BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

MISC. APPLICATION NO. 74 OF 2015

(ARISING OUT OF APPLICATION NO.10 OF 2014)

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)

In the matter of:

1. LAKHAN MUSAFIR.
Village Umarva (Joshi),
Tal. Nandod, P.O. Gora Colony,
Dist. Narmada, Gujarat.

2. ROHIT PRAJAPATI.
37, Patrakar Colony, Tandalji Road,
Vadodara 390 020, Gujarat.

3. SAVITABEN GANPATBHAI TADVI.
Village Indravarna, Tal.Nandod,
Dist. Narmada, Gujarat.

4. MAVAJIBHAI JESANGBHAI TADVI.
Village Nana Piparia, Tal. Nandod,
Dist Narmada, Gujarat.
.....**APPLICANTS**

VERSUS

1. **SARDAR SAROVAR NARMADA NIGAM LIMITED,**
   Through Chairman, Block No.12,
   New Sachivalaya,
   Gandhinagar,
   Gujarat-382 010.

2. **THE STATE OF GUJARAT,**
   Through Chief Secretary,
   Having his office at 1st Block,
   3rd Floor, Sachivalaya,
   Gandhinagar, Gujarat.

3. **UNION OF INDIA,**
   Through the Secretary,
   Ministry of Environment & Forest,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi-110 003.

4. **THE CHAIRMAN,**
   Environment Sub Group of
   Narmada Control Authority,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi-110 003.

5. **UNION OF INDIA,**
   Through the Secretary,
   Ministry of Social Justice and
   Empowerment, Shastri Bhavan,
   New Delhi-110 001.

6. **THE CHAIRMAN,**
   R & R Sub-Group of
   Narmada Control Authority,

Ministry of Social Justice and
Empowerment, Shastri Bhavan,
New Delhi-110 001.

7. UNION OF INDIA,
Through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

8. THE CHAIRMAN,
Narmada Control Authority (NCA),
Shram Shakti Bhavan, Rafi Marg,
Parliament Street, New Delhi-110 001.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Mihir Desai Advocate a/w Lara Jesani, Avubha Rastogi, Neha Pathak, Mr. Asim Sarode, Alka Babaladi Advocates.

Counsel for Respondent (s):

Mr. P.S. Narsimha, Additional Solicitor General,
Mr. Maninder Singh Additional Solicitor General,
Mr. Tushar Mehta Additional Solicitor General a/w
Mr Nirzar S. Desai, a/w Mr. Parth H. Bhatt, Mr. Nalin Kohli, Mr. Virrrar S. Desai Advocates for Respondent No.1.
Mr. Parth H. Bhatt, Adv a/w Mr. Nirzar Desai Advocates for Respondent No.2
Shweta Busar Adv holding for Mr. Ranjan Nehru Advocates for Respondent No.3.

Mr. Krishna D. Ratnaparkhi Advocates for Respondent Nos. 5 to 8.

DATE : 1ST SEPTEMBER, 2015

JUDGMENT

1. Brief submissions put forth by way of objections regarding maintainability of the Application are certain material preliminary issues raised by the contesting Respondent Nos.1 and 2.

2. We may reproduce the preliminary objections raised on behalf of them, which are indicted in the Order dated March 3rd, 2015.

> "*Heard learned Counsel Mr. Mihir Desai for the Applicant, Mr. Maninder Singh and Mr. Tushar Mehta Additional Solicitor Generals for the Respondent No.1.*
>
> *There are preliminary objections raised on behalf of Respondents. Preliminary objections are three (3)*:
>
> **i)** That the Application is barred by limitation, if it is considered under Section 15 of the National Green Tribunal Act, 2010, along with Ss.14 (1) as well as 14(3), because extension of period under the Limitation Act, 1963, is impermissible since NGT Act, 2010 does not allow extension of limitation as per the Land Acquisition Act, 1963, being a special enactment and Section 33 of the NGT Act, gives overriding effect to the general Law.

ii) The Application is barred as the Applicants have no *locus standi* to file such Application for the reason that the Applicant Nos.1 and 2 either are busy bodies, who have no concern with the project in question or have no connection with result of the project, nor they are affected by the project, in any way and do not befit within Section 15 of the NGT Act and other Applicants are beneficiaries, who are estopped from claiming any further relief due to their conduct.

iii) The Application is barred by the principle of "*Res-judicata*", in view of Judgment of the Apex Court in '**Narmada Bachao Andolan'**, and other Judgments cited by them because the issue is covered by abovementioned Judgment and, therefore, now, there is no reason to separately deal with such issue to reconsider or allow the same to be re-agitated and legally decided.

Out of the preliminary objections, above preliminary objections have been argued by Mr. Tushar Mehata and Mr. Maninder Singh, Additional Solicitor Generals.

Mr. Mihir Desai, learned Advocate makes a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1) and 14(3) of the NGT Act, and only if he can surmount difficulties regarding limitation for filing of such Application under Ss. 14(1) and 14(3) of the NGT Act, by showing this Tribunal that such Application is maintainable, then and then alone his Application may be considered for the relief which he is seeking i.e.

for restoration, or, else his Application under Section 15 for restoration will go away. In other words, if the Applicants would be able to show that the Application is filed within period of six (6) months and thereafter grace period of sixty (60) days, is available if satisfactory reason shown for extension of time, then this Tribunal may entertain the Application and may allow the Applicants to cross the hurdle, else, penultimate result would be that the Application would fail.

So far as question of locus standi is concerned, Mr. Mihir Desai, is yet to argue and make his stand clear as to whether his Application will be maintainable. He has yet to make submissions on third objection regarding Res-judicata. Learned ASG has submitted copies of the Judgments on question of Res-Judicata, in order to clarify third preliminary objection raised and would submit that the matter was directly and substantially in issue in previous proceedings, therefore, now the present Application is liable to be dismissed.

