

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI  
&  
\* THE HON'BLE SRI JUSTICE MAHESWARA RAO  
KUNCHEAM**

**+W.P. Nos.31066 OF 2021**

% 08.01.2026

# M/s. Sri Kumaraswamy Silica  
Mines, Momidi Village, Chillakur  
Mandal, SPSR Nellore District.

.....Petitioner.

And:

\$1. The Government of India, represented by its Director, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhavan, Jorbagh Road, Aliganj, New Delhi and others.

....Respondents.

Counsel for the petitioner : Sri P. Veera Reddy, Sr.  
Advocate assisted by  
Sri B. Sarma.

Counsel for the respondents : Sri G. Sai Narayana Rao, learned counsel for the respondents 1 and 2  
Ms. Anusha, Assistant Government Pleader for Mines and Geology for respondents 3 to 6,

Sri Ganta Rama Rao, learned senior counsel assisted by Sri Kambampati Ramesh Babu, learned counsel for the 7<sup>th</sup> respondent.

<gist:

>Head Note:

? Cases referred:

1.(2017) 9 SCC 499

2.2025 SCC OnLine SC 1139  
3.(2022) 11 SCC 1  
4.(2025) 5 SCC 786  
5.(2013) 4 SCC 465  
6.2022 SCC OnLine SC 639  
7.2013 SCC OnLine NGT 31  
8.(2023) 7 SCC 740  
9.AIR 1976 SC 578  
10.(2023) 6 SCC 615  
11.2022 SCC OnLine SC 362  
12.2022 SCC OnLine SC 1469  
13.2021 SCC OnLine SC 897  
14.AIRonline 2021 Bom 4360  
15.SLP No. 4127/2021  
16.(2012) 8 SCC 524  
17.(2019) 18 SCC 494  
18.(1998) 8 SCC 1  
19.(1997) 3 SCC 261  
20.2021 SCC OnLine SC 897  
21.2021 SCCOnline SC 7  
22.(2006) 11 SCC 356  
23.(2004) 2 SCC 65  
24.(1998) 7 SCC 66  
25.(2006) 6 SCC 430  
26.(2020) 16 SCC 446  
27.(1991) 2 SCC 716  
28. SCC OnLine SC 1789  
29.2025 SCC OnLine SC 2474  
30.2013 SCC OnLine All 6052

**HIGH COURT OF ANDHRA PRADESH**

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**W.P. Nos.31066 OF 2021**

DATE OF JUDGMENT PRONOUNCED:08.01.2026

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**&**

**THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

1. Whether Reporters of Local newspapers Yes/No  
may be allowed to see the Judgments?
2. Whether the copies of judgment may be Yes/No  
marked to Law Reporters/Journals
3. Whether Your Lordships wish to see the Yes/No  
fair copy of the Judgment?

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM,J**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
&  
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM  
W.P. Nos.31066 OF 2021**

**JUDGMENT:** per the Hon'ble Sri Justice Ravi Nath Tilhari:

1. Heard Sri P. Veera Reddy, learned senior counsel assisted by Sri Bargava Sarma, learned counsel for the petitioner, Sri G. Sai Narayana Rao, learned counsel for the respondents 1 and 2, Ms. Anusha, learned Assistant Government Pleader for Mines and Geology for respondents 3 to 6, Sri Ganta Rama Rao, learned senior counsel assisted by Sri Kambampati Ramesh Babu, learned counsel for the 7<sup>th</sup> respondent.

**I. Facts:**

**(i) Petitioner's case:**

2. The petitioner Sri Kumaraswamy Silica Mines Momidi Village, Chillakur Mandal SPSR Nellore District Andhra Pradesh, represented by its Managing Partner, has filed the present writ petition under Article 226 of the Constitution of India, challenging the order passed by the National Green Tribunal, South Zone (NGTZ), Chennai, dated 15.11.2021, in Appeal No.19 of 2020 (SZ) (B. Madan Kumar Reddy vs. Government of India and others), filed under Section 16 of the National Green

Tribunal Act, 2010 (in short, the NGT Act) filed by the present 7<sup>th</sup> respondent, B.M. Reddy, Challenging the Environmental Clearance (EC) granted, to the present petitioner -7<sup>th</sup> respondent in the Appeal, by the 1<sup>st</sup> respondent-the Government of India represented by its Director, Ministry of Environment Forest and Climate Change, IA Division, New Delhi, vide proceedings No.F.No.23-238/2018-IA.II(v) dated 16.04.2020.

3. The petitioner firm is a partnership firm carrying on business of Silica sand mining. Mining lease was originally granted in the name of V. Rama Chandra Reddy on 24.05.1975 for an extent of Ac.512.01 cents in Sy.No.695/22 and 696 of Momidi Village, Chillakur Mandal SPSR Nellore District. The mining lease was executed on 04.09.1975 for a period of 20 years. It was later on transferred in favour of the petitioner's firm by executing, transfer of lease dated 01.07.1985. The lease period expired on 03.09.1995, and was renewed by the Government of Andhra Pradesh for another 20 years from 03.09.1995 but for a reduced area of 338.39 acres in Sy.No.695/22 and 696.

4. The petitioner applied for E.C on 23.11.2013 to the 1<sup>st</sup> respondent as per EIA Notification 2006. The proposal was

examined by the Expert Appraisal Committee (EAC), but the MOEF and CC 1<sup>st</sup> respondent vide letter dated 21.04.2014 directed the petitioner to stop mining activity as the proposal was said to be in violation of EIA notification. The petitioner filed W.P.No.4490 of 2014 challenging the order dated 21.04.2014 which was disposed of vide order dated 06.06.2014, observing that the principles of natural justice were violated and no opportunity of hearing was given to the petitioner, and so, it was provided that, the petitioner shall submit a representation to MOEF & CC, setting out the explanation and the 1<sup>st</sup> respondent was directed to consider and pass appropriate orders. The petitioner submitted the representation dated 03.07.2014 to the 1<sup>st</sup> respondent inter alia submitting that the petitioner did not commit any violation of EIA notification and requested for issuance of Term of Reference (ToR).

5. In the meantime one Mallikarjuna Reddy filed O.A.No.96 of 2015 before the NGT against 48 Mining Units including against the petitioner raising the grievance that those units were operating minings without E.C. The petitioner put in appearance and took the stand that the petitioner had applied for the E.C which was pending consideration. It was also the stand that the

mining of the petitioner was in operation since before the EIA notification of 1994 came into force and so there was no legal requirement to obtain the EC. The NGT vide common interim order dated 08.07.2015 directed the respondent No.1 to pass orders on the application for EC. The petitioner's further case is that on the representation dated 13.07.2015 TOR, was issued by the 1<sup>st</sup> respondent on 10.08.2015 and in the O.A.No.96 of 2015, the NGT passed the final order dated 07.09.2015, issuing directions to the 1<sup>st</sup> respondent to pass final orders on the application for grant of EC. The public hearing was conducted by the A.P.State Pollution Control Board (in short, the Board) on 29.04.2016. The petitioner made a representation to the EAC in May, 2016 in respect of its Mining Project. The EAC recommended issuance of EC subject to the final decision of the 1<sup>st</sup> respondent. The petitioner's further case is that the Regional Director of MOEF & CC, Chennai inspected the minings on 08.07.2016 and gave a report dated 16.08.2016 in petitioner's favour. A joint inspection was also made by the Revenue and Forest Officials during May, 2016 and a report dated 24.01.2017 was also sent to the District Collector, Nellore observing that the lease area was altered but the mining was in the leased area

only and there was no encroachment. Another joint inspection of the mining area was conducted by the Forest and Revenue officials on 14.03.2017 and 15.03.2017 and a report was sent to the MOEF & CC, observing that the Sy.No.696 was never classified as reserve forest and it was only Sy.No.692 which was a reserve forest and no mining had taken place in the reserve forest. Further, in Sy.No.696, measuring Ac.92.40 cents was classified as forest reserve poromboke but was subsequently changed as jungle poromboke. The same was presently treated as 'Adavi' (jungle) poromboke. Sy.No.696 to an extent of about Ac.20.00 cents was classified as government dry land, during the lease period which was surrendered. The lease of the petitioner was renewed vide order dated 03.02.2017 up to 2035.

6. The petitioner's further case is that the 7<sup>th</sup> respondent filed W.P.(PIL) No.22 of 2017 before the High Court for the State of Telangana and Andhra Pradesh, alleging that Sy.No.696 was classified as reserve forest and fell in the lease area of the petitioner and therefore the lease should not be renewed. The petitioner had also filed O.A.No.187 of 2017 against the 1<sup>st</sup> respondent, for not granting EC, which was disposed of by the NGT directing the 1<sup>st</sup> respondent to pass appropriate orders in

accordance with law. The 1<sup>st</sup> respondent issued a letter dated 05.04.2018 that the petitioner would have to apply under violation category. Though, the petitioner's case is that there was no violation, still the petitioner submitted the application under the violation category. The proposal of the petitioner was placed before the EAC in April, 2019 which recommended for grant of EC observing that the petitioner should furnish a bank guarantee for a sum of Rs.63,50,000/- in order to satisfy the criteria in the notification dated 14.03.2017. The 1<sup>st</sup> respondent thereafter granted EC to the petitioner on 16.04.2020.

