribunal Act, 2010 (for short the 'NGT Act') praying that a Local Commissioner should be appointed and instances of violations which were still persisting be brought to the notice of the Tribunal, while also praying that the Police Authorities, the SDM etc. should be directed to take appropriate actions without any further default.

The stand taken by the respondents primarily was that they were trying their best to control and regulate the air and noise pollution resulting from the activities complained of by the Applicant. Right to clean and decent environment would include protection against air and noise pollution, whatever the source generating such pollution. The authorities were expected to carry out the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 and more particularly the orders of the Hon'ble Supreme Court of India.

Thus, this Application was disposed of with a warning to the Administrative, Executive as well as the Police Authorities, to ensure no recurrences of burning of 'upale' or of generating noise pollution from using instruments, DJ sets, music systems, etc. above the prescribed decibels. Furthermore, the fixed hours for playing such music etc. were to be strictly adhered to not only by the SDM and SHO concerned in Palam, but even in the entire NCR.

MSW
Miscellaneous: Jurisdiction, Limitation

Vikas Kalkal
Vs.
Govt. of NCT, Delhi & Ors.

Original Application No. 481 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Untreated effluents, illegal sewer line, High Court of Delhi, jurisdiction, limitation
Decision: Application dismissed
Date: 10th December, 2015

In the present Application, the applicant prayed for removal of the illegal sewer line which discharged untreated effluent into the open space and direct the officers to take appropriate actions in accordance with law against the defaulters.

The Tribunal was of the considered view that it would not be appropriate for it to exercise its jurisdiction in the facts and circumstances of the present case. Admittedly, the applicant had filed a writ petition before the High Court of Delhi and the High Court had disposed of the writ petition vide its order dated 14th September, 2010. Vide this order the High Court had issued directions to the officers as well as liberty had been granted to the Applicant to approach DPCC. The Applicant accepted the said order. It was for the applicant to show as to whether the concerned authorities had or had not complied with the directions issued by the High Court of Delhi in appropriate manner. Non-compliance of the order of the High Court of Delhi could be examined only by the High Court itself and not by this Tribunal. Thus, it was not appropriate for the Tribunal to exercise its jurisdiction when the matters were subjudice before the Court of Competent Jurisdiction and parties to the lis were contesting the suit on merits and otherwise.

The Applicant had stated that the sewer line was constructed in the year 2010. Even if the present application was seen as a petition under Section-14 of the NGT Act, the limitation there is of six months from the date when the cause of action first arose. In that context, the present application was barred by time. It was also a settled position of law that the Tribunal would have no jurisdiction to condone any delay beyond the period of 60 days to the prescribed period of limitation. The Tribunal observed that, while discussing the merits of the case, the dispute raised did not squarely fall within any of the Scheduled Acts. At best, it could be treated as an environmental issue falling within the ambit of Section 14 of the NGT Act but as the application was barred under that provision, the question of maintainability of this application did not arise.

Consequently, this application was dismissed as not maintainable, with no order as to costs.

MSW
Water Pollution

Suo Moto Uttarakhand Human Rights Commission
Vs.
Government of Uttarakhand & Ors.

Original Application No. 239 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: Pollution, River Kosi, River Ganga, sewage, domestic waste, effluents, industrial pollution, Municipal Solid Waste Rules, Water Act, statutory duty, action plan
Decision: Application disposed of (with directions)
Date: 10th December, 2015

The Uttarakhand Human Rights Commission, Dehradun, on suo moto action in a complaint passed an order showing concern for pollution being caused in River Kosi and River Ganga by sewage, waste water and domestic effluents being discharged into these rivers directly or indirectly. This order was communicated to the Tribunal vide letter dated 14th May, 2015. The present case had two facets in relation to River pollution.

The first aspect was related to the pollution of River Kosi primarily because of sewerage, domestic waste and domestic effluents being put into the river indiscriminately without treatment. The second aspect related to pollution of River Ganga directly through the industrial pollution being caused at Kashipur and the other industrial areas which discharged their effluents, treated or untreated, directly or indirectly, into River Ganga. As far as the latter was concerned, a comprehensive petition was pending before the Tribunal, of which the hearing had been going on at day-to-day basis, being Original Application No. 200/2014, titled as M.C. Mehta vs. Union of India & Ors. Thus, the Tribunal primarily dealt with the pollution of River Kosi, particularly with regard to the discharge of sewage, wastewater and domestic effluents at Ram Nagar, Uttarakhand. It was unchallenged that the entire sewage, wastewater and domestic effluents were being dumped into River Kosi, thus causing its pollution. A vague averment was made by the respondents that some of the houses may be having septic tanks.

The Tribunal stated that it was not only statutory, but constitutional obligation of the respondents to provide decent and clean environment. The main source of water in the city or towns located on the banks of rivers was the river itself. The Jal Nigams had not stated as to what is the source of the potable water being supplied to the residents of Ram Nagar. These public authorities and bodies, constituted for the very specific purpose to ensure that the municipal solid waste was collected and disposed of in accordance with the Municipal Solid Waste Rules, 2000, had the duty to ensure that the sewerage was collected and treated and the release of the treated sewerage was to be strictly in accordance with the prescribed parameters under the Water (Prevention and Control of Pollution) Act, 1974. Fact of the matter remained that not even a single step had been taken physically at the ground. There was no document to show the water quality, characteristics of River Kosi at Ram Nagar or down or upstream thereof. No project for laying down sewerage line network and establishment of STP for this area had admittedly been conceptualized yet.

While expressing displeasure at the manner in which such sensitive and substantial environmental issues were being dealt with by the State and Public authorities, the Tribunal held that all the respondents, including the State Pollution Control Board, failed to perform their statutory and constitutional duty. Thus, the application was disposed with the following directions:

a) A Committee to be constituted consisting of the Secretary, Environment, of the State of Uttarakhand, CEOs of Uttarakhand, Pey Jal igam and Uttarakhand Pay Jal Sansthan, District Magistrate, Nainital and Member Secretary of the Uttarakhand Pollution Control Board.
b) To prepare a complete and comprehensive action plan in terms of this judgment and submit the report to the Tribunal within three months.
c) The action plan would provide for establishment of STPs, Biodigestors and Collective septic tanks for collecting the sewerage of entire Ram Nagar while ensuring that no sewage or untreated sewerage would be released into River Kosi.
d) The Committee would answer if the existing 15 drains, the STP or any other mechanism for treating the sewerage could be constructed and operationalized. It should also point out which of the drains could be intercepted and connectivity provided to the established STP.
e) A specific report on physical inspection to be conducted through employees of the respective bodies and the report would state as to how many houses were without septic tanks. It would also state if was any mechanism to collect such sewerage and its treatment as per law in the houses which constructed septic tanks.
f) The Committee would also state whether any industrial effluent was being discharged into River Kosi and Ram Nagar, upstream and downstream in the district Nainital. If so, the Committee was to ensure identification of such sites in Nainital.
g) Complete mechanism to be provided for collection, segregation, transportation and disposal of the Municipal Solid Waste from District Nainital and Ram Nagar.
h) The Committee would unambiguously bifurcate the function, scheme and responsibility of the State Government, public authorities and the Nigams, including the Pollution Control Boards in execution of the action plan.
i) The Nigams and the State Authorities would show availability of finances with the State or these authorities and/or any of the financing schemes like ADB and World Bank etc. Computation, in a certain and time bound manner.

The Tribunal further stated that the members of the Committee, of which the Secretary would be the Chairperson, would be responsible personally for compliance of these directions without default and delay. No costs.

Water Pollution
Environmental Compensation

Sterling Home Innovator Private Limited
Vs.
Haryana State Pollution Control Board

Original Application No. 419 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: River Ganga, polluting industry, effluents, precautionary principle, onus of proof, principle of strict liability, environmental compensation
Decision: Application disposed of
Date: 10th December, 2015

This Application was filed with the prayer to direct the Haryana State Pollution Control Board (for short 'The Board') to consider the application filed by the applicant industry and also to direct the Board to de-seal the premises, Plot no. 88-D HSIIDC Sector-16 Bahadurgarh, District Jhajjar, Haryana. The applicant industry was engaged in manufacturing of Kitchen Accessories with Nickel and Chrome plating, which was the basic and serious source of pollution. The case of the applicant was that the Tribunal on 15th December, 2014 in OA no. 196 of 2014 titled as Krishan Kant Singh & Ors v. NGRBA & Ors. had directed that the polluting industries which were discharging their effluent into River Ganga, Yamuna or its tributaries and were operating without consent of the Board would not be permitted to operate. If the units were found to be compliant subsequently the Board could grant consent to the industry which would become operative subject to the order of the Tribunal. The Board passed an order dated 31st December, 2014 after it had found during their inspection conducted on 31st December, 2014 that the industry was polluting and had closed the unit as well as electricity and water supply to the unit were disconnected. However, according to the applicant industry, the industry was inspected on 25th August, 2015, and the analysis report showed that the parameters of the effluent were within the prescribed limits. It was in these circumstances that the applicant filed the present application with the above prayers.

From the narrated facts it was clear that the applicant industry had been polluting the water at points of its effluent discharge and had even violated the terms and conditions of the Consent Order. It was only after the issuance of the Show Cause Notice and the closure order that the industry had taken remedial steps and strengthened/upgraded its ETP and the unit also claimed to be a 'Zero Effluent Discharge Unit'. The Tribunal observed that there was no difficulty in permitting the unit to operate but such permission could not be granted unless the unit was found to be complying and non-polluting by the appropriate authorities. The onus was on the industry to show that it had been complying with the requirements of law and is a non-polluting and compliant industry, which the industry in the present case had failed to discharge.

The Tribunal referred to 'Precautionary Principle', which demonstrated that an activity which posed danger and threat to the environment was to be prevented. Under this Principle, the State Government and the Local Authorities were supposed to first anticipate and then prevent the cause of environmental degradation by checking the activity. Lack of scientific knowledge as to whether particular activity was causing degradation should not

have stood in the way of government in analysing such harm. 'Onus of Proof' under this Principle was on the actor or the developer to show that the action was environmentally friendly. The provisions of the National Green Tribunal Act of 2010 under Section 20 mandates that the Tribunal had to apply the 'Precautionary Principle' while adjudicating the cases under the environmental jurisprudence. Furthermore, in terms of Section 19 of the NGT Act of 2010, this Tribunal was not bound by the procedure laid down by the Code of Civil Procedure, 1908 as well as by the rules of evidence contained in Indian Evidence Act, 1872 and it had evolved its own procedure in consonance with the Principles of Natural Justice. These provisions were suggestive of an approach which the Tribunal should adopt in order to protect the environment, while keeping in mind the principles stated under Section 20 of the Act of 2010. The Tribunal also stated that besides the fact that substantive onus would fall upon the industry to show that it had complied with the statutory requirements and was operating within the prescribed norms, the industry had to be aware of the fact that compensation for causing environmental degradation and its restoration could be imposed upon it in terms of Sections 15 & 17 of the Act of 2010. This showed the application of Principle of 'Strict Liability'.

Since apparently the industry was a polluting unit and had not taken such steps in installing anti-pollution devices which it ought to have, it had rendered itself liable to pay Environmental Compensation in terms of Section 15 of the National Green Tribunal Act, 2010. Applying the rule of reasonableness, the Tribunal was of the considered view that the industry should pay a sum of Rs. 2 lakh to the Haryana State Pollution Control Board as environmental compensation.

The Tribunal held that permission to operate could be granted only conditionally. Following the orders passed by the Tribunal in O.A. No. 396 of 2015, this application was disposed of with the following directions:

1. The applicant industry to pay a sum of Rs. 2 lakh to the Haryana State Pollution Control Board within 4 weeks from the date of this order. This amount would be used by the Pollution Control Board for improving the pollution of ground water, environment around the areas of the applicant industry.
2. The industry would be permitted to operate to its optimum capacity for a period of 2 months from the date of the order.
3. During that period of 2 months the industry would be inspected by a joint inspection team consisting of the Central Pollution Control Board and Haryana State Pollution Control

a) Board and prepare a complete and comprehensive report. Thereafter, subject to the orders of the Tribunal, the industry could be permitted to operate in accordance with law.

Water Pollution
Restoration

Social Action For Forest And Environment (SAFE)
Vs.
Union of India & Ors.

And

Jaswinder Kaur
Vs.
Union of India & Ors.

Original Application No. 87 of 2015
(M.A. No. 262 of 2015 & M.A. No. 528 of 2015)
And
Original Application No. 382 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf
Keywords: River Ganga, river rafting camps, pollution, restoration, eco-tourism, municipal waste, Forest (Conservation) Act, non-forest activity, Rapid Impact Assessment Report, Regulatory Regime
Decision: Application disposed of
Date: 10th December, 2015

The applicant, through its president, had filed the present application being aggrieved by the haphazard and unregulated licensing of the river rafting camps operating in river Ganga from Shivpuri to Rishikesh, which was a serious source of pollution of pristine river Ganga and was causing encroachment and degrading of various.

The applicant has averred in the application that the initial beach camps on Ganges were established during 1998 with permission by regulatory authority through Ministry of Environment and Forests (for short 'MoEF'). In northern India rafting has commonly been exercised on the river Ganges near Rishikesh and the Beas River in Himachal Pradesh. The area has been denoted as eco-tourism zone namely Kaudiyala- Tapovan eco-tourism zone where various activities besides rafting and camping have been permitted. It was submitted by the Applicant that there were large number of camps in the form of beach camps or otherwise which were being permitted on 'first-come-first serve basis'. A large number of licenses were issued by State agencies without appreciating or analyzing carrying capacity. This caused excessive pressure on the river. As the camp sites and beach camps had encroached upon the forest area, many trees had been cut and land was flattened for setting up of such camps. The State Government and authorities did not have any mechanism in place for collecting the municipal waste and its disposal in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000. Another aspect that the applicant had emphasized was that these camps were also adversely affecting the wildlife to a great extent because of increased man animal conflict. It was also submitted on behalf of the applicant that since rafting camps were a 'non-forest activity', it could not be carried on without clearance from the competent authority under the Forest (Conservation) Act, 1980 (for short 'the Conservation Act'). Thus, according to the applicant, the agencies were not acting in the interest of the environment on account of vested interest. Mushrooming of

rafting camps could not be termed as a sustainable development activity or a permissible eco-tourism activity. The applicant also prayed for restoration of the area and removal of garbage or any other wastes from the camping site at the cost of the camp owners in accordance with the Polluter Pay Principle.

According to the Tribunal, the applicant rightly invoked the Precautionary Principle in terms of Section 20 of the NGT Act. The Precautionary Principle could be safely applied to protect and prevent the environment and ecology.

Section 2 (ii) of Conservation Act provides that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. For the purpose of this section, "non-forest purpose" would mean the breaking up or clearing of any forest land or portion thereof for: (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than re-afforestation. The question which arose for consideration was whether setting up of rafting camps along the beach of river Ganga and its tributaries qualified as breaking up of the forest as comprehended under Section 2(ii) of the Conservation Act or not. The contention of the respondents was that the activity was not in any manner violation of the Conservation Act. The petitioners, on the other hand, pleaded that the density of the tents together with the number of camps along the beaches for the most part of the year made the activity a permanent obstruction and hence qualified it to be taken as a means of breaking up the forest. According to the Tribunal, the cases of camping activities in the reserved forest areas were activities which were for non-forest purpose or were non-forest activity in the forest area. These cases would attract the provisions of Section 2(ii) and (iii) of the Conservation Act. Thus, it was obligatory upon the State of Uttarakhand to seek approval from MoEF and then issue orders/permits in terms of Section 2 of the Forest Conservation Act.

According to the Tribunal, the concept of ‘Back to Nature’ ought not to be used for developing revenue at the cost of Environment and Ecology. The Tribunal stated that responsibility was upon the State to protect its environment, forest and rivers. Right to decent and clean environment is the right of every citizen. Thus, on the cumulative reading of Article 21, 48 A and Article 51 A (g) of the Constitution the State could not be permitted to shirk its responsibility of conservation and protection of forests and environment on the plea of earning revenue. If the State chose to carry on such activity which was not a prohibited activity under the Conservation Act, but was a restricted activity, then it should have itself responsibility of regulating this activity in all responses without any default. Camping activity caused contamination of river and ground water particularly when not carried on strictly in terms of the regulatory regime in force. Google images, Rapid Impact Assessment Report and other documents placed on record showed that the camping activity in particular was not being properly regulated and the State was failing in its supervisory capacity, and even private entrepreneurs have failed in their duties in complying with the conditions of the permission granted to them in accordance with law. It was also noticed that the wildlife that had been reported between Kaudiyala-Rishikesh in Garwhal region. The wildlife also required protection. When the MoEF issued its letter on 23rd May, 1990, it noticed that camping on sandy stretch of the river would be a source of pollution and is a threat to the forest and the river bank. Site should have been more towards the road and not on the river bed. There it had also been stated that it was a commercial activity. Thus, it was absolutely essential that a proper stringent Regulatory Regime was placed on record so

that such activity could be permitted to continue longer. The State of Uttarakhand had submitted before the Tribunal on 31st March, 2015 that it would not grant any fresh permits for the current season. The Tribunal proposed to continue the said directions till a proper Regulatory Regime in accordance with law was brought in place and implemented.

Hence, the Tribunal passed the following directions:

1. No camping activity to be carried out in the entire belt of Kaudiyala to Rishikesh and the Government would abide by its statement made before the Tribunal on 31st March, 2015, till the regulatory regime in terms of this Judgement comes into force and is effectively implemented. However, it was also made clear that Rafting per se did not cause any serious pollution of river or environment, and thus was permitted be carried on.
2. To constitute a Committee of officers not below the rank of- Joint Secretary from the MoEF&CC, along with a specialist in this field from the Ministry; Secretary, Department of Environment and Forest from the State of Uttarakhand; Member Secretary, Central Pollution Control Board; Chief Conservator of the Forest of the concerned area; Member Secretary, Uttarakhand Environment Protection and Pollution Control Board; and Director of Wildlife Institute of India or his nominee of a very senior rank. Member Secretary, Uttarakhand Environment Protection and Pollution Control Board would be the Nodal Officer and Convenor of this Committee. This Committee could engage any Government Institution or a private body to prepare the regulatory regime, which was to be submitted to the Tribunal in accordance with law.
3. The Rapid Impact Assessment Report to be treated as a relevant document and the Committee would conduct or get conducted further survey.
4. The Committee to consider all aspects of Environment, Wildlife, River and Biodiversity while preparing the relevant regulatory regime.
5. The Committee to give recommendation for all preventive and curative measures and steps that should be taken for ensuring least disturbance to wildlife and least impact on the environment and ecology. The Committee would also have to specifically report in relation to the carrying capacity of the area in regard to both the activities, in view of the fragile ecology of the area.
6. This report was to be prepared within 3 weeks from the pronouncement of this Judgement. Thereafter the State of Uttarakhand through Secretary, Forests would submit a Comprehensive Management Plan cum proposal for approval to MoEF. MoEF would consider the same and accord its approval in terms of Section 2 of the Forest Conservation Act within 3 weeks thereafter.
7. The Committee would ensure the manner and methodology in which such sites should be put to use for carrying on of these activities.
8. After grant of approval, the State of Uttarakhand to issue an order under Section 2 of the Forest Conservation Act and give permits in terms of its policy.
9. To impose complete prohibition on use of any plastic in the entire belt covered under this judgment.
10. It would be obligatory upon every person to whom permit/license for camping was granted by the State to collect the Municipal Solid Waste or all other wastes from the camping site at its own cost and ensure their transport to the identified sites for dumping.
11. If any licensee fails to comply with these directions, the department would take action in accordance with law and it would be treated as a breach in terms of the license. In this regard complete record to be maintained by the licensee of the site as well as at the dumping site, in the records of the concerned authority.