In this view of the matter, we would proceed further with the arguments of Mr. Mihir Desai. "

3. However, considering cumulative tenor of submissions put forth by Additional Solicitor Generals Sh. Narsimha Rao, Sh. Tushar Mehta and Sh. Maninder Singh, following points are set out as being the preliminary objections:

i) **Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by Judgment of the *Narmada Bachao Andolan vs Union of India and Ors.*?**

ii) **Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?**

iii) **Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of 'locus *standi*'?**

iv) **Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908?**

<u>POINT NO. (i):</u>

Whether the Application cannot be entertained because of constitution of Narmada Control Authority (NCA) as controlling mechanism by

Judgment of the *Narmada Bachao Andolan vs Union of India and Ors.*?

4. The Applicants have filed the present Application seeking reliefs against the Respondents inter alia for staying/stopping ongoing construction at or in respect of Garudeshwar Weir, initiating legal action against the erring officers, individuals and companies that have started construction or given permission for construction of Garudeshwar Weir in contravention of the provisions of the Environment (Protection) Act, 1986 and Environmental Sub Group (ESG) and Relief and Rehabilitation Sub Group (RSG) of the Narmda Control Authority (NCA) and for restitution of the project area to *status quo ante*. It is the case of the Applicants that the Respondents have encroached construction in respect of the Garudeshwar Weir project, without having obtained environmental clearance, without having carried out any environmental impact assessment and/or without having undertaken any environmental safeguards and measures.

5. The Applicants submit that Garudeshwar Weir project is a project spread out over vast land tracts, which is irreversible in nature and is bound to lead to

the submergence, fully or partially, of 11 villages and affect directly or indirectly, about 11,000 villagers in Gujarat. The Garudeshwar Weir project is admittedly a Category 'A' Project under the Environment Impact Assessment Notification, 2006. The Garudeshwar Weir project will have significant social and environmental impacts, and would have the potential of affecting the fisheries in the upstream and downstream areas; and also, affect the river downstream and its biodiversity and other related aspects right up to sea. It is the case of the Applicants that no concrete plan or social impact assessment for the Garudeshwar Weir has been submitted by the Respondents prior to commencement of construction of Garudeshwar Weir. No environmental clearance has been obtained in respect of the Garudeshwar Weir project to date, and in any event, no environmental impact assessment or any other environmental safeguards and measures have been undertaken prior to commencing construction in respect of the Garudeshwar Weir Project.

6. We may, however, also state that prior to raising above three (3) specific preliminary objections, one of the preliminary objection was raised by

learned Additional Solicitor General Sh. P.S.Narsimha, during course of hearing dated December 23rd, 2014, on the ground that due to constitution of Narmda Controlling Authority (NCA) under directions of the Apex Court in case of "***Narmada Bachao Andolan vs Union of India and Ors***" **(2000) 10 SCC 664**, all the relevant issues will have to be decided by the said Authority, which has exclusive jurisdiction to deal with relevant issues, stated in the present Application and hence, the National Green Tribunal (NGT), cannot entertain instant Application under Ss. 14,15 and 18 of the NGT Act, 2010. In other words, it was argued that jurisdiction of this Tribunal to entertain Application stands ousted due to establishment of NCA and as such, the main Application cannot be entertained at all.

7. So far as question of ouster of jurisdiction is concerned, learned Advocate Mihir Desai, appearing for the Applicants would submit that NCA has been established by the Govt. with a view to device grievances redressal system for States of Gujarat, Maharashtra and Madhya Pradesh. He would submit that Judgment of the Apex Court in "***Narmada Bachao Andolan***" (supra), does not bestow any

powers to the Tribunal viz. Narmada Sarovar Control Authority (NCA) to deal with 'settlement of environmental disputes', as provided under Section 14(1) of the NGT Act, 2010, but objective thereof is to ensure implementation of Resettlement and Rehabilitation (R & R) Policy, in three (3) States, namely, Gujarat, Maharashtra and Madhya Praesh. The above three (3) States were to get benefits of project as well as some of the families were likely to be affected by the project called "Sardar Sarovar Project" (SSP). He referred to paragraph (22) of Judgment of the Apex Court.

8. Countering arguments of Mr. Mihir Desai, learned Additional Solicitor General Sh. P.S. Narasimha, invited our attention to paragraph (174) of the Judgment (as referred in 'Manupatra'). It is stated in sub-para (7) of paragraph (174), that the authority was "to undertake any of the authority in the matter of resettlement and rehabilitation (R&R) pertaining to SSP and IPS". Taking cue from such statement in sub-para (7), it is argued that the statutory authority will have jurisdiction to decide which of the activities related to resettlement and rehabilitation are permissible and legal. In other words, restitution or compensation, as can be

considered, under Section 15 of the NGT Act, 2010, cannot be matter of decision making process that may be undertaken by this Tribunal. It is amply clear from the record that the Applicant No. 4 had filed proceedings claiming enhancement of compensation under provisions of the Land Acquisition Act, 1894, alleging that his lands were acquired for the purpose of "Garudeshwar Weir" in 1987. He was paid compensation by the District Court. Dissatisfied with the amount of compensation awarded, he approached the Hon'ble High Court of Gujarat, claiming more amount of compensation. He is beneficiary of acquisition of the lands. He is not legally entitled to claim relief of compensation, inasmuch as issue is already settled under the Land Acquisition Act, 1894 which is a special enactment. Nor he is entitled to restitution of the property, because once the land acquired by the Govt. under provisions of the Land Acquisition Act, 1894, the property stands transferred in favour of Govt. As regards the Applicant Nos.1 and 2, they are not person affected due to project in question. The question pertaining to "settlement of dispute" is different from the scope of Section 15 of the NGT Act, 2010. In this view of the matter, the jurisdictional issue raised by the learned

Additional Solicitor Sh. Narsimha Rao bears no ring of merit. We deem it fit to reject the objection in this context, and hold that the original Application is maintainable. Constitution of NCA, in our opinion, will not oust jurisdiction of the NGT in case of the Application falls within ambit of Section 14(1) of the NGT Act, 2010.