**(ii). Challenge before National Green Tribunal:**

7. The grant of EC dated 16.04.2020 was challenged by the present 7<sup>th</sup> respondent by filing appeal before the NGT under Section 16 of the N.G.T.Act.

8. Before the NGT, in response to the appeal filed by the present 7<sup>th</sup> respondent, the petitioner herein, filed counter raising the objections inter alia that the appeal was not maintainable. It was also pleaded that after ensuring that all the requirements were satisfied the 1<sup>st</sup> respondent granted the EC. The petitioner already paid a fine of Rs.1,00,000/- in C.C.No.456 of 2018, for carrying on mining operations without obtaining EC, as also after

issuance of additional ToR by the 1<sup>st</sup> respondent. The petitioner had also furnished the bank guarantee, as was recommended by the EAC for a sum of Rs.63,50,000/- in order to satisfy the criteria of the violation category.

9. The NGT allowed the Appeal vide order dated 15.11.2021, with detailed directions, which shall be referred shortly, and kept the E.C dated 16.11.2020 in abeyance.

10. The petitioner has filed this Writ Petition challenging the order of the National Green Tribunal dated 15.11.2021.

**iii. Case of the respondents as per the Counter Affidavit:**

11 Respondents 3 to 6 filed counter affidavit. The stand taken is that the Director of Mines and Geology, Ibrahimpatnam vide notice dated 03.02.2017 decided in principle to grant second renewal of quarry lease for Silica Sand in favour of the petitioner for a further period of 20 years with effect from 04.09.2015. It was not correct to say that the lease was renewed upto the year 2035. In compliance of the said notice dated 03.02.2017, the petitioner had submitted approved mining scheme, environmental clearance, consent for establishment and consent for operation, and the renewal was under consideration. Their further stand is that pursuant to the order of the N.G.T in Appeal No.19 of 2020

necessary directions have been issued to the concerned authorities to take immediate necessary action. They have also submitted that the technical staff conducted survey and inspection of the subject quarry lease area of the petitioner, initially on 19.12.2022 to 21.12.2022, which submitted the report. Further in obedience of the order dated 15.11.2021, the mining operations over the subject leased area of the petitioner were stopped and the dispatch permits for transportation of Silica sand were not being issued.

12. The respondent No.7 has also filed the counter affidavit. The objection has been raised with respect to the maintainability of the writ petition on the ground that there is statutory alternative remedy under Section 22 of the N.G.T Act. The 7<sup>th</sup> respondent has supported the impugned order of the N.G.T submitting that the same was passed in a statutory appeal under Section 16 of the N.G.T Act. The appeal was maintainable as the 7<sup>th</sup> respondent herein (the appellant before the N.G.T) was aggrieved person being an affected person and had every right to challenge the environmental clearance granted to the petitioner in violation of the prescribed procedure, as also without complying with the judgment of the Hon'ble Apex Court in the **Common**

**Cause vs. Union of India**<sup>1</sup>. The further stand of the 7<sup>th</sup> respondent is that there is no violation of the principles of natural justice in passing the order by the N.G.T before which the petitioner had the ample opportunity of hearing and after hearing the present petitioner, the order was passed by the N.G.T.

13. The 7<sup>th</sup> respondent has filed an additional counter affidavit as well, raising the plea that the mining operations were conducted by the petitioner without having environmental clearance which was required under the provisions of the notification of 1994-2006. He has referred to the report dated 24.01.2017 of the inspection of the mining sent to the District Collector submitting that in the said report several adverse observations were made against the petitioner including the one that the mining activity was done without leaving safety zones and the other that there shall be an acute scarcity of water both for irrigation and drinking water due to extensive mining and machinery.

14. On 23.04.2025, this Court passed the order inter alia directing the counsel for the respondents 1 and 2 to get instructions on the point “whether any decision has been taken by

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<sup>1</sup> (2017) 9 SCC 499

the Ministry of Environment, Forest and Climate Change pursuant to the direction of the N.G.T". The respondents 1 and 2 have filed the memo dated 20.06.2025 mentioning the action taken by the respondents 1 and 2 pursuant to the direction of the N.G.T in its judgment dated 15.11.2021. But, we find that those correspondences mainly are of the date prior to the judgment of the N.G.T. Another memo has been filed, in which, in substance, what has been stated is that "at present, the process of complying with the N.G.T judgment requires some more time."

(II). **Submissions of the learned counsels:**

15. Sri P. Veera Reddy, learned senior counsel for the petitioner submitted that the appeal by the present 7<sup>th</sup> respondent before the NGT was not maintainable under Section 16 of the NGT Act. The 7<sup>th</sup> respondent is not an aggrieved person within the meaning of Section 16, so as to challenge the grant of EC by the 1<sup>st</sup> respondent in favour of the petitioner. The appeal was not maintainable and so the order passed thereon by the NGT is without jurisdiction.

16. Learned senior counsel for the petitioner submitted that on various points, the NGT recorded the finding in favour of the petitioner, but still allowed the appeal of the 7<sup>th</sup> respondent. He

submitted that the grounds on which the EC has been kept in abeyance and the matter has been remitted for fresh consideration, were not even informed to the petitioner so, against those grounds the petitioner was not afforded any opportunity of hearing. The impugned order therefore, suffers from violation of the principles of natural justice, and deserves to be set aside.

17. Sri P. Veera Reddy, learned senior counsel for the petitioner further submitted that the Project is for Silica Sand Mine which is entirely different mineral to which the Sustainable Sand Mining Management Guidelines, 2016 (in short SSMMG, 2016) would not be applicable, which guidelines in his submission are applicable only to recoveries of sand from the rivers.

18. Learned counsel for the petitioner further submitted that the E.C was granted prior to the notification dated 07.07.2021 and consequently notification of 2021 should not govern the petitioner's case. He further submitted that the EC having been granted under the notification of 2017, it was not open for the Tribunal to have kept it in abeyance with the directions issued for consideration on the points mentioned in the order of N.G.T. He submitted that the E.C (s) granted upto the date of judgment in

**Vanashakti vs Union of India**<sup>2</sup> remained unaffected by and in terms of the said judgment itself.

19. Learned counsel for the petitioner placed reliance on the following judgments:-

1. Rajeev Suri vs Delhi Development Authority and others<sup>3</sup>
2. Union of India vs Parashotam Das<sup>4</sup>
3. Ayaabkhan Noorkhan Pathan vs State of Maharashtra<sup>5</sup>
4. Madhya Pradesh High Court Advocates Bar association vs Union of India<sup>6</sup>
5. Rana Sengupta vs Union of India<sup>7</sup>
6. S. Narahari vs S. R. Kumar<sup>8</sup>
7. JasbhaiMotibhai Desai vs Roshan Kumar<sup>9</sup>
8. Electrosteel Steels Ltd vs Union of India<sup>10</sup>
9. Pahwa Plastics Pvt. Ltd. vs Dastak NGO<sup>11</sup>
10. State of Uttar Pradesh vs Uday Education and Welfare Trust<sup>12</sup>

**ii) For the respondent No.7:**

20. Sri Ganta Rama Rao, learned senior advocate assisted by Sri Kambampati Ramesh Babu, learned counsel for the 7<sup>th</sup>

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<sup>2</sup> 2025 SCC OnLine SC 1139

<sup>3</sup> (2022) 11 SCC 1

<sup>4</sup> (2025) 5 SCC 786

<sup>5</sup> (2013) 4 SCC 465

<sup>6</sup> 2022 SCC OnLine SC 639

<sup>7</sup> 2013 SCC OnLine NGT 31

<sup>8</sup> (2023) 7 SCC 740

<sup>9</sup> AIR 1976 SC 578

<sup>10</sup> (2023) 6 SCC 615

<sup>11</sup> 2022 SCC OnLine SC 362

<sup>12</sup> 2022 SCC OnLine SC 1469

respondent raised a preliminary objection, that the order impugned is subject to appeal before the Hon'ble Apex Court. There is alternative remedy under Section 22 of the NGT Act and so the writ petition deserves not to be entertained.

21. Sri Ganta Rama Rao, learned senior counsel further submitted that the NGT for the well recorded reasons viz. that, various relevant aspects were not considered by the EAC including no-detailed study conducted by the Project Proponent, and that without ascertaining whether any District Survey was conducted, the EC was recommended and granted which was in violation of the SSMM Guidelines, 2016, kept the EC in abeyance and remitted the matter for fresh consideration. So, there is no illegality in the order of NGT, which calls for no interference in the exercise of writ jurisdiction.