12. No structure of any kind would be permitted to be raised, temporary, semi-permanent or permanent within the 100 meters, with reference to the Ganga Data maintained by the Central Water Commission.
13. The Committee would also make this Report in relation to source, quantum of Water and source of Power needed keeping in view the camping activity.

The application filed by Jaswinder Kaur was also disposed in terms of the order in this case. Thus, both the above cases were disposed of without any order as to cost.

Air Pollution, Compensation

Social Action For Forest And Environment (SAFE)
Vs.
Union of India & Ors.

Review Application No. 32 of 2015
In
Original Application No. 179 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal
Keywords: Air pollution, water pollution, review jurisdiction, environmental compensation
Decision: Review Application disposed of
Date: 10th December, 2015

This Review application was filed by the appellant seeking review of the order of the Tribunal dated 12th August, 2015 passed in the Application no. 179 of 2015. The applicant had filed Original Application no. 179 of 2015 under Section 18 read with Section 14 of the NGT Act raising issue of noncompliance of the provisions of Environment (Protection) Act, 1986 (for short 'Act of 1986'), Air (Prevention and Control of Pollution) Act, 1971 (for short 'Air Act') and Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act'). The applicant had filed a list of 60 glass industries which were set up in the Taj Trapezium Zone, Firozabad in State of Uttar Pradesh without obtaining the consent of the Uttar Pradesh Pollution Control Board (for short 'UPPCB'). It was submitted by the applicant that the Board had failed to take any action or impose any penalty against the industries. It was prayed by the applicant that the Board only granted consent only after filing of the RTI application by the applicant dated 24th September 2014, and since the industries were operating without consent of the Board for the year 2014, the Order of the Tribunal dated 12th August, 2015 needed to be reviewed.

The Tribunal was of the considered opinion that the present application was beyond the purview and scope of review jurisdiction as contemplated under the Section 19(4) (f) of the NGT Act, 2010 (for short 'NGT Act') read with the Rule 22 of the National Green Tribunal (Procedure and Practice) Rules 2011 and Order 47 Rule 1 of the Civil Procedure Code, 1908 (for short 'CPC'). The present application prayed for issuance of further and even different directions, than prayed in the main application. For this purpose, appropriate remedies for the applicant was to file a fresh application, as review jurisdiction could not be exercised for the purpose of passing new and different directions.

It was not disputed before the Tribunal that all the glass industries at Firozabad had been in operation for decades. They were operating without obtaining the consent of the Board where it was the obligation of these industries to take consent of the Board to operate. It was also the duty of the Board to ensure compliance of the law as well as that these industries were not permitted to pollute air and water in the area in question.

Thus, while declining to review its judgment dated 12th August, 2015, the Tribunal passed the following directions:

1. The Uttar Pradesh Pollution Control Board to examine the report of the National Environmental Engineering Research Institute (NEERI) and the report submitted by the Committee constituted in pursuance to the Order of the Tribunal dated 12th August, 2015 and take appropriate preventive and precautionary measures. They should grant

one final opportunity to all the industries to obtain the consent of the Board, within the period of 1 month from the date of this judgement.

2. The industries which failed to apply for obtaining the consent of the Board within the stipulated period, the Board would have to proceed in accordance with law and if necessary direct the closure of the industries.
3. The Board to duly notify all these industries that in the event they operated without consent they would be liable to pay Environmental Compensation in accordance with law for polluting air and water and for degrading the environment in the area in question.

M/s. Shakti Fasteners
Vs.
Haryana State Pollution Control Board

Appeal No. 131 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Water pollution, consent to operate, pickling unit, drawing unit, ETP, effluent analysis report, anti-pollution devices
Decision: Appeal disposed of
Date: 10th December, 2015

This Appeal was filed to challenge the order of closure dated 20th October, 2015 passed by the Haryana State Pollution Control Board (for short The Board).

The applicant was running pickling and drawing units of all types of Bright Bars since 1992 from Rohtak (Haryana). Consent to operate was granted by the Board vide its order dated 15th August, 2014 for a period of 2 years ending on 31st March, 2016. In January, 2015 the unit of the appellant was inspected by the Board and certain short comings and deficiencies were pointed out. It was stated that as per the advice of the Board the appellant upgraded the ETP by installing the Tube Steller, Air Diffuser/Blower etc. Thereafter, the appellant informed the Board about the removal of the deficiencies. It was averred by the appellant that the Board officers visited the unit on a rainy day that is 5th August, 2015 for collecting samples. The analysis report dated 11th August, 2015 showed that the effluent was in violation of prescribed parameters. The deficiencies which were removed by the applicant were brought to the notice of the Officers of the Respondent Board. However finding the reply to be unsatisfactory, the Board passed the closure order dated 20th October, 2015.

The arguments raised on behalf of the appellant that samples were collected from the manhole and because of heavy rain it was a sample not properly collected and therefore the Effluent Analysis Report should be rejected, was without any merit. It was noticed that the ETP was found to be non-operational, during the inspection and the effluent was being discharged directly into IDC Sewer. The samples therefore were collected from the manhole.
Furthermore, if there was rain it would result in the dilution of the effluent and it would be in no way disadvantageous to the appellant. Furthermore, the appellant undertook to dismantle the water polluting process, i.e., the process of acid pickling and further undertook that it would carryout only the process of drawing and cutting of bright bars and as such no discharge of the effluent could have been done. This showed that the appellant industry was a polluting industry, and its ETP was found non-functional during inspection.

In these circumstances, the Tribunal was unable to find any error in the order passed by the Board as impugned in the present appeal. However, while dismissing this appeal, liberty was granted to the appellant to rectify all defects, remove all deficiencies and become a compliant and non-polluting industry. Once it installed all such Anti-Pollution Devices, it could apply to the respondent Board for 'Consent to Operate'. The Appeal was disposed of with the above direction, without any order as to cost.

Sarav Shikshit Evam Berojgar Janhit
Vs.
State of Himachal Pradesh & Ors.

Original Application No. 157 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Cement Company, air pollution, water pollution, noise pollution, health hazards, precautionary principle, polluters pay principle, environmental compensation
Decision: Application disposed of (with directions)
Date: 10th December, 2015

The Applicant, a registered society, through its President approached the Tribunal with a prayer that the Tribunal should pass an order/direction to the official respondents to take appropriate steps against respondent no. 8 (i.e. Associate Cement Company Ltd.) as the unit was causing air and water pollution and consequent health hazards in and around its premises located near Barmana, District Bilaspur, State of Himachal Pradesh. The plant of respondent no. 8 was commissioned on 12th March, 1984 near National Highway-21. According to the applicant, the capacity of the unit should also not have been expanded. The applicant prayed that the official respondent should be directed to take appropriate action against the respondent no. 8; penalties on respondent no. 8 should be imposed to compensate the applicant and residents of the area because of the health hazards that they had been exposed to and to appoint an Expert Committee to examine the impacts of running of the unit of respondent no. 8 upon air and water and on the health of the inhabitants living in the area.

From the view point of the environment, the unit of Respondent no. 8 was to be examined by the Tribunal with reference to the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000 inter alia but primarily on the following aspects:

1. Air pollution from stack emission as well as ambient air quality as a result of activity carried out by respondent no.8.
2. Noise pollution resulting from the activity of respondent no. 8.
3. Discharge of treated sewage water from the STPs of the unit and installation of complete and comprehensive environmental protection devices.

The notice issued by the Board on 27th January, 2012 pointed out some patent default in carrying on of manufacturing activity by respondent no. 8 on the relevant time. From the said notice it was clear that the respondent no. 8 had failed to check and discharge its statutory duty to carry on its manufacturing activity within the prescribed standards, particularly in relation to air and noise. The notice also indicated that though the equipment had been installed but they were to be maintained and operated properly. Thus, this was the pollution resulting from in-action, bad maintenance and apparent negligence on the part of respondent no. 8. The ambient air quality from the Ambient Air Quality Monitoring Station was found to be excessive on the dates specifically mentioned therein. The Tribunal observed that it was not Corporate Social Responsibility of respondent no. 8, but instead a statutory requirement to maintain its operations of manufacturing strictly within the

prescribed parameters at all the relevant times. Burden to show that it was performing its statutory duty without default would always be on respondent no. 8. The unit was expected to fully comply with the requirements of the Precautionary Principle. The Polluters Pay Principle would arise from the terms and conditions of the order of Consent to Operate granted by the Board to respondent no. 8 as well as from the law enforced.

Wherever the applicant claims damages or environmental compensation for loss suffered by him as a consequence of pollution resulting from carrying on of activity by the industry, the onus lies on him to prove such loss. The applicant had led no evidence in individual cases to show what loss they had suffered and what damage had been caused to their persons or property individually. Thus it was difficult for the Tribunal to award individual environmental compensation in terms of Section 17 of the NGT Act. However, it was undisputable that respondent no. 8 had violated the prescribed parameters in relation to air, noise and environmental pollution. The pollution had resulted from emissions as well as from operation of the heavy machinery causing noise pollution. It was again not disputed that people were living in the close vicinity to the Plant. It would therefore have had adverse impacts on environment and public health.

From the above, it was clear that the unit was found violating the prescribed norms on different occasions particularly during the years 2012-13, after which it took remedial measures. This was confirmed in the inspecting report of the Board. Respondent no. 8 also did not maintain the requisite buffer zone between the industrial unit and the residential area continuously up to, at least January, 2012 as was mentioned in the notice issued on 27th January, 2012. Similarly, the unit was violating the norms in respect of noise levels for the said period as well. These violations even continued after the above mentioned notice. In respect of both the above violations respondent no. 8 had nothing in defence and accordingly was liable to pay environmental compensation for violating the norms continuously till the year 2012 at least.

Thus, the Tribunal passed the following directions to ensure that even the intervening episodes of pollution did not result in future and there was no possibility of environmental and health hazards resulting from the activity of the manufacturing of cement by respondent no. 8:

1. The respondent no. 8 to comply with all the directions that have been issued by the Pollution Control Board and all other concerned authorities in regard to environment within a period of four weeks. It would take all antipollution devices and ensure that its emissions, noise levels and the discharge from the STP were strictly within the prescribed parameters and did not exceed under any circumstances.
2. After the period of one month the unit to be inspected by the Joint Inspection Team.
3. The inspecting team to submit a complete and comprehensive report to the Tribunal inter-alia but primarily and particularly on creation of green belt, wind barriers, ambient air quality stack samples, discharge from the STP, noise levels and maintenance of antipollution devices fixed by the industry.
4. This Committee would also deal with the health aspects of the villagers living around the industry.
5. The report to be submitted to the Tribunal within two weeks from the date of passing of this order.
6. Respondent no. 8 to ensure that the transportation of cement from its premises to and trucks entering its premises for loading of cement should be properly cleaned, should

be covered so as to prevent any dust emissions during loading and transportation and take all other possible measures in that regard and as recommended by the Committee.

7. Respondent no. 8 directed to be liable to pay environmental compensation to the extent of Rs. 50 lakhs. This compensation was to be paid in the following manner;
   a. Rs. 20 lakhs to the CPCB,
   b. Rs.20 lakhs to the HPPCB and
   c. Rs.10 lakhs to the Government Hospital at Bilaspur.

   This amount would be used by the respective Boards for taking the remedial measures for improving the environmental and ecological damage that occurred in the past, on and around the premise of the industry and would ensure that there was no pollution in future. The compensation amount would also be used for upgradation, improving the environment, sanitation, health situation of the affected people.

The application was disposed of with the above directions, with no order as to cost.

Sanjay Kumar
Vs.
Union of India & Ors.

Original Application No. 306 of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Ridge area, forest area, illegal construction, Supreme Court, municipal solid waste
Decision: Application disposed of (with directions)
Date: 10th December, 2015

The Applicant, a person interested in the Forest Area and Environment, filed the Petition praying that the official respondent in the main Application be directed forthwith to demolish the illegal and unauthorized construction by the Ashram of Respondent No. 10 (i.e. Sant Shri Asha Ram Bapu Trust) situated in the Central Ridge Area and that the respondents should also initiate criminal proceedings against Respondent No. 10. According to the applicant, this was a Reserve Forest and the said Respondent was carrying on its non-forest activities in that area.

The main Application came to be disposed of by a detailed Judgement of the Tribunal dated 10th November, 2014. The Tribunal noticed in the Judgement that keeping in view the jurisdictional limitation of the Tribunal, the Tribunal was not concerned with the issues relating to the nature, extent and legality of the possession over the forest area by the Ashram and other administrative matters relating thereto. In the Judgement, the Tribunal had also noticed that as far as construction in the Forest Area was concerned, it was squarely covered by the order of the Hon'ble Supreme Court of India in the matter of M.C. Mehta v. Union of India, Writ Petition (C) No. 4677 of 1985 passed in relation maintaining the pristine glory of ridge areas. In the order of the Tribunal dated 10th November, 2014, it was recorded that any construction made in any event, subsequent to the order of the Hon'ble Supreme Court of India in 2002, could not be protected and Respondent No. 10 had no right to carry on its activity over or beyond that area in any event.

Vide its order dated 10th May, 2014, Tribunal had directed constitution of a Committee to inspect the premises in question and submit its report. The committee in terms of direction of this order filed a report before the Tribunal on 5th January, 2015, necessitating revival of the matter and therefore, it came to be placed before the Tribunal. Complete compliance to the direction of the Tribunal was not reported by the Committee. Besides this, certain other short-comings/discrepancies had also been pointed out by the Committee in its report dated 5th January, 2015, which was also detailed by the Government of NCT of Delhi in its comparative statements. It made certain observations in regard to dumping of waste and sewage etc. It was the obligation of Respondent No. 10 to carry out the directions of the Tribunal and comply with the requirements of law in the interest of Forest Area and the environment in general.

Thus, the Tribunal disposed of this Application with the following directions:

a) Respondent No. 10, Municipal Corporation of Delhi and Delhi Pollution Control Committee to comply with the directions contained in the order of the Tribunal dated 10th November, 2014 within four weeks from the date of passing of the order.
b) Respondent No. 10 to dismantle and close the pipeline which was smelling of sewage and other foul smell, under the supervision of Delhi Pollution Control Committee, within four weeks from the date of this judgement.
c) Respondent No. 10 to ensure due collection of the Municipal Solid Wastes and its disposal in accordance with the MSW Rules, 2000 at its own cost and risks.
d) Respondent No. 10 – Trust to pay the Municipal Corporation such amount as the Corporation may demand for the purpose of collection and removal of its municipal solid waste.
e) The Municipal Corporation and Respondent No. 10 to ensure that sewage or urine to be appropriately taken to the septic tank from where it would be collected by the Corporation at the cost of Respondent No. 10 and disposed of in accordance with the relevant Rules.

All these steps were to be taken by all the concerned Authorities and Respondent No. 10 within four weeks from the date of pronouncement of this order.

Rewa Valley Environment Protection Society
Vs.
Gujarat Industrial Development Corporation & Ors.

Original Application No. 62 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Pollution, chemical discharge, trade effluents, industrial complex, Effluent Treatment Plant, Action Plan
Decision: Application disposed of
Date: 10th December, 2015

The grievance of the applicant was against the Gujarat Industrial Development Corporation (for short, "Corporation") for causing pollution of various types in various natural tributaries in the Ankleshwar Industrial Region. According to the applicant, chemical discharge from various industries was being released into the water bodies.

According to the Applicant, M/s. United Phosphorous Limited (Respondent No.4) was one of the major polluting industry which discharged red water in the drain which came from the compound wall of its industry. The tributaries, in which the effluent was being discharged, thereafter fell into river Amarawati. Reference was made to some other industries but the primary grievance was that the industrial complex of the Corporation generated lot of pollution; i.e. the discharge of trade effluent from the industry was highly polluting the water bodies, ground water and even the eco-sensitive areas of that area.

Due to non-appearance of the applicant, and keeping in view the seriousness of the averments made in the application, the Tribunal had appointed Amicus Curiae to pursue the matter before the Tribunal.

During the course of the hearing, questions were also raised in regard to disposal of the hazardous waste which the industries were generating. Disposal of such hazardous waste was a matter of concern and, therefore, the industries were asked specific queries with regard to disposal of trade effluents and their Corporate Social Responsibility.

An affidavit filed on behalf of the Gujarat State Pollution Control Board (for short, "GSPCB") stated that in compliance to the orders of the Tribunal, the Central Pollution Control Board (for short, "CPCB") and GSPCB had jointly carried out the inspection at Jhagadia Industrial Estate. The GSPCB submitted that the trade effluent from the industrial estate was conveyed through underground drainage system and collected at the pumping station provided by the Corporation. This effluent was dumped through the Final Effluent Treatment Plant by M/s. Narmada Clean Tech Limited at Ankleshwar for further treatment and disposed to deep sea through marine disposal system. The industries were also inspected, particularly M/s. United Phosphorous Limited and it was found that they had an operating ETP. Thus, according to the GSPCB, there were no environmental issues or pollution of the area in question, particularly, the water bodies including the river.