POINT No.(ii):

Whether the Application is barred by Limitation, because it does not fall within ambit of Section 15 read with Section 18 of the NGT Act, 2010?

9. We shall now proceed to deal with the objection as regards Limitation. According to contesting Respondent No.1, Garudeshwar Weir is an integral part and parcel of comprehensive project of SSP, which was envisaged a way back. The cause of action to file such Application could have arisen when project of SSP, inclusive of Garudeshwar Weir, was contemplated, planned and approved in or about 1985-86. The planning department of Gujarat Govt. was directed to execute the project vide letter dated October 5th, 1988, issued by Planning Commission, Yojana Bhawan, Sansad Marg, New Delhi. It is contended that agricultural lands were acquired

thereafter and compensation was paid to the said Project Affected Persons (PAP), including the Applicant Nos.3 and 4, as per the Award rendered under the Land Acquisition Act, 1894. The main project was inaugurated on April 5th, 1961. The land acquisition proceedings were commenced in 1987 by issuance of Notification under Section 4 of the Land Acquisition Act, 1894. So, the Applicants had full and clear knowledge regarding proposed project of Garudeshwar Weir, for which the lands were being acquired at the relevant time.

10. In order to describe nature of activities of Garudeshwar Weir, it is stated that the same is of much public significance, because it would enable reversible power generation at the underground power house units (6 Turbine) of 200MW each, (already constructed and commenced several years ago), which will enable production of maximum electricity under all conditions of water availability by use of reversible turbines. The water from Weir would be pumped back during night time for reversible use to run turbines through canal head power used at a higher elevation thereby generating additional power at peaking hours for the same quantity of water through river bed power house.

11. Chief bone of contention raised by the Respondent No.1, is that limitation period prescribed under Section 14(1) of the NGT Act, is only of six (6) months, in view of sub-clause (3) of Section 14. The period of limitation cannot be extended by the Tribunal, because the NGT Act, 2010, is a special enactment to which provisions of Limitation Act, 1963, are not applicable. The Application having not been filed within period of six (6) months from first day of alleged 'cause of action', which had arisen a way back, when Sardar Sarovar Project (SSP), was envisaged, or at all even, as alleged in the Application the work was allotted to M/s Ritwick Construction Pvt. Limited in 2012 then the limitation triggered because the original Applicants have come out with a case that they had knowledge of absence of environment impact assessment. It is contended that period of limitation is not of five (5) years, but is only of six (6) months, in view of Section 14(3), because, Section 15, does not apply to the fact situation.

12. Per contra, the Applicants allege that letter of Shri. Shekhar Singh, an individual Member of the Respondent No.4, i.e. Environmental Sub Group (ESG), brought on surface of the record illegalities regarding construction activities of Garudeshwar

Weir project. Therefore, the Applicants urged Respondents to stop construction activity at the site. Inaction of the Respondents to do so would give rise to the cause of action. The Applicants allege that construction in respect of Garudeshwar Weir project commenced only in the year September/October, 2013. So, until commencement of actual construction, they had no occasion to be alarmed about illegality of the project. The acquisition of lands for the project in the past could not give rise to cause of action, because such acquisition of lands had no bearing upon issue of knowledge regarding absence of required EC to the project in question. The Original Applicants would submit, therefore, that cause of action first arose when construction activity was illegally started by the Respondents. Reliance is placed on observations in "***Amit Maru vs The Secretary, MoEF and Ors***" (**M.A. No.65/2014 in Application No. 13 of 2014**), dated October 1st, 2014, delivered by this Bench and in the matter of "***Kehar Singh S/o Sh. Singhram vs. State of Haryana***" **(Application No.124/2013)** dated September 12th, 2013, delivered by Hon'ble Principal Bench of the NGT.

13. Nobody will deny that question of limitation is ordinarily, a mixed question of law and facts. The facts which are undisputed may be considered to deal with the issue before examining as to whether the Application would be maintainable within purview of Section 14 of the NGT Act, 2010. The Applicants have placed on record letter dated March 24th, 2013, issued by Sh. Shekhar Singh, who was the Member of ESG of Narmada Control Authority (NCA) -an Inter-State Administrative Authority. It appears that he gave his opinion that Garudeshwar Weir will have potential of stock of fisheries in the immediately surrounding areas and also in the area downstream river and its biodiversity and other relevant aspects. He made it clear that he had no knowledge as to how without assessment of cumulative environmental impact of the project and activities in the area, evaluation of bids for construction of Garudeshwar Weir were called for and the bidder M/s Rithwik Project Pvt. Ltd, Hyderabad was awarded the contractual work. He also made categorically clear that "I understand that subsequent to this decision, the work of construction of Garudeshwar Weir (GW) has been started on the ground".

14. The above letter is the main plank of the Applicants based upon which the Applicant Nos.1 and 2, issued a letter dated 26th October, 2013, to the MoEF & CC. This letter dated 26th October, 2013, reiterates what Sh. Shekhar Singh opined and stated in his letter.