22. He further submitted that the respondent No.7 had the locus being an aggrieved person within the meaning of Section 16 of the N.G.T Act, to maintain the appeal. So, the order of the N.G.T is not without jurisdiction. He further submitted that in any case the N.G.T has suo moto power to take note of the environmental violations and threats and so even if the appeal be

not maintainable, the order of the N.G.T would be within jurisdiction.

23. Learned counsel for the respondents submitted that the procedure even under the notification of 2017 was not followed. The expert committee did not act according to the procedure prescribed in making the recommendations and therefore the Tribunal having found the irregularities committed and the necessary measures not having been adopted and the relevant considerations not having been kept in view, the Tribunal was right in passing the impugned order and keeping the E.C in abeyance. So, the submission based on the no applicability of the notification of 2021 is unsustainable.

24. Learned counsel for the respondents placed reliance on the following judgments:-

1. Municipal Corporation of Greater Mumbai<sup>13</sup>
2. Directorate of Mines and Geology vs Saidas Khorjuvekar<sup>14</sup>
3. Mehra Bal Chikitsalaya Evam NavjatShishu I.C.U. vs Manoj Upadhyay<sup>15</sup>
4. Cicily Kallarackal vs Vehicle Factory<sup>16</sup>

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<sup>13</sup> 2021 SCC OnLine SC 897

<sup>14</sup> AIROnline 2021 Bom 4360

<sup>15</sup> SLP No. 4127/2021

<sup>16</sup> (2012) 8 SCC 524

5. Madhya Pradesh High Court Advocates Bar association vs Union of India. (2022 SCC OnLine SC 639)
6. Mantri Techzone Pvt. Ltd. vs Forward Foundation<sup>17</sup>

**iii) Reply submissions:**

25. In response, Sri P. Veera Reddy, learned senior counsel for the petitioner submitted that the alternative remedy is no bar to the maintainability or entertainability of the writ petition under Article 226 of the Constitution of India. Further, the challenge to the order of the NGT is on the ground of violation of the principles of natural justice and being without jurisdiction. The writ petition therefore deserves to be entertained.

26. He further submitted that the writ petition was filed in the year 2021 and at this stage after four years, the petitioner deserves not to be relegated to the alternative remedy of appeal.

**III. Points for consideration:**

27. The following points arise for our consideration and determination:

(A) Whether the writ petition against the order of the N.G.T is not maintainable? And if maintainable, it should or should not be entertained?

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<sup>17</sup> (2019) 18 SCC 494

- (B) Whether the impugned order of the N.G.T is without jurisdiction on the argument that the appeal by 7<sup>th</sup> respondent was not maintainable under Section 16 of the N.G.T Act?
- (C) Whether the impugned order of the N.G.T violates the principles of natural justice?
- (D) Whether the order of the N.G.T calls for interference in the exercise of the writ jurisdiction?

28. We have considered the aforesaid submissions and perused the material on record.

#### **IV. Analysis:**

##### **Point-A: Maintainability and entertainability of the writ petition:**

29. We would first consider the preliminary objection with respect to the maintainability of the writ petition against the order of the N.G.T, in the light of the submission advanced by the learned counsel for the 7<sup>th</sup> respondent in view of the availability of statutory remedy of appeal under Section 22 of the N.G.T.

30. Learned counsel for the 7<sup>th</sup> respondent placed reliance in **Directorate of Mines and Geology** (supra). The Bombay High Court held that the scheme of N.G.T Act should not be derailed by taking recourse to proceed under Article 226 of the Constitution

of India and that the judicial prudence demands that the writ Court refrains from exercising its jurisdiction. It was observed that the appeal under Section 22 of the NGT Act is not a matter of right and an appeal can be entertained on one or more of the grounds mentioned in Section 100 of the Code of the Civil Procedure, but that by itself would not warrant interdiction by a writ court. The Bombay High Court declined to exercise the writ jurisdiction and left the petitioners to avail the remedy of appeal before the Apex Court or file the review before the Tribunal as provided by the N.G.T Act in accordance with law. He contended that in view of the remedy of appeal under Section 22 of the NGT Act, the writ petition should not be entertained.

31. Learned counsel for the 7<sup>th</sup> respondent further placed reliance in **Cicily Kallarackal** (supra), in which it was held that it is not appropriate for the High Courts to entertain writ petitions under [Article 226](#) of the Constitution of India against the orders passed by the Commission under the [Consumer Protection Act, 1986](#), once the legislature had provided for a statutory appeal to a higher court. It cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to a higher court and entertain writ petitions under [Article 226](#) of the Constitution of

India. Reliance was also placed reliance in **Mehra Bal Chikitsalaya Evam Navjat Shishu** (supra), in which also, the principle of law as laid down in **Cicily Kallarackal** (supra) was restated and the writ petition was dismissed on the ground of maintainability in the light of the availability of the statutory alternative remedy.

32. So far as the maintainability of the writ petition against the orders of the Tribunal is concerned, the law has been well settled by the Hon'ble Apex Court. The existence of the statutory alternative remedy is no bar to the maintainability of the writ petition under Article 226 of the Constitution of India. That does not take away the jurisdiction of this Court though ordinarily, in view of the statutory alternative remedy, this Court would be reluctant in invoking the jurisdiction and would first require the petitioner to avail the statutory alternative remedy. But, that is not an absolute bar neither to the maintainability nor to the entertainability of the writ petition. The exceptions to the doctrine of exhaustion of alternative remedies are also well laid down, *inter alia*, when the challenge is on the ground of the impugned order being without jurisdiction; having been passed in violation of the principles of natural justice, violation of fundamental rights;

utra vires, as laid down in the cases *inter alia Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai*<sup>18</sup> and other various pronouncements of the Hon'ble Apex Court.

33. In **Madhya Pradesh High Court Advocates Bar Association** (supra), one of the issues was:

“A. Whether the NGT seized the High Court's jurisdiction under Section 14 & 22 of the NGT Act.”

34. The Hon'ble Apex Court referring to the judgment in **L.Chandra Kumar vs. Union of India**<sup>19</sup>, reiterated that the NGT like any other Tribunal is within the jurisdiction of the High Court (s) under Article 226 and 227 of the Constitution of India but it further observed that while exercising such jurisdiction the courts necessarily exercise due discretion on whether to entertain or to reject the petition as per the test broadly laid down in **Whirlpool Corporation** (supra). The Hon'ble Apex Court further held that there is nothing contained in the N.G.T Act, either impliedly or explicitly which seized the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India. The power of judicial review remains intact and unaffected by the NGT Act.

35. Paras 18 to 22 and 45 of **Madhya Pradesh High Court Advocates Bar Association** (supra) read as under:

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<sup>18</sup> (1998) 8 SCC 1

<sup>19</sup> (1997) 3 SCC 261

“18. With the above prefatory contexts in mind, we may now look at the challenge.

#### ISSUE WISE DISCUSSION

A. Whether the NGT ousts the High Court's jurisdiction under Sections 14 & 22 of the NGT Act?

19. Insofar as the contention of the petitioners that there is ouster of jurisdiction of the High Courts under Article 226 and 227 of the Constitution because of Sections 14 & 22 of the NGT Act, it must be recalled that in *L. Chandra Kumar v. Union of India* [supra], it has been categorically declared that the power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. The following pertinent opinion rendered by the 7 Judges' bench of this Court must be remembered on this aspect:—

“78.....We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

20. Apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Article 226 and 227 jurisdiction of the High Courts, the learned Attorney General on

behalf of the Union of India has also made submissions consistent with L. Chandra Kumar [supra] and conceded the legal position.

21. It can further be noted that in terms of the above ratio in L. Chandra Kumar\* [supra], the High Courts have been entertaining petitions under Article 226 and 227 of the Constitution against orders of the NGT. While exercising such jurisdiction, the Courts necessarily exercise due discretion on whether to entertain or to reject the petition, as per the test broadly laid down in *Whirlpool Corp. v. Registrar of Trade Marks, Mumbai*;

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

22. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners.

45. In consequence of the above analysis, our conclusions are,

A. The National Green Tribunal under Sections 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution."

36. In **Parashotam Dass** (supra), one of the issues was with respect to the power of High Court under Article 226 of the Constitution of India with respect to the order of the Armed Forces Tribunal, against which the remedy of appeal was provided to the Supreme Court under the Armed Forces Tribunal Act, 2007. The Hon'ble Apex Court reiterated that the power of High Court under Article 226 of the Constitution of India is not inhibited.

37. Paras 25 and 26 of **Parashotam Dass** (supra) read as under:

"25. While we agree with the aforesaid principle, we are unable to appreciate the observations in the case of Major General Shri Kant Sharma & Anr. (supra), which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasized in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.