After visit and inspection, the joint inspection team and Amicus Curiae filed a detailed report with recommendations. The Amicus Curiae had noticed that the surrounding areas of

the industrial estate were farmlands and that the water pollution was ultimately not carried to the Narmada River on the one side. It was established that the parameters of discharge of effluent were within the prescribed limits. The final recommendation/conclusion as submitted to the Tribunal was as follows:

a) To request officers of the Gujarat Pollution Control Board/Central Pollution Control Board to take samples and submit an analysis report for the water sources during the monsoon season to enable the Tribunal to monitor the situation in the monsoon.
b) To prevent surface run off from the factory of UPL Ltd. entering the storm water drains outside the factory, to direct testing of the parameters of TDS, BOD and COD, as well as the pH, before the water is allowed to be carried away in the drains external to the factory. If the water in the internal drains of the factory is contaminated, this water should be treated and pumped directly to the Final Pumping Station.
c) To direct an addition of a check wall/gate in the natural drains. If the water in these national drains is found to be contaminated, GIDC ought to make provision for treatment of the water
d) To seek a schedule of time within which upgradation of the storm water drainage system in the GIDC Estate should take place.
e) To monitor the progress with regard to the upgradation of the storm water drainage system mentioned above.

None of the parties, including the GSPCB, had any objection for implementation of the recommendations/conclusion.

From the subsequent developments and events in the case, it was clear that the application filed before the Tribunal did not have any substance. In light of the above discussion, this application was disposed of with a direction to the GSPCB and Gujarat Industrial Development Corporation (owner of the industrial estate) to prepare an Action Plan in view of the recommendations made by the learned Amicus Curiae within a period of three months from the date of judgement. The Action Plan prepared was directed to be implemented by all the concerned authorities, industrial units and occupants of the industrial estate within a period of three months thereafter. Furthermore, the Corporation and the GSPCB could prepare the Action Plan while permitting representative participation by the industries that were located in the industrial estate. No costs.

Miscellaneous
Compensation

Randhir Singh
Vs.
State of Himachal Pradesh & Ors.

Original Application No. 280 (THC) of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Highway, damage, house, culverts, Environmental Clearance Regulation, Compensation
Decision: Application partly allowed
Date: 10th December, 2015

The Applicant filed the present application to issue an order to the Respondent State to construct culverts near village Batol, District Sirmaur, Himachal Pradesh as well as to direct the private respondents to pay compensation for causing damage to his house and property to the extent of rupees thirty five lakhs, inclusive of the cost of the house.

According to the Applicant, in 2008–2009, Respondent No. 4, i.e. M/s. Som Dutt Builder was awarded the work of widening of the said highway, which work was in progress even at the time of filing of the application. According to the applicant, Respondent No. 4 had not constructed culverts for drainage of water due to which the whole rain water was flowing into the house of the applicant and his house further suffered damages and huge losses. The Applicant stated that due to the negligence and callous attitude of the executing authority and the contractor, immense loss had been caused to the applicant and his property.

According to Respondent No. 5, i.e. New India Insurance Company Ltd., the DPR and technical specifications did not provide any provision for culverts near the house of the applicant. The applicant was guilty of withholding material facts being guilty of *suppression vari* and *suggestion falsi* and was not entitled to any relief as prayed for. The next objection was with regard to maintainability of the present application before the Tribunal. According to the respondents, the application did not disclose the cause of action which would squarely fall within the provisions of the NGT Act and it was purely a contractual obligation. The remedy of the applicant, if any, lay before the Civil Court or any other forum in accordance with law.

According to the Tribunal, the MoEF had issued the Environmental Clearance Regulation, 2006 which required a Project Proponent to obtain prior EC from the concerned regulatory authority, if the project was specified as Category-A and Category-B project in terms of the schedule to the Regulation 2006. Highway falls under the said schedule. The projects relating to state highway expansion in hill terrain above 1000 meters AMSL and/or in ecologically sensitive areas, would be impermissible. In this case, the project was commenced and completed without EC. The Tribunal stated here that though none of the parties raised this argument, this fact was brought out only in relation to answer the issue raised by the respondents before the Tribunal in relation to jurisdiction.

In this case, the applicant relied on the definition of the words accident, environment and substantial question relating to environment as defined under section 2(1)(a)(c)(m) respectively to contain that such matter would be squarely covered under the provisions of the NGT Act. If these expressions are construed co-jointly, in the backdrop of the Environmental Clearance Regulation of 2006, then it would ex-facie make an application maintainable before the Tribunal. The expression accident would include the damage, caused to the house of the applicant by use of a mechanical process. This process was adopted by the respondent no. 4 during the performance of the contract in relation to up-gradation of the project of the State Highway.

Therefore, the Tribunal allowed this application partly and awarded a sum of Rs. 2,59,688/- (Rupees Two Lakhs Fifty Nine Thousand Six Hundred and Eighty Eight) Only, payable at the first instance to the applicant by Respondent No. 4 who would be free to settle this rate with Respondent No. 5 in accordance with law.

Accordingly, O.A. No. 280 (THC) of 2013 was disposed of with no order as to costs. In view of the above judgment, M.A. No. 753 of 2013 was dismissed.

Environmental Clearance

Ramakant Gautam & Ors.
Vs.
State of Madhya Pradesh & Ors.

Original Application No. 496 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal
Keywords: Quarry lease, environmental clearance, EIA Notification 2006, Environmental Impact Assessment Authority, principle of *ignorantia juris non excusat*
Decision: Application disposed of
Date: 10th December, 2015

This application was filed by quarry lease holders of sandstone under different lease deeds from the State of Madhya Pradesh, praying to allow them a reasonable period for complying with the judgment of the Tribunal dated 13th January, 2015 in the case of Himmat Singh Shekhawat v. Union of India & Ors. 2015 ALL (I) NGT Reporter (1) (Delhi) 44, for obtaining Environmental Clearance (for short 'EC') from the Madhya Pradesh State Environmental Impact Assessment Authority (for short 'MPSEIAA').

The applicants submitted that they had been granted renewal of quarry leases, but the quarrying operations of the applicants were ordered to be closed by the Collector vide order dated 29th July, 2015, in furtherance to the abovementioned order of the Tribunal dated 13th January, 2015. Thereafter, the State of Madhya Pradesh had filed a Review Application No. 18/2015 seeking review of the order dated 13th January, 2015. In this application the Units were permitted to operate for a period of three months but the units which had not applied for the EC as on the date of passing of the order in the Review Application were directed to be closed. According to the applicant, the State Government and its authorities remained inactive for a considerable time and had suddenly started issuing closure orders despite the fact that the applicants have already moved applications for obtaining ECs. Thus, the applicant's grievance were twofold; firstly, non-compliance to the order of the Tribunal on the part of the State and MPSEIAA that was causing them prejudice and secondly, the intent of the order was not to close the mining activity but was to require the mine-owners to obtain EC to prevent air and environmental pollution in those areas.

The Tribunal, by subsequent orders, had already granted extension of time for complete compliance to the provisions of the Environment (Protection) Act, 1986 and EIA Notifications, 2006, as contained in the order dated 13th January, 2015. According to the Tribunal, the applicants failed to provide any plausible or reasonable cause that would persuade the Tribunal to grant any further extension of time for complying with the directions contained in the judgment dated 13th January, 2015, and the applicant admitted that principle of *ignorantia juris non excusat* was applicable and ignorance of law is not an excuse for committing violation of law. The Tribunal further stated that laxity was noticeable on the part of the State of Madhya Pradesh as well as MPSEIAA, as they were expected to act expeditiously and ensure compliance. But in the present case, it was not the State which was solely to be blamed for non-compliance of law and order of the Tribunal dated 13th January, 2015. The applicant's lease in relation to the mining had been renewed from the year 2009 onwards. The EIA Notification, 2006 was already in force at that time. Thus, both parties were liable to be blamed for their inaction and laches. The Tribunal stated that in order to have consistency and uniform applicability of the directions all over

the country, it would be necessary for the Tribunal to follow the same directions even in the present case.

Thus, for the reasons afore-stated, this application was disposed of with the following directions:

1. The MPSEIAA and State of Madhya Pradesh to direct and ensure closure of all the mines operating in the area which had not applied for grant of Environmental Clearance.
2. MPSEIAA to dispose of all the applications that were pending before it as on 1st September, 2015 positively by 31st December, 2015.
3. The applicants who filed their applications but the same are pending with MPSEIAA for want of information or further particulars, all such applicants should furnish the requested information within 2 weeks from the date of judgement; or they would be shutdown forthwith.
4. The applicants who have applications pending with MPSEIAA and particularly where the units have been ordered to be closed, MPSEIAA shall dispose of such applications within two weeks from the date of passing of this judgment. In the event of default, the Tribunal would be compelled to take strong action as available in law against MPSEIAA and all its officers since they had already delayed the disposal considerably despite directions for constitution of more Committees.

This direction would operate in precedence to other directions contained in this order.

No costs.

M/s. Paramount Tannery Industry
Vs.
Uttar Pradesh Pollution Control Board

Original Application No. 82 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: polluting industry, effluents, river Ganga, inspection, principle of strict liability
Decision: Application dismissed
Date: 10th December, 2015

During the pendency of O.A. 299 of 2013, the Central Pollution Control Board (for short, "CPCB") filed a report dated 7th February, 2014 mentioning the names of industries, which were polluting and/or highly polluting industries and were discharging their effluents directly or indirectly into the River Ganga or its tributaries. The Tribunal had passed orders on 30th October, 2014 and 17th November, 2014 requiring the authorities to ensure that any industry having no consent of the Board and polluting river Ganga were not be permitted to operate. The applicant's industry was a polluting industry and was ordered to be closed. In the present application, the Applicant claims that it was one of the members of the CETP at Jajmau and had been regularly depositing all its dues in this regard. These charges were payable for Combined Effluent Treatment Plant after primary treatment was done by the applicant. In view of this fact, the applicant prayed that they should be permitted to recommence their operations.

One of the most important aspects of the present case was that the tannery industry at Jajmau was one of the most serious sources of pollution in river Ganga, and the pollution had increased with the passage of time. The applicant's industry was subjected to a joint inspection under the orders of the Tribunal dated 26th May, 2015 by an inspection team consisting of officers of CPCB and the Uttar Pradesh Pollution Control Board (for short 'UPPCB'), and large numbers of deficiencies were noticed. The industry was found to be non-compliant and polluting; and the effluent discharge violated the prescribed parameters. In view of the various analysis reports, inspections reports and the fact that applicant's industry had failed to discharge its onus to show that it was compliant and non-polluting industry, the Tribunal concluded that the industry was a polluting industry and had violated the prescribed standards. According to the Tribunal, it is not only expected of the seriously polluting industries to take all steps, remedial or otherwise, for ensuring prevention and control of pollution but they are also required to discharge the burden of compliance on the principle of strict liability. The Applicant failed to discharge any of its above obligations.

However, liberty was granted to the applicant to take all corrective and remedial measures, after which they could move the Board for grant of consent/revocation of the closure order which if granted, would be subject to the orders of the Tribunal.

Thus, the application was dismissed. No costs.

EC
Mining

National Green Tribunal Bar Association
Vs.
MoEF & Ors.

Original Application No. 364 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Mining lease, environmental clearance, applications, SEIAA, extension of time
Decision: Application disposed of (with directions)
Date: 10th December, 2015

Association of Mining Lease Holders had filed this application with a prayer that State Environment Impact Assessment Authority (for short 'SEIAA')/Ministry of Environment, Forests & Climate Change (for short 'MoEF') and other authorities should be granted extension of time for considering and disposing of the applications of the mining lease holders for grant of Environmental Clearance. Further, it was prayed that till the applications of the applicants were decided, they may be permitted to continue mining operations on the basis of proof of submissions of applications for grant of Environmental Clearance.

The necessary facts are that National Green Tribunal Bar Association filed a case being Original Application no. 171 of 2013, titled as *National Green Tribunal Bar Association v. MoEF & Ors.* before the Tribunal on the averments that illegal mining, particularly, sand mining in the river bed was being carried on in violation of the laws and thus, such mining activity should be prohibited. The Tribunal vide order dated 13th January, 2015 in the case of *Himmat Singh Shekhawat v. State of Rajasthan and Ors*., 2015 ALL (I) NGT Reporter (1) (Delhi) 44, followed the dictum of the Supreme Court in the case of *Deepak Kumar v. State of Haryana and Ors.*, (2014) 4 SCC 629, 2012 4 SCC 229. As per the directions of the above mentioned order, the Tribunal had granted 6 months' time to the concerned authorities to dispose of the applications filed by the Mining Lease Holders. The applicants submit that although they were not parties to the above proceedings, the directions in the Judgment being *in rem* and mandatory, hence they had applied for Environmental Clearance as members of the association. The members of the applicant association had applied to the concerned authorities for grant of Environmental Clearance. It was submitted that because of large number of applications the task of grant or refusal of Environmental Clearance had not been completed by the authorities and applications were pending. The present application had been filed before the Tribunal for further extension of time.

According to the Tribunal, it is the obligation of SEIAA/SEAC to deal with the applications filed by the persons carrying on mining activity expeditiously. Large Number of applications could not be an excuse for inability on the part of these authorities to dispose of the applications in accordance with law. Secondly, on this count the applicants could not contend that they should have been permitted to carry on mining activity without obtaining Environmental Clearance. The Tribunal opined that if the mine operators did not have Environmental Clearance and were permitted to operate the mines, then it would cause adverse impacts on environment and ecology and considering the interest of the environment, it could not be permitted purely for commercial needs.

In light of the above, the Tribunal disposed of this application with the following directions.

1. The SEIAA, Karnataka and State of Karnataka shall direct and ensure the closure of all the mines operating in the area and which have not applied for grant of Environmental Clearance.
2. SEIAA, Karnataka shall dispose of all the applications pending before it as on 1st September, 2015 which were stated to be 88, positively by 31st December, 2015.
3. The applicants who have filed their applications but the same are pending with SEIAA, Karnataka for want of information or further particulars, all such applicants should furnish the requested information within 2 weeks from today. Upon furnishing of such information, such applications should also be disposed of on or before 31st December, 2015, and failure to provide such information would result in shutdown.

The Tribunal further made it mandatory that with effect from 1st January, 2016 no mining operations by the operators who were not provided with the Environmental Clearance in their favour would be permitted in the entire State of Karnataka by SEAA and State Government of Karnataka.

Pollution
Consent order

M/s. Koyo Components
Vs.
Haryana State Pollution Control Board

Original Application No. 417 of 2015
(M.A. No. 971 of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Consent order, polluting industry, Water Prevention & Control of Pollution Act, remedial measures
Decision: Application disposed of
Date: 10th December, 2015

M/s Koyo Components (India) (for short 'The Industry'), the applicant has filed the present application for issuance of direction, particularly in view of the Order of the Tribunal dated 15th December, 2014 passed under O.A No. 196 of 2014 titled as *Krishan Kant Singh & Ors v. National Ganga Basin Authority and Ors.* The Industry was engaged in the manufacturing of finished automobile parts, with the process of electro plating and was a water polluting industry. It was inspected by a team of the Haryana Pollution Control Board (for short 'The Board') on 25th December, 2014 and upon inspection it was found that the industry was a noncompliant and polluting industry. It was also noticed that the industry was violating the provisions of the Water Prevention & Control of Pollution Act, 1974 (for short 'The Water Act'). Thus, a Show Cause notice was issued to the industry and after considering the reply to the Show Cause Notice, the industry was directed to be closed. Thereafter, the industry took remedial steps and installed anti-pollution devices so as to become compliant and non-polluting industry. It submitted an application to obtain consent of the Board under the Water Act and the Air Prevention and Control of Pollution Act, 1981 (for short 'The Air Act') and for authorisation for handling the hazardous waste. Upon analysis it was found that all the parameters were within the prescribed limits. Thereafter vide order dated 14th September, 2015, the Board issued authorisation in favour of the industry and also granted Consent for the period of 1st April, 2015 to 31st March, 2016 to operate under the provisions of the Water and the Air Act. The consent orders and the authorisation issued by the Board stipulated that the industry would be permitted to operate only after approval of the orders by the Tribunal. This resulted in the filing of the present application by the industry.

In the present matter, the Tribunal decided that since the industry had been granted Consent under the Water Act and the Air Act and has also been provided with the authorisation to deal with hazardous substances, there was no reason as to why the industry could not be permitted to operate. Consequently, the industry was allowed to operate strictly in accordance with the consent orders passed by the Board, as well as in accordance with law.

The application was accordingly disposed of with the above direction with no order as to costs. M.A. No. 971 of 2015 did not survive for consideration and was disposed of.

EC
Consent to operate

Mohd. Maruuf
Vs.
State of UP & Ors.

Original Application No. 173 of 2015
(M.A. No. 782/2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Uttar Pradesh, slaughter house, residential area, illegal activity, untreated effluent, Water Act, Air Act, Hazardous Wastes Rules, anti-pollution devices, consent to operate
Decision: Application disposed of
Date: 10th December, 2015

The Applicant filed the present application praying that Respondent No. 4, i.e. M/s. Altamash Exports Pvt. Ltd., be restrained from running their illegal activity of operating a slaughter house in the residential areas of district Aligarh, Moradabad, Khurja and Saharanpur. Further, it was prayed that Respondent No. 3, i.e. Uttar Pradesh Pollution Control Board (for short, "UPPCB") should be restrained from granting any clearance/consent, environmental clearance, pollution certificate, No Objection Certificate to Respondent No. 4 in relation to these activities. According to the applicant, respondent no. 4 was carrying out the illegal and unauthorized activity of running of a slaughter house in different parts of Uttar Pradesh with blatant disregard to the environmental laws. He further stated that these illegal operations were causing immense pollution in the areas where the units were set up, and was also polluting the river Ganga.

Inspection report by the UPPCB of M/s. Altamash Exports Pvt. Ltd. in Hapur had found that the industry was engaged in slaughtering activity and they were using lot of water for cleaning of slaughter waste. The untreated effluent generated was being disposed of without treatment. It also found various deficiencies and it was recommended that action should be taken in accordance with the provision of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act').

The matter was heard, and it was evident that respondent no. 4 had consent of Water and Air Act till December, 2015 only in relation to slaughter house at Moradabad. However, it did not have its own rendering plant and on the date of inspection, the unit was found to be closed. The Board had also issued Show Cause Notice to this unit as to why directions should not be issued as the unit was found to be polluting and non-compliant. The Board had directed this unit to have its own rendering plant at Moradabad. The plant at Khurja was in operation, but this plant also did not have the consent of the Board. None of the units could operate either for want of consent to operate, or if it did not have the requisite anti-pollution devices including a rendering plant installed in the units. According to the Tribunal, it was probable that the industries had stopped their operations intentionally and primarily with the intention to mislead the Board Officials. Besides the above, it was noticed that the reply filed on behalf of the UPPCB was vague, sketchy and lacked the requisite information. Even the inspection conducted by the UPPCB was not satisfactory, and strangely no effluent was collected from any of the industries. A running unit at

Moradabad was found to be non-functional by the team on the date of inspection. In the Tribunal's considered view, this did not speak well of the functioning of the Board.