15. Now, it does appear that the Respondents have not produced any record to show as to what kind of response was given to above communication. The question herein is as to whether absence of response, if it is not given within reasonable time, can indefinitely extend period of limitation. Secondly, whether letter of Sh. Shekhar Sing, which was not in public domain, could trigger limitation for filing such an Application under Section 14(1) read with Section 18 of the NGT Act, 2010, is yet another question. So far as case of the Applicants is concerned, their averments in the Application may be reproduced as follows:

> **Limitation**:
>
> The Applicants herein are seeking stoppage of construction of Garudeshwar Weir which commenced only in October 2013 and are approaching this Hon'ble Tribunal within the limitation of 5 years as specified.

16. The averments made in the abovementioned paragraph clearly indicate that the Applicants laboured under impression that limitation of five (5) years, as specified under Section 15 of the NGT Act, 2010, could be availed by them, inasmuch as construction of Garudeshwar Weir had commenced only in October, 2013. They never came out with a case that they had no knowledge about absence of EC to the project of Garudeshwar Weir. Nor it is their case that because of absence of inaction on the part of Respondents/Authorities the period of limitation stands extended. As stated before, by order dated March 3rd, 2015, it is recorded that learned Advocate Sh. Mihir Desai, made a statement that so far as question of limitation is concerned, the Application is filed under Ss. 14(1), (3) of the NGT Act, 2010 and only if he can surmount difficulties, by showing this Tribunal that such Application is maintainable, then and then alone the Application may be considered for reliefs which he is seeking, namely, for restoration etc. or else, his Application under Section 15 for will go away. Obviously, it is essential to examine whether the Application is within limitation, as provided under Section 14(1) read with Section 14(3) of the NGT Act, 2010. We have already clarified that there is

no question of granting relief of compensation, because the affected owners of the lands have been paid such compensation under the Land Acquisition Act, 1894. Once such compensation is paid, there cannot be duality of granting the same relief in any other proceedings. There cannot be two opinion about legal position that the NGT Act, 2010, being a special enactment, the Tribunal has no power to extend period of limitation. There is plethora of case law on this legal aspect. We may only mention few of such cases viz (1) ***Save Mon Region Federation vs Union of India & Ors*** (M.A No. 104 of 2012 arising out of Appeal No.39 of 2012) as well as (2) ***Medha Patkar vs MoEF & Ors Ors*** (Appeal No.1 of 2013) and those others as discussed hereafter in paragraph 32 in the Judgment. We need not deal with each of the case law for want of avoiding reiteration of settled legal position in this behalf.

17. The scope of Section 14 (1) of the NGT Act, 2010, is to deal with "substantial question relating to environment". These questions may include infringement / infraction of any legal right of a person relating to environment. The questions relating to environment, however, ought to be demonstrated, being in the category of

implementation of the enactments specified in Schedule-I of the NGT Act. The Applicants would submit that grounds to be put forth in the Application, fall within domain of the Environment (Protection) Act, 1986, which is shown in Schedule-I. The legal rights of the Applicants were allegedly trampled in or about September, 2013, when the actual work of Garudeshwar Weir started and they were alarmed after commencement of the work. It is not for the first time that they came to know about nature of Garudeshwar Weir project. They had already been well informed that Garudeshwar Weir project required acquisition of lands. In fact, agricultural lands of Applicant No. 4- Mavjibhai were acquired. He had contested the acquisition proceedings, had claimed more compensation and had fought for such claim up to the Hon'ble High Court. Thus, the Applicants had knowledge of potential implementation of Garudeshwar Weir project, which was in the offing. The knowledge could be traced back to 1978 or at least, till acquisition proceedings, which had commenced somewhere in 1997. There was no whisper at that time about legal rights relating to environmental issues arising out of the Environment (Protection) Act, 1986. The said Act

had already came into force when acquisition proceedings were initiated. The second occasion was when the construction of Garudeshwar Weir work was allotted to M/s Ritwick Construction Pvt. Ltd in 2012.. The Applicants have not mentioned date when actual construction at the site was noticed by them. It appears that instant Application was presented to this Tribunal on January 16th, 2014.

18. At this juncture, it is pertinent to note that the Environment (Protection) Act, 1986, came into force w.e.f. May 26th, 1986. Before the said enactment, the field was governed by a Notification issued by the MoEF & CC on January 27th, 1994. By virtue of the said Notification, certain restrictions were placed on expansion and modernization of activities of the new project, without obtaining EC, in accordance with S.O. No.80-© dated January 28th, 1993. Earlier, there were only internal guidelines of the MoEF. Needless to say, till commencement of the Environment (Protection) Act, 1986, and more particularly EIA Notification of January, 1994 no EC was required for any such project.

19. Perusal of record shows that Garudeshwar Weir was the project activity envisaged much before

the Environment (Protection) Act, 1986, came into force. Whether actual construction started was in 2013, is not of much significance. The very fact that since year 1997, the acquisition proceedings had started and that was well known to the Applicant Nos. 3 and 4 as well as other beneficiaries, go to show that the said project was an ongoing activity. The Apex Court in "***Goan Real Estate and Construction Ltd & Anr Vs Union of India***, Through the Secretary, Ministry of Finance & Forest and Ors, (W.P. (c) No.329 of 2008)" held that "subsequent change in legal position in that case viz **"*Indian Council for Enviro Legal Action Vs. Union of India & Ors*"**, **(1996) 5 SCC 281)**, could not be applicable to "ongoing project and would not impact such ongoing activity which was already underway."

20. So far as the project of Garudeshwar Weir is concerned, there is no dispute about the fact that it is being set up around 12kms downstream of Sardar Sarovar Dam situated in Narmda district (East Gujarat). The Applicants, named above, categorically state in the pleadings of instant Application as follows;

"In 1987 a conditional EC and in 1988 conditional planning commission EC was given to this Project. A copy of conditional EC is at Annexure-2 and a copy of conditional planning commission EC is at Annexure-3……"

"The present Application is only concern with a small segment of this entire project. The main segment of Sardar Sarovar Dam has already been substantially constructed."