26. On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-a-vis different tribunals, though it has also produced some successes), the same was tested in *L. Chandra Kumar* (supra) case before a Bench of seven Judges of this Court. Thus, while upholding the principles of "Tribunalisation" under Article 323A or Article 323B, the Bench was unequivocally of the view that decisions of Tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42nd Constitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition. The need for the observations in the five-Judges' Bench in *Royer Mathew* (supra) case qua the Armed Forces

Tribunal really arose because of the observations made in Major General Shri Kant Sharma & Anr. (supra) Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution."

38. We thus hold that the writ petition is maintainable. Further, as the challenge is on the grounds of order being without jurisdiction and in violation of the principles of natural justice, and further as the writ petition is pending since 2021 with the affidavit exchanged, we entertain the writ petition as well.

**Point-B( Order if without jurisdiction):**

39. The submission of the learned counsel for the petitioner is that the 7<sup>th</sup> respondent herein does not fall under the expression 'person aggrieved by' so as to maintain the appeal under Section 16 of the N.G.T Act and so, the order passed by the N.G.T in the appeal of 7<sup>th</sup> respondent is without jurisdiction.

40. Section 16 of the N.G.T Act read as under:

**Section 16. Tribunal to have appellate jurisdiction.**

**Any person aggrieved by,--**

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

- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or

operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003), may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

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

41. Section 16 of the N.G.T Act thus provides that 'any person aggrieved by' an order, decision, direction etc. under Clauses (a) to (j), prefer an appeal to the Tribunal.

42. In **Jasbhai Motibhai Desai** (supra), on the point of locus standi, the Hon'ble Apex held that an applicant may ordinarily fall in any of these categories; i) **persons aggrieved**; (ii) strangers; and (iii) busybodies/meddlesome interlopers. The Hon'ble Apex Court observed that there is a distinction between the first and second categories of applicants, though real, is not always well-demarcated. The Hon'ble Apex Court laid down some broad tests, to determine whether the applicant is a person aggrieved,

observing that those tests were not absolute or ultimate paragraphs 36 to 38 read as under:

36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories:

(i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

38. To distinguish such applicants from “strangers”, among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person “against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?”

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?”

43. In **Ayaaubkhan Noorkhan Pathan** (supra), the Hon'ble Apex Court held that only a person who has suffered or suffers from a legal injury can challenge the act/action/order, etc in a court of law. It was held that a person who suffers the grievance must show how he has suffered legal injury.

44. Paras 9 to 17 **Ayaaubkhan Noorkhan Pathan**

(supra) read as under:

**Person aggrieved:**

“9. It is a settled legal proposition that a stranger cannot be permitted to mediate or to prosecute or to defend, or to argue or to file an appeal or a petition within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A legal right is an interest which the law protects-an interest enjoyment of which the law protects. It must be a legally enforceable claim right available for enforcement, on the basis of which writ jurisdiction is exercised. The cause of action must, therefore, be germane to the statutory duty by a public body, using its writ jurisdiction at the behest of a person, complaining of a wrong and the court can also go into the question of his on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the Court. It is open to a person to seek such extraordinary jurisdiction that the relief prayed for must be one to promote a cause and he must be a person who is or is to be, prejudicially affected by the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the person complaining of the infraction of infraction of such right and approaches the Court for relief as regards the State, 1999) 7 SCC 725, 746, paras 46 & 47; \*M.S. Jayaraj v. Commissioner of U.P., Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Rajendra v. State of A.P., 2008) 13 SCC 128,

143, paras 33 & 34 and *Ravi Yashwant Assn. v. SCC Sekhar*).

10. A "legal right" means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The existence of some tangible interest is a sine qua non for any person, be it a psychological or an pecuniary injury, to be an aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (See: *Kumaun Mandal Vikas Nigam Ltd. v. Home Insurance Co. of New York and State of Rajasthan v. Union of India*.)

11. In ***Anand Sharadchandra Oka v. University of Mumbai***, (AIR 2008 SC 1289), a similar view was taken by this Court, observing that, if a person claiming relief is not a legally aggrieved person, he is not entitled to be a person aggrieved regarding the selection or the election of other persons.

12. In ***A. Subhash Babu v. State of A. P.***, (AIR 2011 SC 3031), this Court held:

"25. ... The expression 'person aggrieved' cannot be confined to any elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the infringement is alleged, the nature of the breach or the wrong done, nature and extent of the interest of the informant and the nature and the extent of the prejudice suffered by the informant/complainant."

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the petition has to be filed by the person who is in illegal stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide Charanjit v. Delhi University v. Union of India, Sunil Batra v. Delhi Admn. v. Nirmal Choudhary v. State of Bihar, Simranjit Singh Mann v. Union of India, Karamjeet Singh v. Union of India, and Rishu v. State of U.P.)

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by “meddlesome persons” or “busy-bodies who do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social justice regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a necessary connect within the framework of the judicial system must be provided. Whenever any public interest is involved, the court must examine the case to ensure that there is, in fact, genuine public interest involved. The court must restrain strict vigilance to ensure that there is no abuse of the process of court and that, “outlandish meddlesome bystanders are not granted a visa”. Many are legal disputants, others new prophets of non-redressed grievances, but the court should make an earnest endeavour to take the broad facts of where the subjective purpose of the litigant lies. The court must (Vide P.S.R. Sadhanantham v. Arunachalam, Dalip Singh v. State of U.P., State of Uttarakhand v. Balwant Singh Chauhan and Amar Singh v. Union of India.)

15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide Duryodhan Sahu v. Jitendra Kumar Mishra, Dattaraj Natthuji Thaware v. State of Maharashtra and Neetu v. State of Punjab (2007) 10 SCC 614.)

16. In Ghulam Qadir v. Special Tribunal, this Court considered a similar issue and observed as under: (SCC p. 54, para 38)

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception to the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person is receding, *inter alia*, because of the change which the development of constitutional law, as our country and the constitutional courts are, now adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. In other words, if the person is found to be an offerer, a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi." (emphasis added).

45. In **Thammanna** (supra), the Hon'ble Apex Court held that the expression 'person aggrieved' may vary according to the context of the statute at the facts of the case, nevertheless normally, a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something. Para 16 of **Thammanna** (supra) reads as under:

“16. Although the meaning of the expression ‘person aggrieved’ may vary according to the context of the statute at the facts of the case, nevertheless normally, “a ‘person aggrieved’ must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.”

46. In **Rana Sengupta** (supra), the NGT, New Delhi, considered the meaning of the 'aggrieved person' and the 'locus standi' to prefer the appeal before the N.G.T under Section 16 of the N.G.T Act was considered. It was held that the expression "person aggrieved by" imply some or other reason which might have demonstrated that such person is directly or indirectly

concerned with the adverse environmental impact which is likely to be caused due to granting of EC by the competent authority.

47. In view of the above, the law on the said point can be summarised to the effect that a person who claims to intervene, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property cannot be permitted to intervene in the affairs of others.

48. The 7<sup>th</sup> respondent in his appeal filed before the Tribunal specifically stated in para 1 thereof that he was resident of the concerned village. The 7<sup>th</sup> respondent being the resident of the village concerned, if for any mining activity, the EC was issued and violating norms such person will certainly be a person aggrieved within the meaning of Section 16 of the N.G.T Act. The 7<sup>th</sup> respondent cannot be said to be a stranger. It can also not be said that he has no legal right. Right to air, water, free of pollution is a fundamental right of a person enshrined under Article 21 of the Constitution of India. In case of any infringement thereof or likely to be infringed, such person shall certainly have a right to challenge the action and would have the locus standi being 'aggrieved person' within the meaning of Section 16 of the N.G.T

Act. In **Thammanna** (supra), it was observed that the meaning of the expression 'person aggrieved' may follow according to the context of the statute at the facts of the case. In the context of the environmental matter, the resident of the particular place would have certainly the right to file the appeal under Section 16 of the N.G.T Act. In **Pranav Kumar vs. State of U.P and 4 others**<sup>20</sup>, it was held as under:

"It cannot be said that the petitioner who is resident of same village where mining operations are going on, effecting the pollution and environment, has no right to raise any voice. As noted above, the petitioner has made a complaint and on his complaint, the mining operation of the respondent No.5 was stopped....."

In the said case, it was further held that ".....as noted above, the present is a case where operation by the respondent No.5 in the village where the petitioner is residing has a direct impact on the environment and pollution. The petitioner who is affected by environmental degradation and increases in pollution cannot be said to be a person who has no interest in the subject matter....."

So, it cannot be said that the impugned order passed by the N.G.T on the appeal filed by the 7<sup>th</sup> respondent was without jurisdiction.

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<sup>20</sup> 2013 SCC OnLine All 6052

**Point-C violation of principles of natural justice and Point-D order of the N.G.T:**

49. The submission of the learned counsel for the petitioner is that there is violation of the principles of natural justice. The submission proceeds on the ground that the Tribunal had passed the order taking into consideration various aspects, which were not made known to the petitioner. The petitioner had no opportunity with respect to those aspects which violates the principles of natural justice of opportunity of hearing. Connected to the above submissions are the other submissions to challenge the impugned order. We shall consider those submissions together under those heads.