According to the CPCB, the units were running without proper consent and are polluting industries. Thus, the Tribunal vide order dated 26th May, 2015, directed the UPPCB to carry out the inspection and to check the illegal activity being carried out by the respondent no. 4. Not even a single unit run by respondent no. 4 at different places were found to be compliant to the provisions of the Air and Water Act and Hazardous Wastes (Management and Handling) Rules, 1989. The units run by respondent no. 4 were violative of all environmental laws in force, and were being run contrary to the orders of the Tribunal and Courts.

Thus, this application was allowed and respondent no. 4 was prohibited from carrying on slaughtering of animals activity, industrial activity or otherwise at three locations i.e. (i) M/s Al-Tamas Frozen Foods Pvt. Ltd. vill. Baroli, Mundakhera Road, Khurja, Distt. Bulandshahr (ii) M/s. Bio Spring, Baroli Road, Khurja, Distt. Bulandshahar (iii) M/s. Al Haq Foods, Dharampur, Bhojpur, District-Moradabad. The State of UP and UPPCB was directed to ensure that all these three units were shutdown forthwith, with the water and electricity supply to these units disconnected. Liberty was granted to Respondent no. 4 to establish its own rendering plant as required by the Board at Moradabad and then move the Board for consent to operate. Similarly, in relation to other places, respondent no. 4 was at liberty to file an application for obtaining consent/permission under the Air and Water Act and such application would be dealt with in accordance with law. However, if consent to operate/consent to establish was granted by the Board, it would become operative only subject to the approval/order of the Tribunal. Liberty was granted to the parties to move for clarification or compliance.

The Original Application No. 173/2015 stood disposed of without any order as to costs.

No jurisdiction

Dr. Arvind Gupta
Vs.
Union of India & Ors.

(With Connected Matters)

Original Application No. 61 Of 2012
(M.A. No. 6 Of 2013)
And
Original Application No. 78 Of 2014
(M. A. No. 193 Of 2014 & M. A. No. 279 Of 2015)
And
Original Application No. 129 Of 2015
(M.A. No. 367 Of 2015) And
Original Application No. 147 Of 2015
(M.A. No. 522 Of 2015) And
Original Application No. 247 Of 2015
(M.A. No. 617/2015) And
Original Application No. 379 Of 2015
(M.A. No. 1095 Of 2015)
And
Original Application No. 383 Of 2015
(M.A. No. 913 Of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Electromagnetic radiation, jurisdiction
Decision: Applications dismissed
Date: 10th December, 2015

The above seven applications were disposed of by this common judgment as a common question of law came up for consideration of this Tribunal, though on somewhat different facts in these cases. The applicant, a conscious public spirted person, in the Main Application challenged the inaction on the part of the respondents in not devising proper Rules/guidelines and in not implementing the existing regulations pertaining to installation of mobile towers in accordance with the Office Memorandum dated 9th August, 2012 issued by the Ministry of Environment, Forest and Climate Change (for short MoEF & CC). The basic grievance of the applicant was that the exposure to Electromagnetic Radiation (EMR) or electromagnetic field needed to be minimised since the radiations were creating adverse impact on both Flora and Fauna of urban and rural environmental setup. The applicant challenged the illegal and questionable action of the respondent companies for not complying with the legal requirements.

A case raising a substantial question of environment which is civil in nature must essentially fall within the scope and implementation of the scheduled acts to the NGT Act, 2010. Implementation should have a direct nexus and must directly arise from such acts and a mere remote connection thereto would not be sufficient for invoking the jurisdiction of the Tribunal particularly when they are actually or are required to be covered under other laws in force. According to the Tribunal, from the provisions of the various acts, it was

clear beyond doubt that the radiation from electromagnetic waves resulting from such towers was not explicitly covered in any of the scheduled acts to the NGT Act. In fact, even under the NGT Act, relevant definitions under provisions did not refer to the radiation specifically. The only act which referred to radiation per se was the Atomic Energy Act, 1962.

Thus, the Tribunal dismissed all these applications while holding that it has no jurisdiction to entertain these applications. No costs.

FC

Mata Shree Service
Vs.
U.O.I & Ors.

Original Application No. 119 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Forest conservation Act, NOC, petrol pump, construction activities, malafide intention, bunjar land, green belt, jurisdiction
Decision: Application dismissed with directions
Date: 10th December, 2015

The applicant filed the present application challenging the provisional NOC granted by respondent no. 7, i.e. the Deputy Commissioner, Kangra, to the private respondents, which according to him was in violation of the forest and environmental laws. He also prayed for directing respondent no. 7 to stop the illegal construction activities being carried out by the private respondents at the plot situated at NH-20A at km 65/195-65/220 in khasra no- 100 at Dhaliara, Tehsil Dehra, District Kangra (H.P). The applicant was carrying on the business of running a Petrol Pump and other related products at Tehsil Dehra since the year 1995. The proposed petrol outlet which the Indian Oil Corporation was proposing to set up was just 500m away from the petrol pump of the applicant and the authorities gave permission to the private respondents to set up this petrol pump. It was further submitted that the petrol pump was in the forest area and even the trees had been cut by the private respondents. According to the applicant, the private respondents had not obtained the NOC under the provisions of the Forest Conservation Act, 1980.

The respondents stated that the present application was filed with a *malafide* intention by the proprietor of Mata Shree Service Station, which was a dealer of M/s Hindustan Petroleum Corporation Ltd.

Firstly, the Tribunal noticed that this application appeared to be motivated and was a result of rivalry between the applicant and the private respondents. It was observed during the course of the proceedings, that the private respondents had obtained the requisite permissions from the concerned authorities and the Tribunal found no infirmity in the NOC's issued to the applicant from the point of view of the environment. It was also clear from the revenue records and the stand taken by the official respondents that the petrol pump was located on the private land owned by the private respondents and it was not situated on the Government land. According to the Divisional Forest Officer it was strictly not a forest land but was a bunjar land which is construed as forest land. This land, which was a very small piece, fell between the land of respondents no. 9 and 10 and the National Highway. According to the Divisional Forest Officer, no trees had been cut at all by the respondents no. 9 and 10. Beside that, the respondents made a statement before the Tribunal that they would plant as many as 50 trees around the petrol pump to develop green belt. If no forest land is involved as stated, the question of taking permission of MoEF for use of forest land for a non-forest activity under the Forest Conservation Act, 1980 would not arise. Thus, the present application lacked bonafide.

The jurisdiction of this Tribunal was confined to the implementation of the scheduled Acts specified in Schedule 1 of the National Green Tribunal Act, 2010. The application read as a whole, did not raise any substantial question relating to environment, including enforcement of any right relating to the environment, that of the applicant or any other person. In view of the above observation, the Tribunal found no merit in this application to grant the relief prayed for by the applicant. Therefore, the application was disposed of, but with a further direction that respondents no. 9 and 10 would abide by their statement made before the Tribunal and would plant within 1 month from the date of judgement 50 trees around the petrol pump on their own land creating a green belt. The parties were at liberty to take such steps as were permissible to them in accordance with law if they were aggrieved by any NOC issued by the Authorities which fell beyond the Scheduled Acts. Further, the Deputy Commissioner Dharmshala was directed to examine the matter and if the private respondents occupied any forest land belonging to the Government and was utilizing the same, it would be required for them to take forest clearance under the Forest (Conservation) Act, 1980 from the concerned Ministry of the Central Government within a period of 3 months from the date of such order.

With the above direction, the Tribunal dismissed this application without any order as to cost.

Waste Management
Compensation

Mansi Chahal
vs.
Delhi Pollution Control Committee

Original Application No. 399 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Garbage dumping, residential area, environmental hazards, Municipal Solid Wastes (Management and Handling) Rules, 2000
Decision: Applications disposed of (with directions)
Date: 10th December, 2015

The applicant, a student of law, prayed for issuance of directions to the respondents to remove the garbage from the residential area of New Seemapuri, New Delhi and also direct the respondent Corporation to take action against people for indiscriminate garbage dumping. It was also averred in this application that plastic and polythene was burnt on that road as well, resulting in emission of various dangerous gases like carbon dioxide, carbon monoxide etc., which was further polluting the air.

When the matter came up for hearing, Tribunal noticed that the site was located in the residential area surrounded by a Bus stand and even commercial place and this ought to have been cleared of all the waste and unauthorized occupations. On 15th September, 2015 the Tribunal passed the order that environmental compensations of Rs.50,000/- be imposed upon the East Delhi Municipal Corporation (for short 'EDMC'), which would be recovered from the salary of the erring, negligent officers/officials of the authorities concerned responsible for environmental hazards.

The facts admitted by the Corporation or entirely substantiated by documents on record indicated that the Corporation failed to discharge its duty and keep the environment decent and clean. Indiscriminate dumping of garbage at the roads causes serious environmental hazards. The Corporation's own auto tippers were dumping the garbage at the site in question and admittedly the Corporation had initiated action against the defaulting contractors/departments. This state of affairs could not be permitted in relation to the directions issued by the Tribunal vide order dated 15th September, 2015. The Corporation had deposited Rs. 50,000/- and had also issued show cause notice to the defaulting officers/officials for recovery of the amount from their salary proportionately. However, this departmental action had not culminated into final and complete action. There was no justification why such huge quantity of garbage and waste should be dumped at the site in question or near it. The extent of garbage dumped was shown by the figures provided by the EDMC itself, and it was determined that during the period of six months, garbage weighing 2574x4.5= 11,583 MT had been transported besides what was already lying on the site. This showed total malfunctioning of the Corporation and its departments in collection and transportation of Municipal Solid Waste to the designated sites.

In light of the above discussion, this application was disposed of with the following directions:-

a. Corporation shall complete the departmental proceedings initiated in furtherance to the order of the Tribunal dated 15th September, 2015, for which show cause notices had already been issued by the Corporation. These proceedings would be completed within three weeks from the date of judgement and report of compliance be filed before the Tribunal.
b. The Commissioner of the EDMC shall conduct meeting of the concerned officer and contractors and provide clear guidelines in consonance with the MSW Rules, 2000, while ensuring that no garbage was dumped at the site in question and it could only be permissible if there was no other place used for daily/temporary dumping of garbage, which in such case, was directed to be removed on the very next day from such site.
c. The Corporation shall fill up the low lying area being used for dumping as it was located in the densely populated area. The site should be identified by the Corporation where the MSW shall be transported and disposed of in accordance with Municipal Solid Wastes (Management and Handling) Rules, 2000.
d. That the Corporation shall take strict action in accordance with law against all the persons who would throw garbage/MSW at the site in question.
e. The expenditure/cost incurred by the Corporation for lifting the garbage shall be recovered as environmental compensation by the Corporation.
f. The entire garbage from the designated site was directed to be lifted within 24 hours of their collection/dumping on those sites.

With the above directions and observations this application was disposed of with no costs.

Pollution
Compensation

Mahalaxmi Bekar's & Anr.
Vs.
SEIAA, Mumbai & Ors.

Original Application No. 12 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Prof. A.R Yousuf, Mr. Ranjan Chatterjee
Keywords: Pollution, foundry, precautionary principle, environmental compensation, principle of Polluter Pays
Decision: Application disposed of
Date: 10th December, 2015

The applicant, a proprietor of a bakery named 'MAHALAXMI BAKERS', claimed that Respondent no. 9, i.e "M/s Melting Point" had bought land in the same village and illegally started the business of Foundry without obtaining the consent of the Pollution Department and other departments. According to the applicant this unit was generating poisonous dust, black dust and iron particles which were thrown by the foundry and they were falling in the vicinity including on the ready material of the bakery products. This was brought to the notice of respondent no. 9, i.e., the unit, but to no avail. Hence, the applicant filed the present application before the Tribunal. The applicant also claimed that he suffered a loss of 48 lakhs because of polluting activity being carried out by the foundry of respondent no. 9, and thus it was further prayed that the respondents should be liable for the loss suffered by the applicant and compensation claimed should be ordered to be paid.

Complaints were filed against respondent no. 9 and the Maharashtra Pollution Control Board (for short 'the Board') Regional Office issued a Show Cause Notice, after which the foundry was even inspected by the officers of the Board. The Member Secretary of the Board on 2nd August, 2013 examined the matter and directed inspection and it came to know that the foundry was polluting the air and water of the area. Hence, respondent no. 9 was issued with the directions by the Board to take necessary measures which respondent no. 9 failed to comply with and did not complete the same. The Government of Maharashtra had not declared the said area as an industrial area and the area continued to be the small scale industries area.

Despite repeated directions and caution issued by the Board and persistent complaints from the public, particularly the applicant, respondent no. 9 had failed to take necessary precautionary and remedial measures. It failed to install any antipollution mechanism, and caused pollution, thus, completely violating the Precautionary Principle. Furthermore, it persisted with causing pollution and indiscriminate dumping of black dust in, around and outside of the premises. It also failed to bring the prescribed parameters in relation to emissions, iron, dust, etc. within limits which caused continuous air pollution and degraded the environment. Respondent no. 9, therefore, exposed itself to be liable to cause environmental degradation as well as to pay environmental compensation on the Principle of Polluter Pays.

Thus, the Tribunal passed the following order:

1. The respondent no. 9 was directed to close its manufacturing activity either in original or expanded business form.
2. It was directed to comply with all the directions issued by the Board without default and install such other advised anti-pollution devices.
3. The industry upon compliance thereof, would be at liberty to move the Maharashtra Pollution Control Board for grant of consent to operate.
4. The consent to operate would be granted by the Maharashtra Pollution Control Board only after the unit is found to be compliant and non-polluting after conducting spot inspection by an inspection team consisting of the officers of Maharashtra Pollution Control Board and a Senior Nominee from the Central Pollution Control Board.
5. If the consent is granted, the same shall become operative subject to approval of the Tribunal. Show Cause Notice was also issued to the industry as to why it should not be directed to pay compensation to applicant as claimed in the application as well as why environmental compensation should not be imposed upon respondent no. 9 for polluting and degrading the environment by causing air pollution for so many years and for having failed to comply with the directions of the Board.

The Application was disposed of with no order as to costs.

Compensation & Restoration
Water Pollution

Krishan Kant Singh
Vs.
M/s Triveni Engg. Industries Ltd.

Original Application No. 317 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf, Mr. Ranjan Chatterjee
Keywords: River Ganga, Pollution, burden of proof, environmental compensation, rule of Strict Liability
Decision: Application partly allowed
Date: 10th December, 2015

The applicant, Krishan Kant Singh had instituted an Original Application No. 299 of 2013 before the Tribunal with an allegation that the respondents were discharging their untreated trade effluents in the Simbhaoli Drain and were causing pollution in the River Ganga. This application was disposed of on 16th October, 2014. During the pendency of this application (O.A. 299 of 2013), the CPCB filed a report dated 7th February, 2014 mentioning the names of industries, which were polluting and/or highly polluting industries and were discharging their effluents directly or indirectly into the River Ganga or its tributaries. Vide order dated 22nd April, 2014, the Tribunal directed the Uttar Pradesh Pollution Control Board (for short 'UPPCB') to issue notice to such industries and directed them to appear before the Tribunal. M/s. Triveni Engineering Industries Ltd. (for short 'industry') was one of such industries to whom notice had been issued vide order dated 22nd April, 2014. The industry filed its Statement of Objection before the Tribunal on 12th December, 2014 and this came to be registered as the present application.

The industry was engaged in the production of Extra Neutral Alcohol, Absolute Alcohol, Rectified Spirit and Industrial Alcohol, with an installed capacity of 160 KLD, using Molasses as its raw material. This industry was inspected by CPCB on 5th July, 2012 and it was found, besides others, that the treated effluent of the industry was not suitable for land disposal. The industry was directed to submit a time-bound Action Plan within 20 days to achieve Zero Liquid Discharge. The industry was to reduce spent wash storage capacity up to 30 days of spent wash generation and demolish the extra storage capacity. The industry was also directed to initiate immediate action for utilization of the spent wash stored. These were the directions issued in accordance with provisions of the Environment (Protection) Act, 1986 (for short 'the Act of 1986'). The industry respondent on 10th December, 2012, informed the CPCB that it was a Zero Liquid Discharge Industry as far as distillery section was concerned and that it had also complied with other conditions of the Consent order.

In view of the reports submitted and the specific recommendations by the joint inspection teams, the industry had to be permitted to carry on its operations, while strictly adhering to the conditions of the consent orders and compliance of the action plan that it has submitted to the UPPCB and CPCB. However, still the question that remained to be examined and answered in the present application was whether for the past pollution caused by the industry, it should be directed to pay environmental compensation in terms of the Sections 15 and 17 of the National Green Tribunal Act, 2010 (for short the 'Act of 2010') and on the Polluter Pays Principle.

There was no doubt that all the reports submitted before the Tribunal clearly indicated that prior to the issuance of directions under Section 5 of the Act of 1986 by the CPCB on 9th October, 2012, this industry was a seriously polluting industry. It had polluted the ground water and had indiscriminately discharged its effluents on the land within and outside its premises. It was only when the direction under Section 5 of the Act of 1986 were issued and the industry in default was threatened with closure, that it took effective steps to prevent and control pollution resulting from its activities, of both water and air. This obviously meant that prior thereto, the industry was a non-compliant and polluting industry. Another aspect of this case was that the industry had committed even other defaults. It operated for some period without obtaining the consent of the Board, which was illegal and in violation of the Water Act and the Air Act. Secondly, there were periods when the industry had violated the conditions of the consent order and even continued to operate in violation thereof.

The main contention before the Tribunal was- '*On whom lies the burden of proof in environmental cases*'? Thus, the Tribunal examined the application and extent of the 'principle of onus of proof' in environmental cases.

The Environment (Protection) Act, 1986 (for short the 'Act of 1986'), the Water (Prevention and Control of Pollution) Act, 1974 (for short the 'Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (for short the 'Air Act'), and their provisions clearly demonstrate the legislative intent to prohibit establishment or carrying on any activity like industrial, manufacturing or any other activity, carrying of which would result in toxic emissions in the air, discharge of sewage or trade effluent on the land or water or if it falls within the air controlled area. The purpose would be two-fold; one to completely regulate such activity and the other to ensure prevention and control of pollution and restoration of environment. A person could carry on or establish any industry or other activities only with the previous consent of the respective Boards. The consent is contemplated at both stages i.e. at the stage of establishing such industry, plant, etc. as well as at the time of operationalization of the plant. Thus, the law imposes dual obligation upon the person or industry. Firstly, it has to take the consent of the Board and secondly, it must ensure adherence to the prescribed parameters and the law in force while carrying on its activity. In either event, the responsibility is exclusively that of the person or industry to comply with the law and to demonstrate at all relevant times that it continues to comply with those directions and laws in force.