"The original Sardar Sarovar Project (SSP), which got permission in 1987, did not concretely envisage this Weir, did not include assessment of social or environmental impact of this Garudeshwar Weir……"

"While there may have been ideas at some stage a Weir may be constructed at Garudeshwar, the Environmental Authorities did not have power with them in the 1980's, with any concrete plan or social impact assessment for this Weir, nor would be environmental impact and how much submergence would take place. This Weir is practically a separate project and not something which is covered by 1987 conditional EC."

21. According to Applicants, in September, 2013, work in respect of this Dam (Garudeshwar Weir) started, and alarmed by this, the Applicants took various steps. They came to know that way back on

24th March, 2013, Sh. Shekhar Singh, an independent Member of Respondent No.4, of Sub-Committee had addressed a letter to the Chairman of the Respondent No.4, in which it was stated that issue pertaining to social impact of construction and operation of Garudeshwar Weir had not been brought before the Environmental Sub-Group (ESG) of NCA. The Applicants further aver that Garudeshwar Weir is a part of the power component of SSP in which Madhya Pradesh and Maharashtra have 57% and 27% share respectively, in both costs and benefits. Therefore, implementation of Garudeshwar Weir cannot be taken up without express consent from these States, which these States have not agreed with the way Gujarat has decided to go ahead. It is the case of Applicants that cause of action arose for filling of the Application only in October, 2013, and hence, they have approached the Tribunal within period of five (5) Years. Thus, it is their case that the Application is squarely covered by Section 15 of the NGT Act, 2010, and hence, limitation of five (5) years can be availed. The construction of Garudeshwar Weir, assuming for a moment, that it is a separate project, its work was allegedly undertaken in October, 2013. The Applicants have not mentioned any

particular date of knowledge as to when they noticed work of construction. However, in para (F) of the Application, it is stated that around March, 2012, it was decided to award contract to one bidder M/s Ritwik Project Pvt. Ltd, for construction of Garudeshwar Weir.

22. On behalf of Respondents, learned Additional Solicitor Generals contended that the Application is barred by limitation, in view of embargo specifically put on raising of dispute after period of six (6) months, under Section 14 (1) of the NGT Act, 2010. They argued that mere perception of Sh. Shekhar Singh, one of the independent Member of ESG in his letter dated 28th October, 2013, will not give rise to cause of action. They argued that Garudeshwar Weir is the part and parcel of SSP and hence, no separate permission/EC was required for the same. They further argued that when lands of affected persons, including the Applicant No. 4, were acquired in 1991, there was knowledge available to them about project activity of Garudeshwar Weir. Therefore, even after counting period of five (5) years from 1991, the Application would not come within ambit of Section 15 of the NGT Act, 2010. They would submit that only Section 14 of the NGT Act, 2010, is applicable

for settlement of dispute when it is raised and Section 15 of the NGT Act, 2010, is restricted to grant of certain reliefs, which would follow if dispute is favourably decided in which victim(s) of pollution and other environmental damage arising under the enactments specified in Schedule-I, of the NGT Act, 2010, would apply for such a relief. The reliefs under Section 15 of the NGT Act, 2010, are discretionary and would depend upon settlement of environmental dispute. According to submissions of learned Additional Solicitor General Sh. Tushar Mehta and Sh.Maninder Singh, when there is bar of Section 14(1) of the NGT Act, 2010, and hence, the Application under Section 15 also cannot entertained, because, Section 14 of the NGT Act, 2010, ought to be conjointly read for making purposive interpretation thereof.

23. Per contra, learned Advocate Sh. Mihir Desai, placed reliance on the observations in "***Aradhana Bhargav & Anr Vs MoEF and Ors*** **(Application No.11 of 2013) (NGT-MANU/GT/0077/2013)**". He further relied upon "***Kehar Singh vs State of Haryana***, **(Application No.124 of 2013)"** decided by Hon'ble Principal Bench of the National Green Tribunal, New Delhi.

In the given case, Applicant **Kehar Singh** alleged that establishing Sewage Treatment Plant (STP), at the site in question was in contravention of the EC Notification. He further alleged that in case the STP is located near the residential colonies, religious place and agricultural lands, it may cause adverse impact on environment, including bacterial diseases, fungus, parasites, increase in noise levels and visual problems. The Hon'ble Bench held that:

> *"the NGT has original jurisdiction in terms of Section 14 of the NGT Act, in relation to substantial question relating to environment or enforcement of legal rights relating to environment, when it arises from implementation of one or more of Acts specified in Schedule-I, of the NGT Act, 2010*".

It is also held that:

> *"**16**. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate*

to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such

facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: Rajasthan High Court Advocates Asson. V. Union of India [(2001) 2 SCC 294]; Sri Nasiruddin v. State Transport Appellate Tribunal and Ramai v. State of Uttar Pradesh [(1975) 2 SCC 671]; A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem [(1989) 2 SCC 163]; Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors. with Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors. [(1994) 6 SCC 322]; Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors. [(2004) 3 SCC 277]; Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. [(2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr.[(2004) 9 SCC 512]; Prem Chand Vijay Kumar v. Yashpal Singh and Anr. [(2005) 4 SCC 417]; Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors. [(2006) 3 SCC 100])

17. *Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that*

those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

24. Learned Counsel Sh. Mihir Desai, seeks to rely upon "***Amit Maru vs The Secretary, MoEF and Ors***. (**M.A. No.65 of 2014 in Application No.13 of 2014**)." This Tribunal held that: " 'cause of action' for environmental dispute could 'first arose' when knowledge of violation of norms was gained and it is referable to the term of 'such dispute' as used in

Section 14(1) of the NGT Act,2010". Thus, "there must exist substantial environmental dispute between the parties relating to enforcement of any act or legal right, available under Schedule-I, of the NGT Act, 2010, 'which dispute' ought to give rise to cause of action that had arisen for first time". It is contention of Sh. Mihir Desai, learned Advocate that in the instant case, when construction activity actually started in September, 2013, public members were alarmed and after enquiry they came to know about commencement of illegal project of Garudeshwar Weir. So, even if first cause of action is counted from September/October, 2013, the Application filed on 16.1.2014, is within period of limitation.