50. We shall consider the order on merits for which we refer to the points framed; the reasons/findings, and the justification recorded by the NGT in its order.

51. The NGT framed the following points for consideration:

- (i) Whether the Environmental Clearance (EC) granted in favour of 7<sup>th</sup> respondent is liable to be set aside for any of the reasons stated in the Appeal memorandum and the submission made by the counsel for the appellant?
- (ii) Whether there is any procedural irregularities committed by MoEF&CC in considering the application as a violation case as per the procedure provided in the notification

issued in this regard on 14.03.2017, if so, what is the nature of further directions to be issued by this Tribunal in this regard?

(iii) Whether the MoEF&CC was justified in relegating the power of calculating the compensation amount as directed by the Hon'ble Apex Court in Common Cause Case to the Mining Authority without exercising that power by themselves?

(iv) Relief and costs."

52. On the aforesaid points 1 to 4, the NGT recorded findings to state briefly, to the following effect:

01. So, the contention that still the appellant's land is included in the lease area appears to be not correct (vide para 100).

02. So, the averments in the memorandum of appeal that there was suppression of material facts, appears to be not correct (para 101)

03. So, it cannot be said that on a ground of alleged suppression of material fact, proper appraisal could not be done by the EAC and the same is not correct (Para 102).

04. So, on the ground that there was no public hearing conducted for the violation category and thereby EC granted, is vitiated, cannot be accepted, as there was earlier public hearing on the petitioner's previous application and also the material collected on the basis of the compliance filed after getting reports, will be sufficient and there is no necessity to conduct any further public hearing as it cannot be said to be a new application but only a conversion of the original application to violation category and it can only be said as continuation of earlier application and as such non conduct of further public hearing is not fatal and on

that ground the EC need not be set aside or to be sent for further public hearing to get further opinion on these subjects (para 103).

53. With respect to the contentions of the petitioner herein (7<sup>th</sup> respondent before the NGT), the N.G.T observed and held as under to be stated briefly, as in the judgment of the NGT:

01. So, the MOEI was perfectly justified in treating this as a violation category and having obtained the EC under the violation category by filing an application and want to enjoy the benefit of EC, the 7<sup>th</sup> respondent (the present petitioner) is stopped from contending that he will not fall under the violation category and such contention raised by the 7<sup>th</sup> respondent is unsustainable and the same is rejected. (Para 104).

02. The submission of the 7<sup>th</sup> respondent (petitioner herein) that the common cause case is not applicable and it applies to the State of Orissa alone and till the EAC was appointed by the Government in terms of the common cause case judgment and the recommendations of such committee-7<sup>th</sup> respondent was not liable to comply with the same, was not acceptable, as also the contention that the dictum laid down in the common cause case was modified in **Alembic Pharmaceuticals case** by the Hon'ble Apex Court. (Para No.105). The NGT observed that the 7<sup>th</sup> respondent (petitioner herein) could not avoid the liability fixed under the common cause case.

03. The observations made by the NGT in previous O.A.No.96 of 2015, that the mining and mineral was included in

the EIA notification with effect from 01.12.2009 and from that date onwards the liability to obtain the EC was mandatory, and only from that date onwards it could be said to have been violated the EC condition, was also not accepted by the NGT in the present Appeal No.19 of 2020 (S2).

04. The contention of the 7<sup>th</sup> respondent (petitioner herein) that it was not liable to pay any compensation and if at all liable only from 01.12.2009, was rejected by the NGT (Para No.106).

54. The NGT also recorded in detail, in its judgment the further relevant aspects/proceedings as under:-

01. That there was lethargic attitude on the part of the Mining Department in directing the natural resources against over exploitation and even after the order/recommendation dated 23.01.2017, against the order imposing penalty of Rs.55,28,293/- by the Government and the matter remitted to the authority concerned for fresh consideration, no action was taken for considerable period to adjudicate the aspect of penalty payable by the present petitioner. The petitioner deposited the amounts only under protest and not by accepting the liability.

02. That the excess mining if any, could not be assessed by the Mining Department within a reasonable time and unless that amount was also paid, no Mining Operation could be permitted. The Expert Appraisal Committee should have assessed this amount also, instead of relegating the work to the State Department without providing any supervisory mechanism as to whether that amount has been paid or not, as a condition in the EC, will go to the root of the EC itself which also showed the non-application of mind of that aspect by the EAC as also by the MoEF&CC.

03. That no compensation was assessed for the loss occurred due to cutting of 1607 cashew trees. Instead of re-planting cashew trees, they accepted the mining plan of planting casuarina trees in that place without considering as to whether it will be substitute for ecological loss to environmental and whether it will have any impact on the ground water level and affect the spring channel that is being available in that area, as also the liability to pay compensation for the trees apart from the undertaking to replant the same as an afforestation process applying the decision of the Hon'ble Apex Court in **T.N. Godhavarman Thirumalpad (2008) 7 SCC 126** (Para 115).

04. That the EAC did not consider the impact of Silica Mines in that area in a right perspective though the mining plant proceeds by the Project Proponent showed that, it was a unique eco sensitive area and certain flora and fauna had to be protected, under the head, Geology, Hydrology, Demography, Ecology of Coastal Dunes, Formation of Dunes and Eco Systems.

05. That the EAC did not ascertain as to whether any District Survey had been conducted by the authorities as per the guidelines provided under the Sustainable Sand Mining Management Guidelines, 2020, and the Enforcement and Monitoring Guidelines for Sand Mining, 2020.

06. That the impact of the large scale mining being undertaken in that area for the last 40 years had not been properly considered and no proper study had been conducted in that regard.

07. That the EAC as well as the Mining Department had only relied on the study conducted by the Project Proponent themselves. The aspect of, there being progressive increase of permissible quantity to be undertaken by the lessee and ultimately by virtue of the mining lease and EC, the project proponent was permitted to mine 3,40,000 Silica Sand from the

Unique Eco Sensitive Area, around ten times of original quantity.

This aspect was also not properly considered by the EAC or by MOEF and CC.

08. That the aspect that mechanized mining was not permissible, was not considered by the EAC which also did not consider as to whether so much quantity of sand could be mined, mainly using small escalation policy during the mining period.

55. The N.G.T concluded that the Expert Appraisal Committee as well as the MOEF and CC had not even considered their own Sustainable Sand Mining Management Guidelines, 2016; the directions issued by the NGT in similar nature of sand mining leases, regarding the responsibility of the authorities to conduct district survey of the sand available, the rate of depletion and replenishment of sand in that area so as to ascertain the quantity available for mining and how much quantity could be permitted for mining in such areas, before permitting a particular quantity of sand to be mined from the mining area. The N.G.T observed that the expert body, is an expert body intended to protect the environment, which ought to have but did not properly consider the various aspects and recommended accepting the Environmental Management Plan submitted by the Project

Proponent without properly examining the reports of various District Collectors. The N.G.T concluded that under the circumstances a detailed study had to be conducted by the Project Proponent, which had to appraise the EAC as well as the MOEF and CC, before ascertaining for allowing such type of mining of huge quantity.

56. The NGT therefore allowed the appeal in part and kept the EC dated 16.04.2020 in abeyance as follows:

“130. In the result, the appeal is allowed in part and disposed of as follows:-

- (i) The Environmental Clearance (EC) granted by the 1 respondent vide Order No. F.No.23-238/2018-IA.II(V) dated 16.04.2020 in favour of the 7th respondent is directed to be kept in abeyance for a period of 6 (Six) months or such period till the Ministry of Environment, Forests & Climate Change (MoEF&CC) or take further decision after completion of the enquiry as directed by this Tribunal and compliance with the direction as directed by the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the additional conditions to be imposed whichever is later
- (ii) The Ministry of Environment, Forests & Climate Change (MoEF&CC) is directed to revisit the question of assessing the compensation for illegal mining without obtaining Environmental Clearance (EC) as directed by the Hon'ble Apex Court in Common Cause case on the basis of the admitted quantity of minerals extracted and

transported during that period and impose a condition that without paying this amount, the Environmental Clearance (EC) will not come into effect and that too only on satisfaction of the Regional Office of the Ministry of Environment, Forests & Climate Change (MoEF&CC) that the amount has been paid as directed. With further direction to the Mining Department, State of Andhra Pradesh to ascertain as to whether any excess mining has been done in violation of the mining lease and also under the Metalliferous Mines Regulation Rules, 1961 and if so, recover the amount also from the project proponent before permitting them to carry out the mining operation on the basis of the Environmental Clearance (EC) to be granted after imposing additional conditions.