The above statutory scheme and the environmental laws have to be seen and examined in the background of the Fundamental Duty imposed under Article 51(A) (g) of the Constitution of India, which imposes a constitutional duty upon every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The cumulative effect of the above Constitutional and statutory provisions is that there would be definite liability upon the person who intends to alter the environmental conditions by his activity or a project, to maintain the requisite parameters and ensure that there are no adverse impacts upon the environment and ecology, particularly as defined under the Act of 1986. This is sufficiently indicative of the application of Rule of Strict Liability. Besides the fact that substantive onus would fall upon the industry to show that it has complied with the statutory requirements and is operating within the prescribed norms, the industry has to be aware of the fact that compensation for causing environmental degradation and its restoration could

be imposed upon it in terms of Sections 15 & 17 of the Act of 2010. This shows and supports the application of Principle of 'Strict Liability'.

According to the Tribunal, the industry had polluted the ground water and air, operated without consent of the Board, breached the conditions of the consent order and failed to discharge its legal obligations. For this reason, the industry would be liable to pay Environmental Compensation.

Thus, having rejected the various contentions raised on behalf of the industry, the application was partly allowed with the following directions:

1. In view of the above directions, the industry shall be liable to pay a sum of Rs. 25 Lakhs as an environmental compensation.
2. The amount shall be used for preventing and controlling pollution as well as for restoration of the environment, ecology and ground water around the industry.
3. The industry shall comply with the conditions imposed by the Board and within the prescribed time i.e. 31st March, 2016. In default thereto, the UP Pollution Control Board shall be entitled to encash the Bank Guarantee of Rs. 10 Lakh that had been furnished by the industry.
4. The joint inspection team of Central Pollution Control Board and the UP Pollution Control Board shall take samples of the ground water from the premises of the industry as well as the lands adjacent to the boundary wall of the industry and its outlet.
5. The analysis report thereof shall be filed before the Tribunal within three months from the date of pronouncement of this judgment.

In the above terms, O.A. No. 317 of 2014 was disposed of without any order as to costs.

Khatima Fibres ltd.
Vs.
Uttarakhand Environment Protection & Pollution Control Board & Ors.

Appeal No. 58 of 2015
and
M.A. No. 608 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Paper unit, Charter for Water Recycling and Pollution Prevention in Pulp and Paper Industry, Principal of Natural Justice, pollution
Decision: Application disposed of (with directions)
Date: 10th December, 2015

The appellant filed the present appeal being aggrieved from the order dated 21st April, 2015 passed by Uttarakhand Environmental Protection and Pollution Control Board (for short 'the Board') directing closure of the industry. The appellant unit was a running a paper unit using high quality imported waste paper for manufacturing speciality paper. The unit was operating after the appellant had obtained the requisite clearances and permissions. According to the appellant, no chemical pulping facilities were provided/installed in the unit. Digesters were installed to treat laminated and wet strength paper waste. Therefore, the directions issued by the Board for removal and dismantling of the digesters were neither in accordance with law nor in spirit of the Charter for Water Recycling and Pollution Prevention in Pulp and Paper Industry (for short 'Charter'). It was the case of the appellant that since its industry did not fall in the category of agro based pulp and paper industry as it operated on recycled water, thus, the Charter did not apply to it. The unit was RCF based and no chemical was being used. It was further submitted that the representation submitted by the appellant was rejected by a non-reasoning order violating the Principal of Natural Justice.

The Central Pollution Control Board (for short 'CPCB') had issued a Charter for Water Recycling and Pollution Prevention in Pulp and Paper Industries. The Charter requires paper industries to control water pollution in a time bound policy programme.

An affidavit was filed in reply by the CPCB stating that the Charter was applicable to the industry. The Board also filed its own affidavit justifying the action taken by it and stating that the industry was a polluting industry. It was denied by the Board that the order had not been passed in consonance with the Principles of Natural Justice. A joint inspection of the industry was conducted when the industry was operating to its optimum capacity. It was pointed out that the final ETP treated effluent analysis showed non-compliance with respect to BOD and TSS norms, although, the sludge generated from the primary classifier analysis was found to be within limits. The inspection report deciphered what was found to be in favour of the industry and what was found to be violative of the prescribed standards, while stating the specific prescribed parameters. The most important observation and finding that

emerged from the inspection report was that the claim of the industry, that it was not using any chemical for cooking waste paper as well as that the industry was a non-polluting RCF based industry, was found to be factually incorrect. It was observed that the industry had continued the activity causing pollution without taking appropriate measures and installing anti-pollution devices. Thus, the Tribunal found no substance in the present appeal on merits.

Lastly, it was also noticed that the source of water for the appellant industry was bore wells. They extracted a large quantity of fresh ground water. It was mandatory for any industry to obtain the permission/NOC from the Central Ground Water Authority before it could extract the ground water. It was undisputed that the industry had no regular water connection and had also not obtained the permission/NOC from the Central Ground Water Authority for extraction of ground water in terms of the EIA Notification of 2006. This again was a very serious violation on the part of the industry which would further disentitle the appellant industry from seeking the relief before the Tribunal.

The Appeal had been filed beyond the prescribed period of limitation of 30 days in terms of Section 16 of the NGT Act. However the delay in filing the appeal was condoned vide order of the Tribunal dated 5th June, 2015 in MA 607/2015.

In light of the above, the Tribunal found no merit in the appeal and, while dismissing the appeal on the Principle of Sustainable Development, disposed of the appeal with the following directions:

1. The order dated 21st April, 2015 shall be given full effect to and the appellant industry shall be shutdown forthwith.
2. The industry was directed to comply with the directions issued by the Board and the Charter issued by CPCB in relation to pulp and paper industries for taking measures and installation of anti-pollution devices to ensure that the industry is compliant and non-polluting.
3. The effluent discharge by the industry should strictly be in accordance with the prescribed norms. Once the industry has installed such anti-pollution devices it will be at liberty to inform the Board requesting for an inspection and grant of consent to operate.
4. After receiving the application aforementioned the Board can permit the industry to operate for a limited period of two weeks during which the inspection shall be conducted. If such application is received by the Board then a Joint Inspection shall be conducted by a team of officers from CPCB and the Board and a comprehensive report shall be prepared.
5. If upon inspection the industry is found to be compliant and non-polluting, consent to operate could be granted by the Board. However, the said order would take effect only with the approval of the Tribunal.
6. After a lapse of two weeks the industry shall be shut down again till directed otherwise.

Khatima Fibres ltd.
Vs.
Uttarakhand Environment Protection & Pollution Control Board & Ors.

Review Application No. 16 of 2015
in
M.A. No. 608 of 2015 in Appeal No. 58 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Review, pollution
Decision: Review Application dismissed
Date: 10th December, 2015

The applicant has filed an appeal challenging the order dated 21st April, 2015 passed by the Uttarakhand Environment Protection and Pollution Control Board directing the unit to be closed forthwith which is Appeal no. 58 of 2015 and the same was pending before the Tribunal. When the appeal came up for hearing, the Tribunal passed an order on 5th June, 2015 issuing notice on appeal and application for interim relief.

The appellant filed this Review Application praying that order dated 5th June, 2015 issuing notice on interim prayer for stay should be reviewed and ad-interim ex-parte stay in relation to the order dated 21st April, 2015 should be granted in favour of the applicant. The applicant had taken up primarily two grounds for review of that order. Firstly, that the order dated 21st April, 2015 was passed on a misconception that the appellant unit was not an agro based paper unit. It was the case of the appellant that the appellant unit was manufacturing paper and paper board by recycling waste paper which, per se, was environmental friendly and they neither discharged any black liquor nor used any chemical. Secondly, that in some of the similar cases, the Bench of the Tribunal had permitted industries to continue to operate, subject to certain conditions which were imposed on them.

According to the Tribunal, both these grounds were without any merit. As far as the first ground for review was concerned, it was factually incorrect as upon inspection by the Joint Inspection Team consisting of officers of Central Pollution Control Board and Uttarakhand Environment Protection and Pollution Control Board, it had been found that the industry was using chemicals dosing facilities. This issue was covered in the judgment of the Tribunal in Appeal no. 58/2015. As far as the second ground was concerned, it again had no merit. Interim orders were passed with reference to the facts and circumstances of the given case.

For these reasons R.A. no. 16 of 2015 was dismissed without any order as to cost.

K.N Lohithakhan
Vs.
State of Kerala

And

Thressiamma Mathew
Vs.
The State of Kerala

M.A. NO. 1089 of 2015 in Application No. 305 of 2013
&
M.A. NO. 1090 of 2015 in Application No. 309 of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Transfer of case
Decision: Application Dismissed
Date: 10th December, 2015

These two applications prayed for transfer of O.A. No. 305 and 309 both of 2013 to any other Bench. The applicant aggrieved by the pollution that was being caused by Nitta Gelatin India Limited in Kathikudam village in Chalakkudy River filed application no. 305/2013 before the Southern Bench of the National Green Tribunal. These matters were listed before the Court No.1 of the Southern Bench.

Under the NGT (Practice and Procedure) Rules, 2011, Rule 3 provides sufficient powers to the Chairperson of the Tribunal to transfer cases from one Bench to another or direct sitting of the Bench at a respective place. This issue has been squarely answered by a larger Bench of the Tribunal in the case of *Wilfred J and another v. MOEF and Ors., 2014 ALL (I) NGT REPORTER (2) (DELHI) 137*. The Chairperson of the Tribunal has the power to transfer cases but such power has to be exercised with utmost caution. Transfer of a case would normally be directed only when it is expedient in the interest of the justice or where ends of justice would be defeated if the case is not transferred from one Bench to another.

The only ground given in these present cases for praying for transfer is that the Member of the Bench had made some observations when the counsel had appeared. What observations and how do they project any apprehension of the litigant or the counsel that they would not get justice has not been substantiated. Thus, the Tribunal was unable to determine any valid reason or ground for directing the transfer of the case from Court No. 1 of the Southern Bench of the Tribunal. In view of the above, no merit was found in both the applications for transfer of the cases to another Bench.

In view of the above, these applications were dismissed without any order as to costs.

Himgiri Zee University
Vs.
Union of India

Appeal No. 08 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan
Keywords: Environmental Clearance, Municipal solid waste plant, public hearing, Precautionary Principle, Principle of Sustainable Development
Decision: Appeal Dismissed
Date: 10th December, 2015

The appeal was directed against the order dated 8th December, 2014 passed by Ministry of Environment, Forests and Climate Change (for short 'MoEF') granting Environmental Clearance for setting up of a dumping site admeasuring 8,323 hectares of land situated on Chakrata Road Sheesham Bada, Dehradun adjacent to the Appellant University.

On 30th June, 2010, the Registrar of the Appellant University wrote a letter to the Chief Secretary, Government of Uttarakhand objecting the construction of the Municipal Solid Waste Plant at the site in question. A member of the Gram Panchayat, Shishambada had written to the Uttarakhand Environment Protection and Pollution Control Board on 10th September, 2010 objecting to the construction of the Municipal Solid Waste Plant at the said site. The residents had also objected to the establishment of the Municipal Solid Waste Plant at the site, it being injurious to the human health and environment of that area. The appellant and all other persons claiming to be aggrieved persons have been raising the issue in regard to the establishment of the Municipal Solid Waste Plant at the site in question in various proceedings without any success.

The appellant submitted that the Government of India vide notification dated 25th September, 2000 notified the MSW Rules, 2000 which introduced specific conditions and requirements for granting Environmental Clearance to such projects. According to the appellant as per the Rules the land fill site shall be away from inhabitation cluster, forest area and water bodies which the above mentioned site was clearly violating. The grant of Environmental Clearance to the project was being challenged by the appellant primarily on the ground that a Civil Suit in regard to the site was pending before the Civil Court and that it granted a stay order against the Project Proponent. Furthermore, the appellant stated that the public hearing was conducted on 12th September, 2012 however the appellant could not participate in the same. Thus, the Environmental Clearance had been obtained by concealment and misrepresentation and the dumping of the waste at site is bound to contaminate the water of River Asan, a seasonal river.

According to the Tribunal, it was noticed that on the own showing of the appellant the public hearing was conducted and despite being adjacent to the place of public hearing and having its knowledge the appellant had opted not to participate in the public hearing and raise issues of concern. Thus, the appellant now could not be permitted to take advantages of its own wrong and contend that at public hearing the objections were not taken into consideration. The other paramount objection taken by the appellant was that the site was closer to the water body and inhabitation clusters and forest. All these aspects had been

duly considered by the authority concerned in the EIA report and the recommendation of the EAC. The matter was reconsidered by the authorities, after which appropriate conditions had been incorporated in the order granting Environmental Clearance dated 8th December, 2014. The final grant of Environmental Clearance had come as a result of the order of the Supreme Court which was passed on 7th May, 2014. The site was even inspected by the MoEF regional office and it was noticed that the land for the project was allotted much prior to other projects coming around the said site. While granting the Environmental Clearance specific conditions had been stated in regard to protection of the surrounding areas. Merely because the site in question was surrounded by different buildings would not be a ground for denying the Environmental Clearance. The Project Proponent had been specifically directed to build a Green Belt around the site, to create a wall between the habitation and institutional area and that of the site in question.

The Tribunal also observed that in a developing country like India which is highly populated there is bound to be some conflict of this nature. And they have to be resolved by applying the Precautionary Principle and the Principle of Sustainable Development. It referred to a judgment of this Tribunal, i.e. *People for Transparency Through Kamal Anand v. State of Punjab & Ors.* 2014 ALL (I) NGT REPORTER (3) (DELHI) 137, which states:
"24. The concept of sustainable development is an inbuilt element of precautionary principle."

For the reasons afore-stated no merit was found in the present appeal the same was dismissed without any order as to cost.

Gram Sarai Vikas Samiti (Regd.)
Vs.
MoEF & Ors.

Appeal No. 106 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. B.S. Sajwan, Mr. Ranjan Chatterjee
Keywords: MSW plant, Environmental Clearance, Haridwar, industry, public hearing, precautionary principle, principle of sustainable Development
Decision: Appeal disposed of
Date: 10th December, 2015

In this appeal, it was prayed by the applicant/appellant that Nagar Nigam, Haridwar i.e. respondent no. 4 should be prohibited from throwing any waste in Gram Sarai, District Haridwar, Uttarakhand. The applicant, a resident of village Sarai, District Haridwar, Uttarakhand was the President of 'Gram Sarai Vikas Samiti', a Society registered under Society Registration Act, 1860. The Ministry of Environment, Forests & Climate Change (hereafter MoEF & CC) i.e. respondent no. 1 vide letter dated 18th May, 2015 granted Environmental Clearance for setting up MSW plant at this site.

The order granting Environment Clearance dated 18th May, 2015 was challenged primarily on the grounds that there was no public hearing and not even a single villager was consulted in accordance with the EIA Notification of 2006. There were large number of colonies and villages surrounding the area and thus it would result in air pollution as well as would cause water borne diseases, particularly at village Sarai. The respondents, particularly respondent no. 4, had seriously opposed this appeal on the basis that the present appeal was not maintainable under Section 16 of the National Green Tribunal Act, 2010 (for short NGT Act), and serious objections had been raised to the grant of the relief on merits.

From the above pleadings of the parties, two issues arose for consideration of the Tribunal:-
ISSUE NO. 1: Whether the application was maintainable in view of the provisions of Section 14 of the NGT Act, 2010?
The contention of the respondents was that the present appeal was not maintainable even under section 16(h) as establishment, construction and operation of a Municipal Solid Waste Plant would not fall within the ambit and scope of provisions of Section 16(h). This contention, in the considered view of Tribunal, had no merit. Firstly, the order granting an EC or refusing the same, both were appealable under section 16(h) of the NGT Act. Secondly, the expressions, 'any industry or operations or processes' were wide enough to cover MSW Plant. According to the Tribunal, the word industry simplicitor even would include the MSW Plant because it is an activity carried out for needs of the society at large.
ISSUE NO. 2: Whether on the ground stated by the applicant, the Environmental Clearance dated 18th May, 2015 by competent authority was liable to be quashed and/or modified?
The main challenge in the appeal was on two grounds; one, in terms of site selection and public hearing and secondly, it was likely to pollute environment and the residents of the village did not want the plant to be constructed at the site in question. In the affidavit filed on behalf of the respondents, which was supported by public documents, it was stated that a

public hearing was held on 31st January, 2013. It was specifically stated that no objections were raised by any of the persons present there. The villagers were also present, the Pradhan of Village Sarai was stated to be present and at the time of public hearing no objections were raised by anyone rather the project was consented to. Thus, there was a complete and comprehensive compliance to the Notification of 2006. The site had been selected keeping in view the fact that the Haridwar generated municipal solid waste to the extent of 200- 215 MT/ day and in peak months the waste was generated up to 250 MT/ day. It was absolutely necessary that an appropriate plant at the site was to be constructed, operationalised without any further delay. At the time of appeal, the waste was being dumped on banks of river Ganga.

Furthermore, the Tribunal observed that no community or villager and for that matter anyone, even in urban areas want a MSW plant or a dumping site near their locality. Scarcity of land and rapid increase in generation of MSW makes it absolutely necessary for the concerned authorities to establish such a plant and sites at the earliest to ensure public health, decent and clean environment. Of course, they are duty bound to take all steps on the basis of Precautionary Principles. The Principle of Sustainable Development demands that such development has to be permitted in the interest of environment and public health.

For these reasons stated above, the Tribunal did not find any merit in the contentions. Accordingly, the Appeal No. 106 of 2015 was disposed of with no order as to costs.

EC

Ghopla Ram
Vs.
State of Himachal Pradesh & Ors.

Original Application No. 191 of 2014
(Miscellaneous Application No. 690 of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Stone crusher, air pollution, renewal order, environmental clearance, statutory consent, damages
Decision: Application allowed (no costs)
Date: 10th December, 2015

The applicant prayed that respondent no. 1 should be directed to close the stone crusher of respondent no. 6, cancel the renewal order dated 6th March, 2014, and also award Rs. 15 Lakhs as damages resulting from the pollution caused by the respondent no. 6. The applicant, an agriculturist by profession, claimed to be the co-owner in possession of land along with other co-sharers situated in Mohal Bajaura, Distt. Kullu, HP. One Shri Daulat Ram had installed a small stone crusher in the year 1999-2000 after obtaining a No Objection Certificate on 9th September, 1997. Thereafter, the stone crusher was modified in the year 2007 without following the norms and conditions and the same was being run under the name and style of M/s. Bhawani Stone Crusher, i.e. respondent no. 6. According to the applicant the stone crusher was causing air pollution which was injurious to the human health, as well as animals, vegetables, fruits, and crops present in the land of the applicant. The stone crusher also did not satisfy the distance requirements required under the Notification as it was too close to human habitation and, thus, adversely affected the agricultural activity that was the main source of livelihood of the applicant. However, on 6th March, 2014, the authorities still renewed the permanent registration for existing stone crusher in favour of the respondent no. 6. The applicant had submitted an application under Right to Information on 15th July, 2014 and came to know that the consent had been renewed without any spot inspection and verification by the Horticulture Department. The Gram Panchayat had also passed a resolution raising objection to running of such huge stone crusher close to the village. Furthermore, the applicant also submitted a complaint before the authorities on 30th March, 2014, but it was of no consequence.