25. True, merits of the Applicants are not required to be considered at this stage. Still, however, *prima facie*, it would be essential to look into the Application to examine as to under which provisions, will it fall for the purpose of counting limitation.

26. Chapter-III of the NGT Act, 2010 deals with jurisdiction, powers and proceedings of the the Tribunal. We may reproduce relevant parts of Ss.

14,15, 16 and 18 of the NGT Act, 2010, for amplification of understanding the scope thereof. It would help us in interpreting purpose of these provisions placed under caption of Chapter-III, together.

Section 14 :

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

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.

Section 15:-

15. Relief, compensation and restitution:-

(1) The Tribunal may, by an order, provide,-

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

(b) for restitution of property damaged;

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

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

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

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

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

Section 16:-

"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 of which the order of 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.

Section 18:-

18. Application or appeal to Tribunal:

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

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

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

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

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

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

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

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

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

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

(3) The application, or as the case may be, the appeal filed before the Tribunal under this act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

27. Coming to Sub-clause (3) of Section 15, it is manifest that any Application for grant of compensation or relief or restitution of property, or environment under Section, can be entertained by the Tribunal only if it is made within period of five (5) years from the date on which cause of action for such compensation or relief first arose. Here is the distinguishing line between Sub-Section (1) of Section 14 and Sub-section (3) of Section 15 of the NGT Act, 2010. While Section 14 (3) governs domain of **"**adjudication of dispute arising out of implementation of enactments specified in Schedule-I, or any substantial question relating to environment and then the limitation period would trigger from date on which cause of action for 'such dispute' arose first**".** Sub-section (3) of Section 15,

relates to limitation period of five (5) years in respect of cause for such "compensation or relief" whatever it may be, first arose. There is much difference between process of adjudication of dispute and process of making provision for grant of relief or restitution of property/environment. In our opinion, Section 15 of the NGT Act, 2010, gives discretion to the Tribunal to provide for relief and compensation to victims of pollution, restitution of property damaged due to degradation of environment for such area etc. Needless to say, reliefs sought under Section 15, are not required to be mandatorily granted unless and until adjudication of dispute under Section 14, is completed. For example, compensation to victims of pollution cannot be contemplated unless and until the dispute regarding environmental question arising out of implementation of enactments specified in Schedule-I, or legal right pertaining to violation of mandate of environment is settled, which could show that such Applicant is victim of any violation of enactments specified in Schedule-I, of the NGT Act, 2010, or that it is clear case of an accident, admittedly being result of environmentally adverse impact. In other words,

Section 15, cannot be isolated from Section 14 and Section 18 of the NGT Act. All these provisions will have to be considered together.

28. Normally, it was unessential to give extracts of relevant provisions enumerated in Chapter-III of the NGT Act, 2010, which provide for legal remedies in relation to environmental issues, may be pertaining to enforcement of any right claimed for relief or compensation etc. We have, however, reproduced these provisions in order to highlight Section 18 (1) of the NGT Act, 2010.

Section 18(1) of the NGT Act, 2010, mandates that the Application must contain relevant particulars and be accompanied by such documents, if it is so filed under Ss. 14 and 15 or be it an Appeal under Section 16 of the said Act. Obviously, Section 18(1) of the NGT Act, 2010, mandates as to how and in what manner the Application either under Section 14 or 15 or an Appeal under Section 16, can be filed to the Tribunal. Sub-clause (2) of Section 18, is rather important for the purpose of interpretation of nature of remedy, which can be considered under any Application filed to the Tribunal. Sub-clause

(2) of Section 18, carves out an exception, because opening words used therein are "without prejudice to the provisions contained in Section 16". It follows, therefore, that filing of Application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by a person, who falls within a particular category stated in Sub-clauses (a) to (f) and it does not provide for filing of any Application for restitution of environment for such area or areas, as per discretion of the Tribunal. In other words, though settlement of dispute under Section 14(1) by adjudication of cause of such "substantial question relating to environment" is permissible by filing Application under Section 14 read with Section 18(1) and 18(2), yet, such is not the case with Application under Section 15 (1) read with Section 18(2) of the NGT Act, 2010, at least to the extent of restitution of property damaged or for restitution of environment for such area or areas, as per discretion of the Tribunal. The Application under Section 15 read with Section 18, may be filed for relief or compensation to the victim of pollution and other environmental damages arising under the enactments specified in Schedule-I (including

accident occurred while handling of any hazardous substance), within period of five (5) years from the date of on which 'cause of action' for such compensation or relief, first arose. In such a case, the meaning to expression 'cause of action' will be rather restrictive, inasmuch as it has to be read with rider provided in Section itself; namely; "from the date on which cause for compensation or relief first arise". The cause for compensation, obviously, refers to the cause of incident, which could trigger from date of incident accident or accidental negligence arising out of spillage of hazardous substance or environmental damage, the victimization of pollution, which is result of violation of the enactments specified in Schedule-I, of the NGT Act, 2010. We cannot read anything more when the purposive interpretation of all the provisions, if considered together, is required to be considered. Otherwise, it may open floodgate to bygone litigations. For example; take a case of landslide which occurred somewhere in 2009 i.e. prior to commencement of the NGT Act and Application under Section 15 read with Section 18 of the NGT Act, 2010, and only relief for restitution of environment is sought by filing Application