(iii) The Ministry of Environment, Forests & Climate Change (MoEF&CC) is also directed to revisit on the question of imposing compensation for cutting of 1607 cashew trees, apart from fixing the amount for Environment Management plan and implementation of the same and also ascertain as to whether planting of Casuarina Trees in the place of cashew trees will be a substitute for such ecological loss, after ascertaining the impact on the ground water level and its impact on the spring channel available in that area and thereafter, reassess the amount of Bank Guarantee to be furnished for implementation of the Environment Management Plan. But that should not include the NPV (Net Present Value) of the cashew trees that have been cut and also ascertain as to whether this has been cut from Sy.No.696 of that village which was identified as the Adavi

Poramboke and later included in the revenue records and omitted from the mining lease applying the principles laid down by the Apex Court in T.N Godhavarman Thirumalpad case taking this as a deemed forest, so as to apply the Forest (Conservation) Act, 1980.

- (iv) The MoEF&CC is directed to issue further direction to get the details regarding the district survey conducted by the authorities in that area regarding the availability of sand as has been directed by the MoEF&CC in the Sustainable Sand Mining Management Guidelines, 2016 and also by the Principal Bench of National Green Tribunal, New Delhi in several cases of this nature.
- (v) After obtaining the same, they are directed to conduct a further study as to how much sand will be available for mining considering the nature of replenishment and without affecting the unique Dunal wetland ecosystem available in that area.
- (vi) The MoEF&CC is also directed to consider the question as to whether in an area like this, mechanized mining can be permissible, as over exploitation of natural resources of such nature available in that area will have adverse impact on the Dunal wetland ecosystem.
- (vii) After considering these aspects, the MoEF&CC is directed to form an opinion as to whether the sand mining could be possible in that area to such a larger extent and if not, to what extent it can be permissible and the methodology to be adopted for conducting mining and if mechanized process is permissible, what are all the additional conditions to be imposed for that purpose, taking into account the number of vehicles that are likely

to be used for the purpose of transporting the same and consequential noise as well as air pollution that is likely to be caused on account of the same and the mitigating circumstances to be imposed, if it is permissible applying the "Precautionary Principle and then fix the quantity of mining that could be permissible which is safe for the purpose of protecting environment and the unique Dunal wetland ecosystem as has been admitted by the project proponent themselves in The Environment Management Plan. The Corporate Environment Responsibility project should also be reexamined to incorporate activities for sustainability of the Dunal wetland ecosystem.

(viii) After considering all these aspects, the Expert Appraisal Committee (EAC) as well as the Ministry of Environment, Forests & Climate Change (MoEF&CC) are directed to impose additional stringent conditions that till these amounts are paid, the Environmental Clearance (EC) will not come into effect and the project proponent has to satisfy the Regional Office, Ministry of Environment, Forests & Climate Change (MoEF&CC) at Vijayawada which is having jurisdiction over the State of Andhra Pradesh before permitting the project proponent to carry out the mining operation on the basis of the Environmental Clearance (EC) granted

(ix) The Director of Mines and Geology, State of Andhra Pradesh is also directed to expedite the process of assessing the excess mining done as early as possible at any rate within a period of 6 (Six) months and to assess the compensation payable for such illegal mining, apart from payment of royalty and penalty payable under the

mining laws applicable to that State and take steps to recover the amount from the 7 respondent after giving them an opportunity of hearing as per the Rules and only on payment of that amount as well, they will have to be permitted to continue with the mining operation if eligible as per Rules in vogue

(x) The Andhra Pradesh Pollution Control Board is also directed to assess compensation for violation of operating the unit without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as it is seen from the counter statement filed by the 7th respondent that they had obtained Consent to Establish and Consent to Operate only during 2016 and prior to that, they were operating the same without obtaining Consent to Establish and Consent to Operate, as has been held by the Principal Bench in O.A. No.593 of 2017 (Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.) and followed by this Bench also in several cases of this nature and recover the amount from the 7th respondent in accordance with law and till then, they should not be permitted to operate on the basis of the Environmental Clearance (EC) granted or the Consent to Establish and Consent to Operate granted earlier

(xi) Considering the circumstances, the parties are directed to bear their respective cost in the appeal.

(xii) The Registry is directed to communicate this order to the Ministry of Environment, Forests & Climate Change (MoEF&CC), New Delhi, Regional Office, Ministry of Environment, Forests & Climate Change (MoEF&CC),

Vijayawada, the Chief Secretary for State of Andhra Pradesh, Director of Mines and Geology State of Andhra Pradesh and Andhra Pradesh Pollution Control Board immediately by e-mail for their information and compliance of the direction.

(xiii) The Ministry of Environment, Forests & Climate Change (MoEF&CC) is directed to take back the file relating to issuance of Environmental Clearance (EC) produced before this Tribunal.

131. With the above observations and directions, this appeal is allowed in part and disposed of accordingly."

57. In our view, the findings arrived at by the Tribunal, are raised on consideration of the material on record before it and therefore the directions issued by the Tribunal keeping the EC in abeyance till the consideration of the matter by the competent authorities is not unsustainable nor it suffers from any perversity.

58. The issue before the Tribunal essentially related to environment ecology. The Tribunal is also having suo moto power under Sections 14 and 15 of the N.G.T Act to consider all the relevant aspects, which caused or are likely to cause threat to the environment.

### **Suo Moto Power of N.G.T:**

59. At this stage, Sections 14 of the NGT Act deserves reference which reads as under:

**“Section 14. Tribunal to settle disputes.**

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

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

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

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

60. In **Uday Education and Welfare Trust** (supra), the Hon'ble Apex Court referring to [Municipal Corporation of Greater Mumbai v. Ankita Sinha](#)<sup>21</sup> held that the NGT is empowered to take suo motu cognizance and that, taking into consideration the nature of functions of the NGT, it cannot be equated with other Tribunals. In environmental matters, it will also have a power to take suo motu

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<sup>21</sup> 2021 SCC OnLine SC 897

cognizance. Paras 96 and 98 of **Uday Education and Welfare Trust** (supra) read as under:

“96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bonafides of the original applicants.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of Ankita Sinha and Others (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bonafides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

61. In **Mantri Techzone Private Limited** (supra), it was held that the N.G.T Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading on the scope of the jurisdiction under Sections 14 and 15 of the Act with the Tribunal. Paras 41 to 46 read as under:

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

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage

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

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

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

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

**46.** Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated *supra*, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable

interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

62. In **Ankita Sinha** (supra), the Hon'ble Apex Court on the exercise of suo moto power by the National Green Tribunal held that the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate. The Hon'ble Apex Court referred to its judgment in **Rajeev Suri vs. DDA**<sup>22</sup>. This consideration on exercise of the suo moto power by the NGT, under paras 51 to 58 of the judgment is re-produced as under:

"51. In addition to the grounds urged in W.P. (C) 510/2020, the petitioners herein submit that the CVC was functioning under the chairmanship of ADG (Works) who is not an architect or town planner and thereby lacks the requisite skills/knowledge required for considering the said proposal. The argument is supplemented in the written submissions where it is stated that the nature of duties entrusted to CVC requires the head of the Committee to be a professional architect or town planner so as to consider the proposal in a nuanced manner. To buttress this submission, the petitioners contend that the meeting was called despite absence of external experts and it was a deliberate step to avoid professional scrutiny of the professional, thereby rendering the said no objection as arbitrary and illegal.

52. The petitioners have also pressed the argument of non-application of mind, akin to that taken in W.P. (C) 510/2020, on the ground that no assessment was made by the respondents to consider

the viability and need of a new Parliament building and the entire process was carried in undue haste. To buttress this argument, reliance has been placed upon *Inderpreet Singh Kahlon & Ors. v. State of Punjab & Ors.*<sup>23</sup> and *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Ors.*<sup>24</sup> to urge that an action taken in undue haste could be declared as bad in law.

53. It is further submitted that CVC disregarded the legal framework for dealing with heritage structures. The petitioners seek support from clause 7.26 read with Annexure-II of Building Byelaws to contend that minimum changes are permissible on Grade-I heritage buildings/precincts and the Committee failed to take that into consideration. The said no objection is also assailed on the alleged failure of the Committee to take into consideration various factors concerning environmental impacts, traffic assessment etc.

54. During the hearing, Mr. Hegde, appearing for the petitioners, submitted that CVC, though originally conceived as an advisory body, has assumed a statutory character owing to its long functioning and is expected to discharge pivotal role in development of such projects. In “Supplementary Note on the Role of Central Vista Committee” submitted by the petitioners, reference is made to the notice inviting bids and clause 6.4.3 of ZDP for Zone-D to support the view that CVC was envisaged as a statutory committee.

55. Alternatively, it is urged that the statutory mandate of CVC is in line with the doctrine of legitimate expectations in administrative matters. The petitioners have relied upon *National Buildings Construction Corporation v. S. Raghunathan & Ors.*<sup>25</sup> to contend that this doctrine is premised on the ground of reasonableness and natural justice, and has now become a source of substantive as well as procedural rights.