The applicant placed reliance upon the judgment of the Supreme Court in the case of *Deepak Kumar v. State of Haryana and Others* dated 27th February, 2012, wherein the Supreme Court had directed that lease of mining minerals including their renewal for an area of less than 5 hectares be granted only after obtaining Environmental Clearance from Ministry. According to the applicant, respondent no. 6 did not have the Environmental Clearance and had been carrying the activity of stone crushing contrary to law.

During the course of hearing, it was observed that respondent no. 6 had been operating without consent of the Board. The consent granted to the respondent no. 6 by the Board had expired on 31st March, 2015. No document had been filed before the Tribunal to show that the respondents were operating with the consent of the board after 31st March, 2015. However, after the case was reserved for judgment an affidavit was filed on 17th October, 2015, to show that the consent was valid till 7th August, 2015 and renewal order for the

same was passed by the pollution control authorities only on 16th October, 2015, which would mean that the respondent was operating without any consent from 1st April, 2015 to 7th August, 2015 and from 7th August, 2015 up to 16th October, 2015. This conclusion was on the premise that a copy of order granting consent till 7th August, 2015, had not been placed on record and secondly the board had no power to grant the consent retrospectively. The respondent no. 6 also did not have an Environmental Clearance for carrying on the mining activity.

According to the Tribunal, no unit has the right to continue to pollute the environment even if it had been established prior to the period when the guidelines and/or the stringent environmental measures came into force. No absolute or unexceptional right is vested in an industry not to adhere to the environmental laws in force. It cannot escape its liability to obey the prescribed parameters on the ground that the unit existed prior to coming into operation of such laws. If such a contention was to be accepted, all the statutory provisions of Water, Air and Environment Acts would be rendered otiose. All these contentions had already been considered by the Tribunal and rejected in the case of "*M/s. Laxmi Suitings vs. State of Rajasthan & Ors. in Original Application No. 358 of 2013*".

The cumulative effect of the above discussion was that the unit was polluting and non-compliant. It did not have the statutory consent and clearances. The mere fact that they had registration with the industries department and mining lease in their favor which was operative till September, 2017, would not by itself be a ground for not having the statutory clearances in terms of the EIA Notification 2006, judgment of the Supreme Court in Deepak Kumar's case and the provisions of the Air & Water Acts. It was the statutory obligation of respondent no. 6 to obtain all these clearances.

As far as the claim of damages put forward by the applicant was concerned, there was no evidence to substantiate the same. The applicant has not even filed an affidavit stating as to the extent of damages he had suffered. For lack of appropriate pleadings and any evidence to support those allegations, this relief was rejected.

Thus, the Tribunal allowed this application, to the limited extent that the respondent no. 6 would not be permitted to carry on his mining activity without obtaining the consent of the Board, Environmental Clearance in terms of EIA Notification 2006. The respondent would also not be permitted to operate the stone crusher unless the respondent installs all the anti-pollution devices like fixation of water sprinklers, raising of the wind blocking walls of the appropriate height as specified in the consent order and properly covering conveyor belts installed by the respondent no. 6 for carriage of the crushing materials. Respondent no. 6 was granted the liberty to move an application and if such application was found to be proper and the unit compliant, all appropriate authorities would consider the same in accordance with law and expeditiously.

Gian Chand
Vs.
State of Himachal Pradesh & Ors.

Original Application No. 335 of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Stone crusher, hot mix plant, Beas River, air pollution, water pollution, compensation, different site
Decision: Application disposed of
Date: 10th December, 2015

The applicant filed the present application praying for a direction that the stone crusher and hot mix plant set up and run by respondents no. 6 and 7 (i.e. Pooja Stone Crusher and Gorsi Construction Company Ltd.) be directed to be closed down immediately. Further, they should be directed to pay Rs. 10 Lakh on account of the compensation for pollution of Beas River and official respondents should be directed to restore the environment as well as disconnect the electric supply to the stone crusher and the hot mix plant of the private respondents. According to the applicant, the unit had been set up in violation of the prescribed norms by the State Government. Various complaints had been made to the authorities submitting that the stone crusher and the hot mix plant were being run contrary to the rules and were causing serious air pollution as well as polluting water of the river Beas. Various photographs had been placed on record, demonstrating the same. The applicant had also made a recommendation to the Himachal Pradesh State Pollution Control Board, but of no consequence.

According to the private respondent, they were carrying on the business of stone crushing after obtaining the requisite permission in accordance with law in force and were not causing any pollution.

Vide order dated 13th August, 2014 the Tribunal had noticed that it could hardly be imagined as to how the hot mix plant could be permitted to operate, in the river bed, and directed that the unit shall not operate till the next hearing. However, during the pendency of the application, respondents no. 6 and 7 approached the State Government and were given permission to set up a hot mix plant on a different site which had been approved by the concerned authorities and consent to establish for the same was also granted by the Himachal Pradesh State Pollution Control Board. The private respondent gave a clear assurance that it would not operate either the stone crusher or the hot mix plant at the existing site on the river bed and would operate only at the newly demarcated site.

In view of the above circumstances and the assurance given by the private respondent that he would establish a new site which was beyond the road, abutting the river, this application was allowed to the extent that the respondents no. 6 and 7 would abide by their statements and would operate the hot mix plant on Khasra no. 1823/514 in accordance with law, after obtaining necessary consent and permissions and strictly as per the conditions imposed by the Board. No costs.

Indian Council for Enviro-Legal Actions (ICELA)
Vs.
MoEF & Ors.

Original Application No. 170 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Air pollution, climate change, greenhouse gas, refrigerant production units, jurisdiction, Environment (Protection) Act, National Green Tribunal Act
Decision: Application disposed of
Date: 10th December, 2015

The applicant, a registered voluntary organisation working towards the protection of environment, rivers and lakes had filed an application with a prayer to direct all the respondent companies producing HCFC-22 to stop immediately venting HFC-23 by-product and incinerate/destroy the same under the supervision of Respondent 1, 2 and independent experts/body. According to the applicant, HFC-23 that was being produced as a by-product while manufacturing of HCFC-22 had serious climatic impacts, particularly, air pollution. HFC-23 was polluting the air and was a greenhouse gas having an impact on global warming thus, finally affecting the environment/atmosphere. Respondents no. 5 to 9 were manufacturing HCFC-22 from their refrigerant production units resulting in the by-product of HFC-23 which is seriously dangerous to store in comparison to destroying the same through scientific methods.

MoEF, the main respondent in this case had filed an affidavit raising a preliminary issue, that the application did not fall within the ambit of the powers conferred upon this Tribunal under Schedule 1 of the National Green Tribunal Act, 2010 (for short 'NGT Act, 2010'). On merit, it was stated that the HCFC-22 and HFC-23 was already regulated internationally by the Montreal Protocol. Emissive HFC-22 would be phased out by 2030 in accordance with the said Protocol. It was also stated that there was no domestic law/rules regulating this aspect and in regard to regulating HFC-23 destruction. Respondent no. 5 and others also filed reply affidavits primarily taking the stand that there were no regulations for controlling emissions of HFC-23 in India.

According to the applicant, there was no specific Indian Legislation or law in force to deal with incinerator emission or otherwise with HFC-23 but it would be covered under the Environment (Protection) Act, 1986 (for short the 'Act of 1986') and therefore, the Tribunal would have jurisdiction. The Act of 1986 was the last environmental Act enacted by Indian Parliament as it was preceded by the Water and Air Act. Section 3 of the Act of 1986 places an obligation upon Central Government and thus it has powers to take all measures as it deem necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. From the cumulative reading of the above provisions emphasized in this judgement, it was clear that environment and atmosphere in general, was covered under the Act of 1986, besides what was specifically covered under the Water, Air and other Environmental Acts. The purpose and object of Act of 1986 was not only to protect the environment, ecology and atmosphere from pollution but there was a direct obligation cast upon the concerned authorities and government to improve the environment. Improvement and protection of the

environment would mean to include acts which are necessary of ensuring that the atmosphere and environment is not further polluted. Furthermore, the NGT Act, 2010 provides the Tribunal with jurisdiction to deal with the civil cases arising in relation to or from the implementation of the enactments specified in Schedule-I. The applicant raised a substantial question relating to environment. The language of the Act of 1986 and NGT Act, 2010 had to be given its correct interpretation which would help in protecting, conserving and improving the environment and particularly with the application of the provision of Section 20 which not only imposed upon the Tribunal an obligation to decide the cases on the strength of precautionary principles but even the inter-generational equity had to be kept in mind. Therefore, it was determined that the Tribunal had jurisdiction to entertain the present application.

Coming to the merits of this case, it was not in dispute that there was no domestic law regulation in place to regulate any of the facets of HFC-23 in the country. The approach adopted by the Ministry of the concerned authorities was merely administrative in content and application both. Presently, this aspect is entirely governed internationally by the United Nations Framework Convention on Climate Change (UNFCCC) with reference to Montreal and Kyoto Protocol at the UNCCC. It was also not in dispute that the HFC-23 formed a part of the basket of greenhouse gases which would have an impact on depletion of ozone layer and global warming, except with regard to the extent and degree thereof. There was only the dispute of whether HFC-23 emissions per se were a pollutant. According to the respondents, including MoEF and CPCB, it was a nontoxic and non-pollutant. However, according to the applicant, the emission of HFC-23 in the air caused air pollution and would have adverse impacts on human health and environment. Thus, in the considered view of the Tribunal, the content of the application were a matter of global policy and therefore there would be a very little role for the statutory authorities within the country to take appropriate measures. Thus, according to the Tribunal, the concerned quarters should apply their mind and create some regulatory regime and appropriate guidelines till the legislative pillars of the country decide to enact some law in the direction.

For the reasons afore-stated, this application was disposed of with a direction to MoEF & CC and CPCB to examine the entire regulatory regime in relation to HFC-23 a by-product of HCFC-22 and issue appropriate guidelines in all aspects thereof. No costs.

Miscellaneous
Forest Act

Aditya N. Prasad & Ors.
Vs.
Union of India

Original Application No. 215 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Forest department, manpower resources, jurisdiction, Forest (Conservation) Act, Forest Policy, Environment Act
Decision: Application disposed of
Date: 10th December, 2015

The Applicants claimed that while pursuing and supporting the cases with respect to protection of environment, they gained knowledge on the massive deficiencies of manpower resources in the Forest Department. Thus, the applicants filed this application as the Department could discharge its statutory duties and implement the provisions of the forest laws, particularly the Forest (Conservation) Act, 1980 (for short 'the Forest Act'). It was stated that the acts and omissions of the Respondent No. 1 to 5 had violated items 3.1, 3.3, 4.5, 4.8, 4.12 and 4.13 and other provisions of the National Forest Policy 1988 (for short 'Forest Policy'). These violations gave rise to enforcement of the legal right available to the applicants in relation to substantial question of environment.

According to the Tribunal, most of the prayers in the application could not be examined, for instance, the promotion policy of the department, providing uniforms, the mechanism that should be adopted by the department with institution of cases and for getting technical knowhow from other States. Consequently, the Tribunal declined to examine any of these prayers, as being beyond the purview and scope of Schedule-I of the NGT Act. However, prayers in regard to the State discharging its statutory duties under the Environment Act, the Forest Act and the Forest Policy would squarely fall within the jurisdiction of the Tribunal.

It was stated that if there was no manpower or infrastructure in existence which would enable the department to perform its functions and duties to protect the environment and forest, then the result would be non-implementation of the provisions of these Acts as well as failure of fulfilling legal duty, giving right to others to enforce the legal right relating to environment. It is a statutory duty of the NCT of Delhi and particularly the Forest Department to ensure that no forest areas are used for non-forest activities, there is no illegal felling of trees and consequential reduction of forest area without obtaining environmental clearances or permission from the competent authority. Furthermore, it has to protect and conserve the forest, not only in discharge of its duties under the Indian Forest Act, 1927, Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972 and Delhi Preservation of Tree Act, 1994 but even in discharge of its constitutional obligations and duties. The Forest Act had been enacted to provide for conservation of forest and for matters connected therewith or ancillary or incidental thereto. This was clearly indicative of the legislative intent that the provisions of the Forest Act were to be given wider interpretation. According to the Tribunal, it was a statutory and constitutional duty of the Forest Department to conserve and protect the forest on the one hand while on the other

hand to ensure checking and controlling of illegal activities or non-forest activities in the forest area and that the forest area was not permitted to be degraded in its form and content under any circumstances.

Reply on behalf of the respondents had been filed but there was no serious dispute to the averments.

There were a number of cases pending before this Tribunal where cases of illegal felling of trees in the forest areas, non-forest activities, even commercial activities being carried on in the forest area and failure of the forest department to conserve and protect the forest had been brought to the notice of the Tribunal. In view of the specific provisions of the Environment Act and that of Forest Act, this application was disposed of with the following directions:

1. The Chief Secretary of NCT of Delhi was directed to undertake a meeting with the Secretary of the concerned Ministry, the Principal Chief Conservator of Forest and the Senior most officers for field staff in the Forest Department and consider the issues in relation to preservation and conservation of forest in NCT of Delhi.
2. The Chief Secretary of NCT of Delhi was further directed to consider appropriate enhancement in the strength of the forest department and provision of proper infrastructure and such electronic or other gadgets that would ensure that all cadres of the forest department would be able to discharge their duties and functions as required under the above Acts.
3. The Forest Department should submit a report to the concerned Secretary in relation to shortcomings or difficulties that the department had been facing for performing their duties in compliance to the provisions of the above two statutes.

No costs

Pollution
Compensation & Restoration

M/s. D.S.M Sugar Distillery Division
Vs.
Shailesh Singh & Ors.

Review Application No. 13 of 2015
(in Original Application No. 35 of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R. Yousuf, Mr. Ranjan Chatterjee
Keywords: Review, distillery unit, seriously polluting industry, remedial measures, Strict Liability Principle, environmental compensation
Decision: Application disposed of
Date: 10th December, 2015

This review application was filed by the distillery unit seeking review of the order dated 23rd April, 2015 and praying that the distillery unit be permitted to operate as the Review Applicant had complied with all the directions issued by the Joint Inspection Team as well as the UPPCB.

In O.A. No. 35 of 2015 one Mr. Shailesh Singh had prayed that M/s. DSM Sugar Distillery Division, Asmoli in Sambhal District of Uttar Pradesh (for short 'the Review Applicant') was a seriously polluting industry, and it was operating contrary to the terms and conditions of its consent order. Thereafter, on the basis of the report of the Joint Inspection Team dated 24th March, 2015, the Tribunal on 23rd April, 2015 directed closure of the Unit and gave liberty to the industry to take remedial measures and apply to the Joint Inspection Team for a fresh inspection.

In the Review Application, it was submitted that the Review Applicant undertook to remove all the deficiencies as pointed out in the order of the Tribunal dated 23rd April, 2015 and the Unit would take prior approval before operating its sugar unit in the next cane crushing season. According to the Review Applicant, it had complied with all the recommendations made in the report of the Joint Inspection Team. As such, there was no deficiency and the unit should be permitted to operate.

After filing of the review application, the Joint Inspection Team conducted inspection twice. In those inspections, the Joint Inspection Team observed that the industry was majorly complying with the recommendations made by the Joint Inspection Team. In that sense, the unit had become compliant and there was a possibility that claim of the industry that it would not discharge untreated effluents or store any spent wash or press mud in and around its premises, which would cause ground water or environmental pollution, could be accepted. But in spite of this, it could not be disputed that the Review Applicant was a polluting industry in the past.

In the report of the Joint Inspection Team dated 20th August, 2015 it was noticed that a soil mined pit, part of a barren private land around 100 meters from the road was filled to some part with dark brown colour effluent with organic smell and resembling distillery spent wash. The lagoons for storage of spent wash was found filled almost to the brim with spent wash while as per the consent conditions, the spent wash should not be stored more than the

red mark in the lagoon. On 22nd August, 2015, the Joint Inspection Team noticed that the drain is passing behind sugar mill which also carries domestic waste water generated from the residential colony of sugar factory. However, no byepass arrangement for spent wash discharge from distillery unit into the drain was observed. This drain finally met the Saut River. It was also observed that the fly ash in Sugar mill was not stored properly. The fly ash was observed at low lying areas near a primary school. Upon proper analysis of the documents filed by the parties, the inspection report and the analysis report, it was clear that the Review Applicant's industry had been causing serious pollution particularly of the ground water and soil itself. The industry had been polluting for years.

The Tribunal opined that there lay an onerous responsibility upon an industry to carry on its business activities of sugar manufacturing and distillery in a manner which was strictly in consonance with the terms and conditions of the consent order and the parameters of its effluents are strictly within the prescribed limits. The unit claimed to have become a zero discharge unit by recycling its effluents. But the correction process started only after institution of the petition No. 35/2015.

There were certain minor deficiencies which the industry undertook to complete before it started its operations. Thus, in this aspect the Tribunal accepted the prayer of the unit to permit them to operate strictly in accordance with the conditions of the consent order, compliance to the directions given by the Joint Inspection Team and in accordance with the law. However, the industry could not be permitted to carry on its activities without paying for the pollution that it had caused over the years to the ground water, soil and indiscriminate dumping of fly ash, spent wash, sludge and its effluents. Section 20 of the NGT Act requires the Tribunal to decide cases with reference to three settled principles of environmental jurisprudence i.e. Sustainable Development, Precautionary Principle and Polluter Pays Principle. The substantive onus would be upon the industry to show that it is operating its business in accordance with the prescribed norms, conditions of the consent order and/or not causing pollution to the environment. The Tribunal had discussed the entire law relating to onus and application of the 'Strict Liability Principle' to environmental cases at some length in the case of *Krishan Kant Singh v. M/s. Triveni Engg. Industries Ltd., Original Application No.317 of 2014*. Thus, the same principles had to be applied while directing the industry to pay environmental compensation in terms of Section 15 and 17 of the NGT, Act, 2010.