under Section 15 can such case lie within purview of Section 15, of the NGT Act, only because an Applicant approaches the Tribunal with a case that he gathered information about landslide on basis of internal communication between the Meteorological Department and the Ministry concern, before four (4) years for filing the Application. In such a case, entire scenario of environment could have gone substantial change which is many a times difficult to trace out and, restitution thereof is a difficult task. The co-relation between Ss. 14,15 and Section 18(1) of the NGT Act, 2010, would make it amply clear that where a relief for grant of compensation or damages caused to the property or where death as a result from the breach of environmental Law occurs an Application containing all such particulars can be filed by the person or representative of the deceased, within period of five (5) years, on date of which 'cause of action' for such compensation or relief, first arose. This provision about five (5) years Limitation appears to be analogous to the Limitatio under provisions of Section 166 of the Motor Vehicles Act. So, date on which any incident which could have resulted into injury to a person, death of a person,

due to environmental damage, damage to property, or relief, which can be granted in terms of money due to an accident arising out of spillage, discharge of effluent of hazardous substance, or any kind of loss of fertility as a result of such of pollution, due to act of contravention of enactments specified under the Acts mentioned in Schedule-I, of the NGT Act, 2010, will be date of such incident and cannot be any other date of "knowledge regarding grant of project activity or, absence of Environment Impact Assessment (EIA)". Those subject matters are covered by the "precautionary principle" which are to be taken into account before any project work has to be commenced. Changing of nature of such project work will, therefore, come within ambit of only and only Section 14(1) read with Section 18(1) of the NGT Act, 2010, because it requires "settlement of dispute relating to substantial question of environment"

(**Emphasis supplied**)

Therefore, first cause of action for filing of such Application would trigger from date of knowledge of the project activity which may smack of illegal acts undertaken by the Project Proponent (PP). Herein,

the Applicants referred to communication of Sh. Shekhar Singh, a Member of ESG, dated March 24th, 2013, addressed to the Chairman of ESG. So, they gathered knowledge at least on March 24th, 2013, that project of Garudeshwar Weir was being carried out by Gujarat Government at the site, probably without assessment of environmental impact by the ESG. They also knew that it was a Sub-Group working under the NCA.

29. Conjoint reading of both the above provisions would make it amply clear that adjudication of dispute relating to environment must be the first priority in case the Application comes within domain of Section 14(1). The National Green Tribunal can exercise its jurisdiction in case adjudication of dispute under Sub-clause (1) of Section 14, is made within a period of six (6) months from the date on which cause of action for such dispute first arose. Substantial question relating to environment involved in the instant Application, is allegedly date of construction of Garudeshwar Weir without full feasibility report and social as well as environment impact report, being submitted during course of construction and operation of Garudeshwar Weir, submitted to the

Environment Sub-Groups (ESG). The main thrust of Applicants is on the letter dated 24th March, 2013, written by Sh. Shekhar Singh, a Member of ESG. (Annex-5). Perusal of the letter dated March 24th, 2013, reveals that Sh. Shekhar Singh categorically stated that he had no knowledge whether comprehensive assessment of environment and social impact of Garudeshwar Weir and its contribution to cumulative impact of all the projects and activities in the area was done. He, however, stated that if it had been so done, he did not believe that same was put up to ESGs for its approval. Obviously, approval of ESG for the project of Garudeshwar Weir was thought necessary. According to perception of Sh. Shekhar Singh, the Committee directed Govt. of Gujarat (GoG) to take further follow up actions and, therefore, construction work of Garudeshwar Weir has been started.

30. At the cost of repetition, we may point out that the applicants have vaguely averred that they came to know about the impugned project being carried out without comprehensive assessment of environment and social impact by the ESG. They have not, however, made it clear, in any manner,

whatsoever, how the letter dated 26th October, 2013, sent by Sh. Shekhar Singh, a Member of ESG to the Chairperson of ESG, was accessible to them. It is vaguely stated that the date of knowledge of letter was in October, 2013. How come such knowledge regarding official communication between Sh. Shekhar Singh and the Chairperson of ESG, was gathered by the Applicants, is rather intriguing and the Applicants did not clarify this aspect of the matter. They did not seek such information by submitting any Application under the R.T.I. Act, 2005. The statement of Applicants that limitation commences only in October, 2013, is not only vague, but is totally unacceptable, having regard to the fact that the words "in October, 2013" are subsequently added in the typed script of the Application. The effort of Applicants *prima facie* appear to be somehow or other to bring the Application within six (6) months period, so that it would come within ambit of Section 14 of the NGT Act, 2010. At this juncture, it is pertinent to note that here also is some misconception in the mind of Applicants. The Applicants have come out with a case that they were alarmed when the construction activity was

noticed by them somewhere in September, 2013. They categorically stated in the Application "*it further appears that around March 2012, it was decided to award the contract to one M/s Ritwik Project Pvt. Ltd, Hyderabad for amount of Rs.299.43 Crores for Garudeshwar Weir*". It is explicit from such statement in the Application that they were well aware that the project work was to commence and contract was awarded to M/s Ritwik Project Pvt. Ltd, Hyderabad in March, 2012. This knowledge has absolutely no co-relation with subsequent internal department communication between Sh. Shekhar Singh and the Chairperson of ESG of NCA. Furthermore, it is not case of the Applicants that they in any way concerned with decision of NCA, which is the concerned Authority to decide the issues ventilated through the present Application. In other words, the Applicants have made statements which are inconsistent with each other and moreover, the date of knowledge regarding so called illegal activity alleged by them, is imaginary and carved out to befit the Application within socket of Section 14 of the NGT Act, 2010, somehow or the other.