56. In addition to cases noted above, the petitioners have placed reliance upon *R.S. Garg v. State of U.P. & Ors.*<sup>26</sup>, *Council of Architecture v. Mukesh Goyal & Ors.*<sup>27</sup> and *Maharashtra State*

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<sup>23</sup> (2006) 11 SCC 356

<sup>24</sup> (2004) 2 SCC 65

<sup>25</sup> (1998) 7 SCC 66

<sup>26</sup> (2006) 6 SCC 430

<sup>27</sup> (2020) 16 SCC 446

**Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Ors.**<sup>28</sup>

57. The argument regarding the statutory character of CVC has been countered by learned Solicitor General. He would urge that it is merely an advisory body with a limited mandate to advise the Government on a proposal submitted for its consideration. It has no authority to grant approvals or take decisions. Further, merely because a body has been referred to in the ZDP (Zone-D) or has been working for a prolonged period, it will not assume a statutory character on its own until it is so provided by a statute.

58. As regards the argument of non-application of mind, it is submitted that CVC is not supposed to supply reasons for its approval in a manner akin to judicial/quasi-judicial bodies and the fact that CVC, in its decision, had asked the project proponent/CPWD to ensure that the project is in sync with the character of Central Vista reveals due application of mind. It is urged that application of mind must be revealed from a substantial compliance perspective. The respondents have urged that the present case is a *sui generis* one and must be treated accordingly keeping in mind larger national interest. For brevity, other submissions of the respondents to this prayer are not being repeated here.”

63. In **Ankita Sinha** (supra) the Hon’ble Apex Court also considered the role of the N.G.T and held that the N.G.T is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi- dimensional environmental issues allows for an all-

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<sup>28</sup> (1991) 2 SCC 716

encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise. Paras 63 to 67 of **Ankita Sinha** (supra) read as under:

“63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in [Paramjit Kaur Vs. State of Punjab](#)<sup>20</sup>, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench, “14. The concept of *sui generis* is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts *sui generis*, that is, on its own and not under any law.”

64. In **D G NHAI vs. Aam Aadmi Lokmanch** (2020 SCCOnline SC 572), Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:-

“38. A conjoint reading of [Sections 14, 15](#) and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutive directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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76. The power and jurisdiction of the NGT under [Sections 15\(1\)\(b\)](#) and (c) are not restitutive, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a

remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under [Section 16](#)) and its original jurisdiction under [Sections 14, 15](#) and [17](#) of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

65. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "an expert regulatory body", which can issue general directions also albeit within the statutory framework.

66. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

67. The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require

a flexible institutional mechanism for its effective exercise."

64. It is further apt to refer the conclusions in **Ankita Sinha** (*supra*), in paras 97 to 102 as under:

"97. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

98. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

99. One could admit to the argument of danger of suo motu jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified above in play, the nature of the trigger itself viz. a letter or a 'suo motu' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

100. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of

environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

101. Let us now hark back to the dialogues of the two protagonists, in Waiting for Godot, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical Godot to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

102. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.”

65. From the aforesaid judgments, the law is well settled that the N.G.T Act is a beneficial legislation. The power vested upon the N.G.T would not be read narrowly and any interpretation which furthers the interest of the environmental concerns must be preferred. The N.G.T has the legal obligation to provide for preventing and restorative measures. The role of the N.G.T is not

simply adjudicatory but is also preventive and remedial. It has the suo moto power as well to take cognizance of various aspects and factors consequently in discharge of its functions under the N.G.T Act, it cannot be said that the N.G.T ought to have confined only to the objections raised in the appeal. We are of the view that the N.G.T did not commit any error of law or of jurisdiction, in keeping in view, the broader aspects, relevant to the protection and preservation of the environment, to ensure that there is no environmental degradation and the grant or the procedure for grant of E.C must be in consonance with the prescribed procedure and following the laws.

66. We refer to the recent pronouncement of Hon'ble the Apex Court in **Union Territory of J&K (Previously State of Jammu & Kashmir) and Another vs. Raja Muzaffar Bhat and others<sup>29</sup>**.

67. The Hon'ble Apex Court held that the absence of a replenishment study renders a District Survey Report fundamentally defective. The Hon'ble Apex Court considered the Guidelines, 2016 and the Enforcement Monitoring Guidelines for Sand Mining-2020 and held that without a proper study of the existing position of the river bed and its sustainability for further

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<sup>29</sup> 2025 SCC OnLine SC 1789

sand mining grant of environmental clearances would be detrimental for the ecology.

68. In the present case, the N.G.T has mentioned about the lack of a proper study of ecology and the impact of the large scale mining in that area for last 40 years, as one of the grounds for its order. Paras 29 to 33 of **Raja Muzaffar Bhat** (supra) read as under:

**“29.** From the foregoing analysis, it is apparent that in light of Guidelines, 2016 and the Guidelines, 2020, the absence of a replenishment study renders a DSR fundamentally defective. These guidelines categorically require that any assessment of mineable mineral quantity must be premised on scientific estimation of replenishment rates, failing which the DSR lacks the foundational data necessary to determine sustainable extraction limits.

**30.** Over the past two decades, environmental statutory and regulatory law in India has undergone significant evolution, particularly in response to the challenges posed by unregulated and unsustainable sand mining. Recognizing the adverse ecological impacts of such activities, successive legal and policy frameworks have progressively tightened the requirements for environmental compliance. In order to appreciate the present controversy, it was necessary to retrace the legal trajectory. Recently, this Court has discussed, in detail, the legal regime surrounding the preparation, nature, scope and importance of DSR in *Gaurav Kumar* (supra). However, the focal point for present

discussion is the value that must be appended to *replenishment study* before EC is granted to mining operations.

**31.** Demand for construction-grade sand is growing at a tremendous rate and it is said that the world is expected to run out of this resource by 2050. Construction-grade sand, can be found in aquatic environments, such as rivers and is a provisioning ecosystem service. Even under controlled circumstances, the practice of extracting sand from the riverbed and banks impacts the environment. In the physical environment, the primary effects are riverbed widening and lowering. In the biological environment, the overarching effect is a reduced biodiversity and stretches from the aquatic and shoreline flora and fauna to the whole floodplain area. Due to easy access, river sand and gravel have been used extensively in construction projects. Depending on the mining operation method as well as morphologic and hydraulic characteristics of the river, sand mining may cause bed and bank erosion or other negative consequences for the river eco-system. It is, therefore, necessary to conduct appropriate studies, including that of replenishment to explore sustainable and cost-effective methods for river mining.

**32.** Without a proper study of the existing position of the riverbed and its sustainability for further sand mining, grant of environmental clearances would be detrimental for the ecology. It has therefore been held that a detailed study leading to a preparation of the *replenishment report* is an integral part of the DSR. If the DSR becomes the foundation for consideration of an application for environmental clearance, then it is compelling to ensure replenishment

studies are undertaken in advance and the report forms an integral part of the DSR.

**33.** In view of the existing legal regime that mandates preparation of *replenishment report* in a scientific manner and such a report forming an integral part of the District Survey Report, we hold that a District Survey Report without a proper replenishment study is equally untenable."

69. We do not find any jurisdictional error or any improper exercise of the jurisdiction by the N.G.T, so as to call for our interference in the exercise of the writ jurisdiction.

**Sustainable Sand Mining Management Guidelines, 2016:**

70. The next submission of the learned counsel for the petitioner that Sustainable Sand Mining Management Guidelines, 2016 are not applicable, deserves rejection. The submission was that those guidelines relate to the sand mining from the river and since the E.C granted to the petitioner is for sand mining not from the river those Guidelines, had no application.

71. Learned counsel for the petitioner referred to the objectives of the Guidelines to emphasise that it relates to the sand mining from the river. He also referred to the effect of sand river mining for the same purpose.

72. We are not convinced. A perusal of the Guidelines, 2016 clearly show that they apply to the sand mining from the river and also from other sand sources. The Guidelines have been framed with the objective to ensure Sustainable Sand Mining Management Guidelines, 2016 and environment friendly management tracks, in order to restore and maintain the ecology of river and other sand sources. A perusal of the 'objectives', 'the effect of sand and gravel mining' does not show that these guidelines of 2016 are for the sand mining from the river only. We need not reproduce those guidelines as from perusal it is evident that they are not confined to the sand mining from the river but, as a whole to ensure control of the un-control sand mining and with an objective to protect the environment and the right of the population to live in clean and safe surroundings.

**Violation of the principles of natural justice:**

73. Another submission of the learned counsel for the petitioner that the N.G.T reordered findings on Points 1 to 4 (briefly narrated in para 52 supra) were recorded in petitioner's favour still the impugned order was passed against the petitioner does not impress upon us for the reason that the N.G.T has assigned

reasons for passing the impugned order which have been briefly noted by us in paras 53,54 and 55 hereinabove.