In view of the above discussion, the Tribunal passed the following order:-

1. The Industry was permitted to start its manufacturing activity.
2. Before commencing its sugar manufacturing and distillery it must comply with the discrepancies pointed out by the Joint Inspection Team.
3. The Unit would be inspected by the Joint Inspection Team immediately upon commencement.
4. The industry was held to be liable pay the Environmental Compensation of Rs. 1 Crore within one month to UPPCB and furnish a bank guarantee as well to the extent of Rs.10 lakh.
5. The amount of Rupees One Crore paid to the UPPCB shall be spent upon taking preventive measures, removing of the various materials, pollutants lying in the area, as well as steps for restoring of the environment and ecology as per the records of this file and ensure that no sludge spent wash, fly ash or other pollutants generated by this industry is permitted to remain in the soil, ground water and even on the land of the industry.

6. If the unit performed strictly within the prescribed parameters and as per the conditions imposed and was found to be compliant and non-polluting industry, the bank guarantee could be released after a period of two years, failing which the bank guarantee shall be encashed and the amount utilized for prevention and control of pollution in that area.

The above Review Application stood disposed of in the above terms. All the pending M.As nos. 613/2015, 626/2015, 915/2015 and 927/2015 also stood disposed of.

Miscellaneous

Doaba Paryavaran Samiti
Vs.
Union of India

Original Application No. 327 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Kedarnath Wildlife Sanctuary, helicopter, forest department, National Board of Wildlife, limitation, eco-sensitive zone
Decision: Application disposed of
Date: 10th December, 2015

This application was filed with the prayer to direct the Respondent to forthwith prevent the flying of any helicopter at Kedarnath Wildlife Sanctuary, Uttrakhand, to declare the Eco-Sensitive Zone of the Kedarnath Wildlife Sanctuary, Uttrakhand, and to award the cost and expenses incurred by the applicant. The applicant was a Samiti involved in environmental protection. It was averred that the ecosystem of Kedarnath Wildlife Sanctuary was in danger because of the operations of helicopters flying over that area without obtaining permission from the respondents, i.e. the forest department and the National Board of Wildlife (for short 'the Board').

It was averred by the respondent that, permission had been granted to M/s Pravatam Aviation Pvt. Ltd. to fly helicopter, and hence, the present application was not bonafide. This application was filed 9 years after the helicopter service was permitted. Thus, the application was barred by limitation under the provisions of Section 14(3) of the Act. The permission was first granted on 10th May, 2006 and thereafter had been renewed from time to time. Furthermore, according to the respondent, the applicant had not presented any material evidence to prove damage to flora and fauna, wildlife and ecosystem of the Sanctuary. The proposal for notification of the Eco Sensitive Zone of Kedarnath Wildlife Sanctuary had been prepared and sent to the higher authorities by the Divisional Forest Officer Kedarnath Wildlife Division, on 10th August, 2015 and it was in the process of being finalised.

The helicopter service had started years back and the applicant had approached the Tribunal in the year, 2015. However, it is a settled principle of law that every violation of law or every act which constitutes and completes cause of action in itself would be a recurring cause of action and would bring the right to an action independently. In other words, a recurring cause of action is an extension to the expression 'cause of action first arose'. To reiterate this point, the Tribunal relied on a judgment of this Tribunal *in Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. 2015 ALL(I) NGT Reporter (2) (Delhi) 81*. Thus, upon the question of limitation, the Tribunal stated that it was unable to accept the contention that the present application was barred by time.

Coming to the merits of the case, from the rival contentions raised on behalf of the respective parties, one aspect that was clear is that it is an eco-sensitive zone, and despite decision of the Board, the Ministry of Environment and Forests and even the clear directions from the Supreme Court, the State of Uttarakhand had failed to submit a proposal to Ministry of Environment and Forest for the purposes of issuance of the Notification for

declaration of the Eco sensitive area under the Act of 1986 for the Kedarnath Wildlife Sanctuary notified in terms of provisions of the Wildlife Protection Act, 1972. The State of Uttarakhand could not take any advantage of its own wrong. It was required of the State to comply with law and directives issued by the Courts within reasonable time.

According to the Tribunal, it was common knowledge that a helicopter develops noise which is beyond the prescribed decibels and when they are flying over wildlife sanctuary or eco sensitive zone, then they have to take extra precautions to ensure that they do not cause any adverse impacts. High sound would certainly disturb the wildlife and the sound will be more if the helicopters are flying lower than the specified heights. The State Government was expected to be more stringent in granting the permission for flying of helicopter in that area. The Tribunal did not agree with the contention of the applicant that the helicopter services in that area were not the need of the hour, but also stated that it must be essentially regulated in accordance with law and while ensuring complete protection of environment, ecosystem and wildlife. In light of the above discussion, the Tribunal disposed of this application with the following directions:

1. The State of Uttarakhand shall take immediate steps to submit its proposal for notification of eco sensitive zone covering Kedarnath Wildlife Sanctuary as well as the Wildlife Sanctuary. This proposal must be submitted to the MoEF&CC within 3 months from the date of pronouncement of this judgment.
2. MoEF&CC shall take consequential steps with utmost expeditiousness.
3. No prevention of flying of helicopters in that area, however, the State Government was directed to issue specific directions in consonance with the aviation policy with specific reference to the Eco Sensitive Zones of Kedarnath Wildlife Sanctuary in relation to height and level of noise that the helicopter being used by the company should be permitted to generate.
4. Issuance of such notifications and other requisite steps as may be directed by the central government, the State Government shall issue measures and steps which should be taken by the company based on the Precautionary Principle.

With the above directions, this application was disposed of without any order as to costs.

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Divesh Bhutani
Vs.
Union of India

Original Application No. 42 of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Aravalli range, forest area, non-forest activities
Decision: Application disposed of
Date: 10th December, 2015

The applicant prayed for the relief that the respondents should be directed to stop all illegal or commercial activities in the forest area, particularly in Village Anangpur and restore the area to its original state. The applicant was a regular commuter between Delhi and Faridabad through Suraj Kund-Badhkal road, which is in the Aravalli Range, an ecologically sensitive area. The primary grievance of the applicant was that this area, having been declared as 'forest area', non-forest activities of different kinds like running of restaurants, marriage houses, banquet halls were permitted by concerned governmental authorities. There were various other violations by many, including the firms, persons or entities, who were directed to be impleaded as respondents. On this premise, it was submitted that there was a clear violation of the Forest Conservation Act, 1980 (for short 'Act of 1980') and the Environment (Protection) Act, 1986 (for short 'Act of 1986').

This case was contested by the respondents, particularly the private respondents who denied that they were carrying on any commercial activity in a manner which was prejudicial to the environment or ecology. The Haryana State Pollution Control Board (for short 'HSPCB') had taken up the stand that all the stone crushers and these marriage houses were located in the notified areas and were carrying on the activity which was not permissible. Finally vide order dated 24th September, 2015 taking a decision on the representation of the Association of Stone Crushers Owners of Pali Mohhabatabad, it was held that they were protected by the order of the Hon'ble Supreme Court and the authorities were of the view that the stone crusher units had been set up in an area on which there were no restrictions whatsoever on any count on the date of the establishment.

The Tribunal held that in the event the applicant felt aggrieved from the order of the authorities dated 24th September, 2015, he was free to take appropriate remedies in accordance with law. At this stage, it would not be appropriate for the Tribunal to adjudicate on these aspects in light of the above orders. Consequently, the application was disposed at this stage with liberty to the parties to take up appropriate remedies available to them in accordance with law, without any order as to costs.

Pollution
Compensation & restoration

Krishan Kant Singh
Vs.
M/s Yash Paper Ltd.

Original Application No. 205/2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Seriously polluting industry, effluents, non-complying, show cause notice, inspection report, onus, environmental compensation
Decision: Application dismissed (with directions)
Date: 10th December, 2015 (*corrected judgement on 23rd December, 2015*)

The present application was filed by M/s. Yashpal Paper praying that name of the applicant industry be removed from the list of seriously polluting industries and they be permitted to continue their manufacturing activity in future in accordance with law.

The facts were that during the pendency of O.A. 299 of 2013 titled as *Krishan Kant Singh and Anr. v. National Ganga River Basin Authority*, the Central Pollution Control Board (for short, "CPCB") filed a report dated 7th February, 2014 mentioning the names of industries which were polluting and/or highly polluting and were discharging their effluents directly or indirectly into the River Ganga or its tributaries. The applicant industry was one of the seriously polluting industries specifically mentioned in the list filed by CPCB before the Tribunal and as such notice was issued to them. The industry was inspected on 3rd June, 2014 and thereafter, UPPCB issued a Show Cause Notice dated 23rd June, 2014 to the industries. Vide the Show Cause Notice dated 23rd June, 2014, UPPCB had called upon the industry to show cause as to why the industry should not be directed to be shut down as it was found to be polluting and non-complying. The applicant industry submitted an application for obtaining the consent of UPPCB to operate on 21st April, 2014. The industry also informed UPPCB on 10th July, 2014 in response to the Show Cause Notice issued by UPPCB dated 23rd June, 2014 that it had taken the steps required for modification or improvement of the ETP. On 23rd June, 2014 the applicant industry submitted along with its application, the analysis report from the private laboratory showing that its parameters were within the prescribed limits. The industry was inspected on 31st May, 2014 by the UPPCB and it found deficiencies. However, the industry reiterated its stand that it has upgraded its ETP and was complaint. Thereafter, during the pendency of this application the applicant industry was subjected to a joint inspection by the members of the CPCB and UPPCB on 15th September, 2015. The joint inspection team again noticed certain deficiencies made the recommendations for the industry to comply with. The other two serious defaults of the Applicant's Industry, were that firstly, it was operating without consent of UPPCB since 31st December, 2014, and secondly, it was extracting ground water through one tube-well without obtaining No Objection Certificate from the Central Ground Water Authority (for short, "CGWA"). It was stated that the applicant had applied for obtaining such permission which was awaited.

From the above narrated facts it was clear that the industry had failed to improve its functioning and bring its trade effluent discharge within the prescribed limits despite issuance of show cause notice, directions by UPPCB and even orders of the Tribunal. The

joint inspection of the industry was conducted more than a year later from the date of issuance of the show cause notice. The onus is on the industry to show that it had been complying with the requirements of the law and is a non-polluting and compliant industry, which it had failed to discharge.

For the above mentioned reasons, the Tribunal found no merit in this application. The Application was dismissed with the following directions:

1. This industry shall be closed forthwith by the UPPCB initially for a period of four weeks.
2. Within that period of four weeks, the industry would ensure that all deficiencies pointed in the joint inspection report dated 16th September, 2015 are rectified/removed. Further, parameters of its trade effluents should be brought within the prescribed limits.
3. After inspection, if ETP is found to be stabilised and after removing other deficiencies, the industry may permit the industry to run for a period of 2 weeks during which samples would be collected and analysed. If the inspection report is favourable and the industry is found to be complaint and non-polluting and its analysis reports are strictly within the prescribed parameters then the industry would be permitted to operate subject to final orders by the Tribunal.
4. The industry shall comply with these directions and submit a fresh application for obtaining the consent of the Board to operate.
5. That for the breaches committed by it for operating without consent to operate of the Board, for discharging the effluent in excess of the prescribed parameters and withdrawing ground water without NOC from the CGWA, the Tribunal imposed environmental compensation of Rs. Five Lakh on this industry, which it would pay to the UPPCB and CPCB in equal shares. The amount would be utilised for control of environmental degradation in that area.

Pollution
Compensation & restoration

Krishan Kant Singh
Vs.
M/s. Deoria Paper Ltd.

Original Application No. 204/2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Seriously polluting industry, effluents, non-complying, show cause notice, inspection report, onus, environmental compensation
Decision: Application dismissed (with directions)
Date: 10th December, 2015 (*corrected judgement on 23rd December, 2015*)

The present application was filed by the Industry applicant praying that name of the applicant industry be removed from the list of seriously polluting industries and they be permitted to continue their commercial activity in future in accordance with law.

The Applicant's Industry was a waste paper based plant, engaged in the production of machine glazed paper using Indian waste paper. The facts were that during the pendency of O.A. 299 of 2013 titled as *Krishan Kant Singh and Anr. v. National Ganga River Basin Authority*, the Central Pollution Control Board (for short, "CPCB") filed a report dated 7th February, 2014 mentioning the names of industries which were polluting and/or highly polluting and were discharging their effluents directly or indirectly into the River Ganga or its tributaries. The applicant industry was one of the seriously polluting industries specifically mentioned in the list filed by CPCB before the Tribunal and as such notice was issued to them. The CPCB vide letter dated 07.05.2013 asked the unit to comply with the certain pollution control measures. On 28th October, 2013, the Applicant's Industry was inspected by the team of the CPCB noticed that the industry had not only failed to comply with the above conditions but even further deficiencies were noticed.

The Applicant's Industry did not dispute that the industry was inspected on 28th October, 2013 and its effluent was found to be beyond the prescribed parameters. The industry stated that it had started necessary modifications in the existing ETP. The industry was going to install Diffused Aeration System in the Aeration Tank for improvement of quality of Aeration System. In regard to the drain near the ETP it was stated that it had been closed. According to the Applicant industry, they had taken remedial steps and installed anti-pollution devices thereafter and had become a compliant industry.

After filing of its application, the applicant industry was again inspected not only by the CPCB but also by the joint inspection team consisting of the officers from the CPCB as well as UPPCB. In this inspection report, it has been specifically noticed that under Air (Prevention and Control of Pollution) Act, 1981 and Water Act, the consent was valid only up to 31st December, 2014. During this inspection various deficiencies were noticed. Most importantly, upon analysis of the effluent samples of the Applicant's Industry it was found from the results that the unit was not complying with the stipulated norms of effluent discharge in respect of BOD parameters. It was noticed that housekeeping was very poor. After noticing a large number of deficiencies in relation to ETP, RCF, the inspection team made certain recommendations for compliance.

The Tribunal had passed an order on 30th October, 2014 and 17th November, 2014 requiring the authorities to ensure that no polluting industry and industry having no consent of UPPCB and polluting river Ganga were permitted to operate. Despite this order and directives of UPPCB, the industry failed to improve its working and bring the parameters of its effluent within the prescribed limits. Instead of improving its working and ensuring that the discharge of effluent by the industry did not violate the prescribed parameters, the industry had gone from bad to worse. The onus was on the industry to show that it had been complying with the requirements of the law and was a non-polluting and compliant industry, which it had failed to discharge.

The other two serious defaults of the Applicant's Industry, were that firstly, it was operating without consent of UPPCB since 31st December, 2014, and secondly, it was extracting ground water through one tube-well without obtaining No Objection Certificate from the Central Ground Water Authority (for short, "CGWA"). It was stated that the applicant had applied for obtaining such permission which was awaited.

For the above mentioned reasons, the Tribunal found no merit in this application. The Application was dismissed with the following directions:

1. This industry shall be closed forthwith by the UPPCB initially for a period of four weeks.
2. Within that period of four weeks, the industry would ensure that all deficiencies pointed in the joint inspection report dated 16th September, 2015 are rectified/removed. Further, parameters of its trade effluents should be brought within the prescribed limits. After taking action on the recommendations based on inspection the unit would be allowed to operate for 2 weeks. Thereafter, the joint inspection team would inspect to verify removal of deficiencies and withdraw effluent for testing of samples.
3. The industry shall comply with these directions and submit a fresh application for obtaining the consent of the Board to operate. If upon the joint inspection conducted by the Board the industry is found to be compliant and non-polluting the consent order would be issued but industry would operate subject to further orders of the Tribunal.
4. For the breaches committed by it for operating without consent to operate of the Board, for discharging the effluent in excess of the prescribed parameters and withdrawing ground water without NOC from the CGWA, the Tribunal imposed environmental compensation of Rs. Five Lakh on this industry, which it would pay to the UPPCB and CPCB in equal shares. The amount would be utilised for control of environmental degradation in that area.

Kirshan Kant Singh
Vs.
M/s. Daurala Organics Ltd.

Original Application No. 421 of 2014

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Prof. A.R Yousuf, Mr. Ranjan Chatterjee
Keywords: Pollution, effluent sample, local commissioner, precautionary principle
Decision: Application disposed of
Date: 10th December, 2015

During the pendency of O.A. 299 of 2013, the Central Pollution Control Board (for short, "CPCB") filed a report dated 7th February, 2014 mentioning the names of industries which were polluting and/or highly polluting and were discharging their effluents directly or indirectly into the River Ganga or its tributaries. The applicant industry was one of the seriously polluting industries specifically mentioned in the list filed by CPCB before the Tribunal and as such notice was issued to them. The response of M/s. Daurala Organics Ltd. to the notice issued came to be registered as Application No. 421 of 2014.

A Local Commissioner was appointed to inspect M/s. Daurala Organics Ltd. and to submit a report to the Tribunal. The Local Commissioner submitted a detailed report dated 6th May, 2015, wherein he noticed various deficiencies in regard to cyanide treatment scheme, mismatch in infrastructure and required information for treatment validation, effluent treatment scheme, irregularity in relation to extraction of ground water, assessment of ground water, audit of production and installed capacity. The Local Commissioner noticed overall the following deficiencies: poor housekeeping in the unit, especially in the ETP section; absence of tamper proof meters; poor maintenance of the cyanide recovery plant; non-maintenance of archival records; lack of monitoring of consumption of water and energy; and rusted and leaking condition of pipelines carrying effluent. To the report of the Local Commissioner, the industry filed its reaction and dealt with each of the observations to the effect that the industry was taking all steps to ensure that it did not cause any pollution.

Thereafter, the UPPCB and CPCB and the Ministry of Environment, Forest and Climate Change (for short the 'MoEF'') were required to react to the observations raised by the learned Local Commissioner in his report. It was stated that they did not agree with some of the observations made by the Local Commissioner. A joint inspection report prepared by the CPCB and UPPCB dated 27th March, 2015 was relied upon. From this report, it was clear that the industry was compliant and it did not appear to be in violation of the consent conditions. Furthermore, the Tribunal vide its order dated 29th April, 2015 had directed that the effluent sample that would be collected from the premises of the industry shall be divided into three separate portions. They were sent to the Laboratory of CPCB, the Indian Institute of Toxicology Research, Lucknow and the U.P. State Laboratory of UPPCB. The report indicated that the discharge was within the prescribed limits.

In view of the above, the CPCB submitted in its analysis report dated 31st August, 2015 that the observations of the learned Local Commissioner were of general nature and related more to the upkeep of the plant and leakage noticed at some places. The CPCB had taken a

definite stand that the industry was compliant and functioning of the plant did not suffer from any serious deficiency. Thus, the Tribunal opined that it would be more appropriate to invoke the Precautionary Principle rather than taking recourse to prohibitory orders.

Therefore, this application was disposed of with the following directions:

a) The industry shall take all remedial and rectifying measures within four weeks from the date of judgement in relation to upkeep and proper maintenance of their plant.
b) The industry shall be subjected to a surprise joint inspection by the CPCB and UPPCB after expiry of four weeks. The joint inspection team shall prepare a comprehensive inspection report while taking samples of the effluents being discharged from the premises of the industry and even from inside the plant. It will be ensured that the industry does not violate the prescribed parameters, particularly in relation to pH, BoD, CoD, Nitrate, Lead, Mercury, cyanide etc.
c) If upon analysis, any deficiencies are found by the joint inspection team and/or the reports are found to be in violation of the prescribed parameters, the CPCB/ UPPCB shall take action in accordance with law and would ensure that the industry is permitted to operate only if it is not polluting and complying.

No costs

Vikrant Kumar Tongad
Vs.
Environment Pollution Authority & Ors.

Original Application No. 118 of 2013

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan, Mr. Ranjan Chatterjee
Keywords: Crop burning, air pollution, National Policy for Management of Crop Residues, Action Plan, environmental compensation
Decision: Application disposed of
Date: 10th December, 2015 (*corrected judgement on 23rd December, 2015*)

The applicant, a public spirited person working in the field of environmental conservation and a resident of Gautam Budh Nagar, Uttar Pradesh filed this application against the adverse effects of burning of agricultural residue in various parts of the country which pollutes the air. According to the applicant, the provisions of Air (Prevention and Control of Pollution) Act, 1981 (for short 'Air Act') and Environment (Protection) Act, 1986 (for short 'Act of 1986') provide standards for emission and require that the ambient air quality must be of specified values. To ensure prevention of air pollution as well as in the interest of public health, the Act of 1986, specifically places an obligation upon Ministry of Environment and Forests (for short 'MoEF') to issue directions in respect of complaints against the violators. Crop agriculture residue burning was stated to be a common feature in NCT Delhi and even in the surrounding states like Uttar Pradesh, Punjab, Rajasthan and Haryana. This practice was even prevalent in other parts of the country. The applicant relied on the National Aeronautics and Space Administration pictures released on 5th November, 2012 which showed a large amount of smoke emerging from the fields of Punjab, particularly, coming towards Delhi. The applicant also relied on various studies which indicated that Biomass burning was a significant global source of atmospheric aerosols and trace gas emissions, having a major impact on climate and human health. There were instances and reports which suggest that the smoke from agriculture residue burning could travel several kilometres. The agricultural crop residues were burnt during the months of October and November each year in the Indo-Gangetic Plains (IGP), which had a significant impact on greenhouse gas emissions and aerosol loading.

On merits, there was hardly any contention raised by any of the States. In principle, the States also agreed that agriculture residue burning was not a practice which could be continued. Each of the States had admitted that they were not only trying their best to stop such practice but had even made various attempts to take up the matter with the farmers as to the evils of crop residue burning and its adverse environmental impacts upon the air. It was further stated that they were in the process of initiating the programs for alternative utilization methods of agriculture residue crop by bio-mass based power plants, using the residue crop as a raw material for other activities. State of Haryana stated that it had also issued a notification dated 16th September, 2013 prohibiting burning of left over straw in the entire State of Haryana. High Court of Punjab and Haryana at Chandigarh had directed to constitute a High Powered Committee under the Chairmanship of Chief Secretary and it was decided that Agriculture Department would promote demonstration and custom hiring of suitable agriculture machinery and promote use of straw bailer for bale making as a long term solution of this problem. State of Uttar Pradesh vide its notification dated 3rd

November, 2000 had declared the entire State of Uttar Pradesh as an Air Pollution Control Area under Section 19(1) of the Air Act.

In view of the stand taken by the parties, particularly, by the respondents in the application, the Tribunal directed the Additional Secretary, Ministry of Agriculture to call a meeting within one week where representatives from all States were directed to be present and committee was directed to finalize the Draft National Policy in regard to residue agriculture burning in open. The MoEF had endorsed the National Policy for Management of Crop Residues, 2014 wherein various issues had been addressed and finally it was requested to States to use available data and state machinery for monitoring, preventing and controlling of stubble and residue burning in cooperation with CPCB and ISRO. Thereafter, all the State Governments had given a specific statement before the Tribunal and most of them issued Notifications prohibiting and banning agriculture residue burning in open. The States' Action Plans were in consonance with the National Policy for Management of Crop Residues framed by the Ministry of Agriculture in 2014.

In the present day, it is not acceptable to advance an argument that crop burning is a necessity. The agriculture residue burning causes serious environmental hazards. It pollutes the air as excessive matters combine with other pollutants, causing serious issues in relation to public health. In this matter, ambient Air Quality in the major cities of all these states, particularly, in NCT Delhi had been found to be more damaging to human health. Before this problem attained dimensions of irresolvable issues, it was necessary that immediate steps were taken to prevent and control impacts of this menace. In view of the above discussion and the stand taken before the Tribunal by the different State Governments and the Ministry, this application was disposed of with the following directions:

a. The National Policy for Management of Crop Residue, 2014 prepared by the Ministry of Agriculture, Government of India shall in conjunction with the Action Plan prepared by the States of Rajasthan, Uttar Pradesh, Haryana and Punjab shall be implemented in all these States, without any default and delay.
b. All these State Governments and NCT Delhi shall immediately take steps to educate and advise the farmers through media, Gram Panchayats and Corporations that crop residue burning is injurious to human health, causes serious air pollution and is now banned or prohibited by law. They shall also be educated that the agriculture residue can be extracted and utilized for various purposes including manufacturing of boards, fodder, rough paper manufacturing and as a raw material for power generation etc.
c. Every State Government to this application shall evolve the mechanism for collection of crop residue, its transportation and utilization for appropriate purposes.
d. In the event of any conflict or contradiction between the National Policy for Management of Crop Residue, 2014 and the Action Plan prepared by the State Governments, the National Policy for Management of Crop Residue 2014 shall prevail.
e. In cases of persistent defaulters of crop residue burning, an appropriate coercive and punitive action could be taken by the concerned State Government including launching of prosecution under Section 15 of the Act of 1986.
f. Where on the one hand State Governments are directed to provide incentives for farmers for not burning agriculture residue in the open and on the other hand they are required to take into consideration passing of such direction, including withdrawal of assistance provided to the farmers if they persist with the defaults.
g. All the States which have issued Notification prohibiting agriculture crop residue burning shall ensure that the Notifications are enforced rigorously and proper action is

taken against the defaulters. Any person or body that is found offending this direction would be liable to pay Environmental Compensation as follows: small land holders having an area less than 2 acres shall pay Environmental Compensation of Rs.2500 per incidence; land holders having land area more than 2 acres but Less than 5 acres shall pay Environmental Compensation of Rs.5000 per incidence; and land holders having land area more than 5 acres shall pay Environmental Compensation of Rs.15000 per incidence.

h. Every State will provide Machines, Mechanism and Equipments or its cost to the farmers to ensure that agricultural residue in the field in these states are removed, collected and stored at appropriate identified sites in each district. Such equipment like happy seeders would be provided to small farmers having land area less than 2 acres free of Cost. For the farmers possessing area of more than 2 acres but Less than 5 acres, the cost for such machines is to be Rs.5000. For land owners having land area more than 5 acres the cost for such machines is to be Rs.15,000. These costs are for each crop growing season only once.
i. Agricultural residue burning shall be prohibited in any part of the NCT of Delhi, State of Rajasthan, State of Punjab, State of Uttar Pradesh and State of Haryana.
j. All the Pollution Control Boards of these states shall monitor the ambient air quality of the major cities, particularly in NCT of Delhi and submit the data to the Tribunal.
k. The District Magistrate of all the Districts was directed in these states to constitute a special team to monitor and physically inspect the sites to ensure that there is no agriculture crop residue burning in their respective jurisdictions.
l. This shall be done on regular intervals and inspection reports should be submitted to the respective Pollution Control Boards which in turn would provide comparative statement based on these inspections and air quality samples to the Tribunal.
m. All the State Governments and the Pollution control Boards should ensure that small land holding farmers are provided with the aid and machines for extracting agricultural crop residue in their respective fields and transport them to the designated sites in the respective districts where either it is used as a fuel in the plants or it is used for manufacturing of Straw/Fiber Boards and it can also be converted into a manure wherever it is possible.
n. The District Magistrates shall further ensure from the Gram Panchayat that farmers are educated by holding special program of public hearing, circulating pamphlets and by practically demonstrating to the farmers the amount of pollution caused and consequential harm to public health, including that of their children from agricultural residue burning in open, as well as the possible ways for disposing agricultural crop residue by even providing benefit in terms of money. In some of the policies declared by the States, even some incentive and aid can be provided. Let the States implement this with greater sincerity and effectiveness.
o. All the State Governments shall, if they have not already done, create an alert system so as to bring to the notice of the Concerned Authorities that in a particular part of the jurisdiction of the State, agricultural crop residue burning has commenced so as to enable them to take effective and immediate measures by use of satellite imagery or otherwise.
p. All the State Governments were directed to bring this order to the notice of the farmers of each State. The District Magistrate, Secretary Environment and Member Secretary of the respective Pollution Control Boards shall be personally responsible for implementation of these directions.
q. The State Governments should in coordination with Indian Space Research Organization (ISRO), National Remote Sensing Agency (NRSA) and State Remote Sensing Agency

(SRSA) develop real time monitoring mechanism for monitoring the place, date and time of burning of agricultural residues within their respective States and evolve communication mechanism for giving SMS alerts to all the district level functionaries in respect of the instances of agricultural residue burning within their jurisdiction.

r. A copy of this judgment was also directed to be circulated to the Chief Secretaries of the States for compliance in accordance with law and accordingly for preparation of Action Plan and compliance thereof in accordance with law.

s. All the District Administrative Officers including District Magistrate, Superintendent of Police, Officers of the regional office of the Pollution Control Boards and the Environmental Department of the districts including Corporations, Municipalities etc. would be responsible for carrying out these directions in their true spirit and substance, without default.

Britannia Industries Ltd.
Vs.
Delhi Pollution Control Committee & Ors.

Appeal No. 124 of 2015
(M.A. No. 1031 of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Prof. A.R. Yousuf, Mr. Ranjan Chatterjee
Keywords: Closure order, manufacturing unit, inspection, show cause notice
Decision: Application disposed of
Date: 10th December, 2015

The appellant filed this Appeal against the directions for closure of the appellant-industry in furtherance to the Closure Order dated 24th July, 2015 issued by the Delhi Pollution Control Committee (for short 'DPCC'). The Closure order was based on the order of the National Green Tribunal dated 11th June 2015 in the case of *Manoj Mishra v Union of India & Ors. (O.A. No. 6 of 2012 & O.A. No 300 of 2013)* wherein the Tribunal while dealing with e-flow in Yamuna had passed directions to DPCC to order closure of the various industries which were discharging their effluents. Appellant submitted that the closure order was ex-facie illegal and perverse in law in light of the fact that the manufacturing operations at the appellant's factory located at Lawrence Road Industrial Area was stopped on 12th November 2014 and the appellant had already surrendered factory license and all other permissions for operating its factory. The Appellant was only running administrative office at the factory premises. The Appellant informed the DPCC on 31st January 2015 that it had stopped its manufacturing activity. According to the Appellant, the Closure order was based on assumption that the unit had been discharging their effluents into drain instead of CETP.

None of the respondents filed any reply except respondent no. 3, i.e. Tata Power Delhi Distribution Ltd. According to respondent no.3, they issued notice for disconnection of electricity on the premises of the appellant industry in furtherance to the above order.

From the record before the Tribunal, it was evident that the respondents had passed the impugned order without conducting any inspection of the premises in question. Similarly, the notice for dis-connection of electricity was also being proposed to be implemented without any inspection. Once the manufacturing activity of the appellant-industry was shut down, the question of it being covered by the order of the Tribunal in the case of *Manoj Mishra v. Union of India & Ors.* did not arise. The order issued by the respondent dated 24th July, 2015 also further demonstrated that no inspection of the Unit was conducted by the DPCC before passing of the directions. In terms of the procedure contemplated for issuance of a direction of this kind, a show cause notice had to have been issued to the industry and the industry was entitled to show cause as to why the directions contemplated in the notice should not be issued. It was only after compliance of the certain procedure that a direction under Section 33A of the Water Act or under Section 5 of the Act of 1986 could be issued. For the reasons above, the Tribunal set aside the order dated 24th July, 2015. The application was disposed of with no costs.

Shailesh Singh
Vs.
Bhushan Steep & Strips Ltd. & Ors.

Original Application No. 70 of 2015

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan
Keywords: Ground water, contamination, extraction, polluting industry, trade effluents, inspection report
Decision: Application partly allowed
Date: 10th December, 2015

The Applicant filed this application primarily raising two issues. First, the ground water in Ghaziabad particularly on the Link Road Police Station Sahibabad and other areas was highly contaminated. For such contamination, the big industries like Respondent No. 1, i.e. Bhushan Steel & Strips Limited and other industries were responsible. Secondly, the industries, particularly Respondent No. 1 were extracting high quantity of ground water for their industrial use which was impermissible and the Respondents had no permission from the Central Ground Water Authority (for short, "CGWA") to extract such ground water. At the very outset, the Tribunal noticed that the present application was devoid of any specific averments and even the prayer was quite vague. During the course of arguments, the Applicant submitted that though there were no specific averments in the application, the respondent industry was extracting nearly 2455000 litres of water through four different tube-wells while it was discharging only 700000 litres effluents, and this created an uncertainty in the obligation of these industries. They were polluting as well as withdrawing ground water without complying with the provisions of law. In the inspection conducted on 4th September, 2015 when the samples were collected, the inspecting team also found number of other shortcomings in upkeep and maintenance of the plant. Furthermore, a joint inspection team consisting of CPCB and UPPCB conducted the inspection of this industry on 14th June, 2013, noticed various deficiencies and made certain suggestions. Thus, the Tribunal vide its order dated 4th July, 2013 in M.A. No. 340/2013 in Original Application No. 36/2012 tilted "*Rajiv Narayan v. Union of India & Ors*." had permitted the industry to carry on its business with a clear directive that within a period of one month it would rectify all the deficiencies pointed out by the joint inspection team.

Instead of improving its working and ensuring that the effluent discharged by the industry did not violate the prescribed parameters, the industry had gone from bad to worse. In the inspection report of 4th September, 2015 not only deficiencies had been pointed out but it was specifically stated on the basis of the analysis reports of the trade effluents, that the industry had become a polluting industry. The other violation that had been persistently committed by the industry was that it had been extracting huge quantity of ground water without obtaining any permission from CGWA. According to the Tribunal, as far as the contention of the industry, that it did not require permission from CGWA for extraction of ground water for the reasons that it was existing prior to the issuance of the Notification of 1997 was concerned, it had no merit. Extraction of water without permission of the competent authority would be clearly in violation of the law, as well as the Corporate Social Responsibility of the industry. The industry was a polluting industry; despite grant

of opportunity vide order dated 4th July, 2013 of the Tribunal. It had failed to remove and rectify deficiencies and become a non-polluting industry.

For the reasons afore-stated, this application was partly allowed with the following directions:

1. This industry was directed to be shut down forthwith its operations, but initially for a period of four weeks.
2. Within a period of four weeks from the date of judgement, the industry shall take all remedial measures, ensuring that effluents being discharged by the industry were not in any way excessive than the prescribed parameters.
3. Within four weeks, the industry shall obtain permission from the CGWA for extracting ground water.
4. That the industry would be subjected to a joint inspection by the UPPCB and the Central Pollution Control Board which shall prepare a comprehensive inspection report, analyse the trade effluent and submit the report before the Tribunal immediately thereafter.
5. Particular attention in the report shall be placed on water budge of the industry and the quantum of effluent generated apart from the working and capacity of ETP/STP etc.
6. If upon inspection and analysis of the trade effluents, the industry is found to be compliant and non-polluting, the UPPCB would permit the industry to operate subject to the orders of the Tribunal. If the reports show any violation, the industry would not be permitted to carry on its operations.

No costs.

Pollution
Consent to operate

A.S. Process
Vs.
Haryana SPCB & Ors.

Appeal No. 118 of 2015
(M.A. No.'s 1007 & 1008 of 2015)

Coram: Justice Swatanter Kumar, Justice M.S. Nambiar, Dr. D.K. Agrawal, Prof. A.R Yousuf
Keywords: Closure order, legality, condonation of delay
Decision: Application disposed of
Date: 10th December, 2015

The appellant filed this Appeal with two prayers. Firstly, the appellant challenged the legality and correctness of the order dated 12th January, 2015, passed by the Haryana State Pollution Control Board (for short the 'Board'), Panchkula wherein the Board in exercise of its powers under Section 33-A of the Water (Prevention & Control of Pollution) Act, 1974 (for short 'Water Act') had directed the closure of the industry and sealing the plant and machinery along with the DG set. The other prayer was that, in view of the consent to operate already being granted to the unit by the board on 14th July, 2015, the appellant unit should be permitted to operate in accordance with law. The appellant submitted that the unit was engaged in the process of dyeing and had been carrying on its business since long. The unit had also obtained authorization for Hazardous Waste Management and Disposal and consents were also granted to it under Air (Prevention & Control of Pollution) Act, 1981 (for short 'Air Act') and Water Act, which were valid up to 31st March, 2015.

Along with the present appeal the appellant had filed M.A. No. 1007 of 2015 for allowing the appellant to run its unit pending disposal of the appeal. M.A. No. 1008 of 2015 had also been filed by the appellant for condonation of delay in filing the appeal. As far as granting of relief in M.A. No. 1008 was concerned the appeal of the appellant was barred by time and the applicants' prayer for condonation of 215 days delay in filing the appeal could not be granted by the Tribunal. In view of the proviso of the Section 16 of the NGT Act, the Tribunal had no jurisdiction to condone the delay beyond a total period of 90 days. Thus, the Tribunal could not entertain the appeal of the appellant against the order dated 12th January, 2015, since it was this very right of the applicant for instituting an appeal beyond 90 days that was questionable.

However, the Board itself had issued both the consents under the Water and the Air Act as well as the authorization of handling the hazardous waste on 14th July, 2015, despite the closure order dated 12th January, 2015 being treated as operative. This was clearly a case of irreconcilable contradictions in the decision making by both the respondents. Thus, the Tribunal directed the Chairman of the Board to personally look into the matter and upon examination of the records to pass appropriate orders within one week from the date of passing of this order.

With the above directions, M.A. Nos. 1007 and 1008 of 2015 were disposed of along with the main appeal as they had been rendered infructuous.