74. We are of the view that the Tribunal being an authority vested with the powers, the jurisdiction and the duty to ensure the environmental protection, if different aspects come before it, or are brought to its notice, it has to take into consideration those various aspects while deciding the lis. Even if it be taken that the petitioner had no opportunity on certain aspects mentioned in the order, even then, considering that the Tribunal has not set aside the EC granted but has only kept it in abeyance while remitting the matter for fresh consideration, the petitioner cannot succeed on the ground of alleged violation of the principles of natural justice, in as much as, while considering the matter by the competent authority, pursuant to the direction issued by the Tribunal, the petitioner may avail the opportunity of hearing before the respondent authorities with respect to those aspects.

**E.C granted prior to 2021:**

75. The next submission of the learned counsel that the EC granted was prior to 2021 and as such the N.G.T ought not to have interfered with the same. The E.C (s) granted even prior to 2021 must confirm the then existing rules, regulations and the

notifications, which could not be granted dehors the rules. The N.G.T has elaborately discussed the illegalities and irregularities committed in grant of E.C to the petitioner. In view thereof no immunity can be claimed from interference by the N.G.T on the well assigned reasons.

**Ex-post Facto grant of EC:**

76. Learned counsel for the petitioner next submitted that Ex-post facto EC could be granted. He emphasized in **Electrosteel Steels Limited** (supra) to contend that the grant of ex post facto environmental clearance is not prohibited in appropriate cases, where the projects are in compliance with, or can be made to comply with the environment norms.

77. The Hon'ble Apex Court in **Electrosteel Steels Limited** (supra) held that the need to comply with the requirement to obtain environment clearance is non-negotiable. A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and

equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.

78. In **Electrosteel Steels Limited** (supra), considering the office memorandum of 2021 and the subsequent follow up proceedings for identification enabled of violation case under 2006 EIA notification, it was observed that in terms of the SOP, the proposal for grant of EC in case of violations were to be considered on merits with prospective effect, applying the principles of proportionality and the principle that the Polluter Pays Principle and liable for costs of remedial measures. The Hon'ble Apex Court, in **Electrosteel Steels Limited** (supra) observed that ex post facto EC clearance should not however be granted routinely but in exclusive circumstances taking into consideration relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex- post facto approval should be given in accordance with law, in

strict conformity with the applicable rules, regulations and/or notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalized by an imposition of heavy penalty on the principle of “polluter pays” and the cost of restoration of environment may be recovered.

79. In **Pahwa Plastics Pvt Limited** (supra) the Hon'ble Apex Court observed that the Ex- Post facto Environmental Clearance should not ordinarily be granted and certainly not for the asking.

80. In **Uday Education and Welfare Trust** (supra), the Hon'ble Apex Court considered the principles of sustainable development, the precautionary principle and the polluter pays principle. It was observed that it cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other. It is necessary that, while protecting the environment, the need for sustainable development has also to

be taken into consideration and a proper balance between the two has to be struck.

81. Learned counsel for the petitioner referred to the judgment of the Apex Court in **Union of India vs. Vanshakti** (supra) along with, **Confederation of Real Estate Developers of India (CREDAI) vs. Vanashakti and another**<sup>30</sup>, to contend that the E.Cs already granted till date under the 2017 notification and the 2021 OM remained unaffected. He contended that the Ex-post Facto EC can be granted in exceptional circumstances. There is no absolute bar in grant of Ex-post Facto EC. He submitted that the EC already granted to the petitioner was prior to notification of 2021. In **Vanashakti** (supra-2), the E.C (s) granted till the date of judgment in **Vanashakti** (supra-2) were saved. So, it was not open to the N.G.T to interfere with the E.C granted to the petitioner.

82. In **Vanshakti** (supra-2), the Hon'ble Apex Court held that ex-post facto grant of EC under the notification of 2017 was not permitted for the projects and activities which were commenced or continued after 14.03.2017. The provision for grant of ex-post facto was made only in relation to projects or activities which were

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<sup>30</sup> 2025 SCC OnLine SC 2474

in violation as of 14.03.2017. The window which was initially for a period of six months was eventually extended till completion of 30 days from 14.03.2018. The Hon'ble Apex Court observed that in environmental matters, the Courts must take a very strict view of the violations of the laws relating to the environment. The Hon'ble Apex Court further observed that Once there is a violation of the EIA notification, the project proponent has to compensate, following the Polluter Pays Principle. Even if, EC is not granted to him he has to pay for remedial plan to remedy the damage done to the environment. He has also to pay the penalty. In **Vanashkti** (supra-2), the Hon'ble Apex Court saved the ECs already granted till date of that judgment by providing that those ECs shall remain unaffected.

83. The aforesaid judgment in **Vanashkti** (supra-2) has been reviewed vide judgment reported in 2025 SCC OnLine SC 2474 (supra).

84. So far as the contention with respect to the Ex- Post facto grant of EC is concerned, we are of the view that while considering the matter in terms of the order of the Tribunal, keeping in view the directions issued, the question of the grant of EC whether Ex- Post facto, prospective or with retrospective

effect, in the light of the various factors, can be taken due care of by the respondent authorities also keeping in view the latest position in law in the case of **Vanashkti** (in Review Petition (C) No.200 of 2025 Diary No.41929 of 2024 reported in 2025 SCC OnLine SC 2474. So, at this stage of the writ petition against the order of the NGT, we are not required to make any observation on that aspect. It is upon the decision, when taken, by the authorities, it may be open to the aggrieved party/person to raise such an issue if so open under law in appropriate proceedings before appropriate Forum.

#### **V. Conclusions:**

85. Thus, considered our conclusions on the points of determination are as follows:

#### **Point-A:**

(i) The writ petition under Article 226 of the Constitution of India is maintainable against the order of the National Green Tribunal. The alternative remedy under Section 22 of the N.G.T Act is not an absolute bar.

(ii) We also entertain the writ petition, as the challenge is on the ground of (a), the order being without jurisdiction, (b) in Violation of the principles of natural justice and (c)

The petition is pending since 2021 and the affidavits have been exchanged.

**Point-B:**

The 7<sup>th</sup> respondent (appellant before the N.G.T) is a 'person aggrieved' under Section 16 of the N.G.T.Act. The order passed by the N.G.T in the appeal filed by the 7<sup>th</sup> respondent, is not without jurisdiction.

**Points C & D:**

(i) There is no violation of the principles of natural justice, so as to interfere with the order of the N.G.T.

(ii) Though on some aspects, finding has been recorded in petitioner's favour but merely on that count, it cannot be said that the N.G.T ought not to have passed the impugned order. The N.G.T has for the well assigned reasons, on justifiable grounds rightly interfered with the grant of the E.C.

(iii) The N.G.T has also the suo moto power. Its role is not simply adjudicatory in the nature of a lis, but it has also to perform the vital roles which are preventive and remedial in nature to save the environment from the degradation.

(iv) The N.G.T rightly took the cognizance of various aspects in discharge of its statutory function. Its power and

jurisdiction while deciding a lis cannot be confined only to the grounds raised in the appeal before it.

(v) Sustainable Sand Mining Management Guidelines, 2016 are applicable to the sand mining from the river as also from the other sources. It is not confined only to the mining of sand from the river only.

(vi) The E.C granted, even prior to 2021 notification has to be in conformity with the then existing rules, regulations, notification and the guidelines. Any EC issued in violation, cannot claim immunity from interference merely because the grant was prior to 2021 notification.

(vii) Grant of Ex-post Facto E.C, is matter which lies in the domain of the respondent authorities, for consideration, in accordance with law, keeping in view the latest pronouncement of the Hon'ble Apex Court in the case of **Confederation of Real Estate Developers of India (CREDAI) vs. Vanashakti and another** (2025) SCC OnLine SC 2474).

(viii) No interference is called with the order of the N.G.T, in the exercise of the writ jurisdiction.

## **VI. Result:**

86. In the result:

- (a) Writ Petition is dismissed,
- (b) The respondent Nos.1 to 6 shall pursuant to the order dated 15.11.2021, passed by the National Green Tribunal, South Zone (NGTSZ), Chennai in Appeal No.19 of 2020 (SZ) (B. Madan Kumar Reddy vs. Government of India and others) proceed to consider the grant of EC, in accordance with law keeping in view the directions issued by the N.G.T.
- (c) While considering the matter the respondent authority shall also take into account the latest pronouncement of the Hon'ble the Apex Court in **Confederation of Real Estate Developers of India (CREDAI) vs. Vanashakti and another** (2025 SCC OnLine SC 2474).
- (d) The petitioner as also the 7<sup>th</sup> respondent shall be provided with the opportunity of hearing.

87. No order as to costs.

Consequently, miscellaneous application if any pending shall also stand closed.

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**RAVI NATH TILHARI,J**

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**MAHESWARA RAO KUNCHEAM,J**

Date:08.01.2026.

**Note:**

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B/o.Gk.

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**  
**&**  
**THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**W.P. No.31066 OF 2021**

Date:08.01.2026.

Gk.