31. Apart from what is stated above, there is no scintilla of evidence that the work was allotted in March, 2012, the executing agency took such a long time to start the actual construction activity at the site. This is rather improbable.

32. Now, there may be some room to say that word ”Restitution” is used in Section 15 read with Section 18 of the NGT Act, 2010 with some connotation and meaning, though it is conspicuously absent in Section 18. We are aware that the Dictionary meaning of words “Restoration” and “Restitution” have semblance. Law Lexicon, (Dr. Shakil Ahmed Khan, 3rd Edition. 2012) defines expression “Restoration” and “Restitution” amends as follows:

> RESTORATION, RESTITUTION, REPARATION, AMENDS.
>
> “Restoration of property may be made by any one whether the person taking it or not: *restitution* is supposed to be made by him who has been guilty of the injustice. The dethronement of a king may be the work of one set of men, and his *restoration* that of another, but it is the bounden duty of every individual who has committed any sort of injustice to another to make *restitution* to the utmost of his power. “*Restoration*” and “*Restitution*” are both

employed in the sense of undoing that which has been done to the injury of another, but the former respects only injuries that affect the property, and *reparation* those which affect a person in various ways. He who is guilty of theft, or fraud, must make *restitution* by either restoring the stolen articles or its full value; he who robs another of his good name, or does any injury to his person, has it not in his power so easily to make *reparation*. The term reparation comprehends all kinds of injuries, particularly those of a serious nature, the word amends is applied only to matters of inferior importance".

33. We are aware that this Tribunal is not bound by procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, as provided under Section 19(1) of the NGT Act, 2010. At the same time, Sub-Section (4) of Section 19, gives power to the Tribunal which indicate that the NGT has all trappings of 'Civil Court'. The power to restitute a property under the Code of Civil Procedure, 1908, is provided under Section 144, which reads:

"Section 144

144. Application for Restoration.-(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order].

[Explanation- For the purposes of sub-section (1) the expression "Court which passed the decree or order" shall be deemed to include—

(a) Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to

execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)".

Perusal of Section 144 of Civil Procedure Code, 1908, reveals that restitution depends upon final outcome of adjudicatory process. It would also depend upon any variance or subsequent orders passed in the Appeal. The adjudicatory process is, therefore, pre-condition, may be either interim adjudicatory process or final one, but prior to adjudication of dispute, the order for restitution in Application under Section 15 read with Section 18, in our opinion, per-se, may not be within legal domain, having regard to scheme of Chapter-III of the NGT Act, 2010.

34. Before we would consider necessity of approval of ESG of Narmada Control Authority (NCA), it will be appropriate to refer certain observations of the Apex Court in "***Narmada Bachao Andolan vs Union of India***". While

concluding the Apex Court gave direction No.6, as under:

> "Even though there has been substantial compliance with conditions imposed under the EC, the NCA and ESG, will continue to monitor and ensure that all steps are taken not only to project but to restore and improve environment."
>
> (**Emphasis by us**)

35. It follows, therefore, that functions of NCA and ESGs were not restricted to protect and restore and improve environment only in the area covered by SSP. It appears that for such a reason Sh. Shekhar Singh, wrote letter to the Chairman of ESG of the NCA and to the Secretary of MoEF. Taking cue therefrom similar letter was addressed by the Applicant Nos.1 and 2 to the MoEF and Chief Secretary of GoG as well as the Chairman of Sardar Sarovar Narmada Nigam Limited (SSNNL).

36. In the context of commencement of date of limitation, which first arose, giving rise to cause of action, the Applicants are required to explain as to how and when it had arisen and as to how come the Application is within prescribed period of limitation.

37. Unless these issues are crystalized and determined, mere issue of approaching the Tribunal for the purpose of restitution which also is vaguely referred in the Application, would be rather impermissible. It need not be reiterated that the Applicant Nos. 2 and 3 and likewise affected land owners of whose lands have been acquired for Garudeshwar Weir project had already received the compensation. They fought litigation up to the High Court level and never raised any substantial question relating to environment, under Section 14(1) of the NGT Act, 2010, before filing of the present Application. They cannot claim restoration of lands, which are already vested in the Govt. somewhere in 1991, as a result of acquisition proceedings under the Land Acquisition Act, 1894. For, those lands vested in State of Gujarat, which became owner of those lands in the eye of Law. A special Notification under the Land Acquisition Act, 1894, was issued vide No. LAQ(BHAL)/36/87(P260) dated May 18th, 1987, by the Additional Collector, (Narmada) Vadodara. Perusal of said Notification clearly shows that a further Notification dated 24th April, 1987, was issued whereby it was informed to owners of the lands at village Garudeshwar, in

district Bharuch, that lands Survey Nos. 295, 296 and 298, for purpose of acquisition so as to cause alignment of an approach road to Garudeshwar Weir site were acquired. The project of Garudeshwar Weir was, therefore, within knowledge of the persons likely to be affected due to acquisition of their lands. They never raised environmental dispute of any kind before filing of the Application. The Land Acquisition Act, 1894, is also a special enactment. The NGT Act, 2010, came on statute-book after many years of enforcement of the Land Acquisition Act and also the event of acquisition of lands for project of Garudeshwar Weir. We mean to say, even assuming that the Applicants could have any reason to raise environmental dispute by filing the Application under Section 14 of the NGT Act, 2010, cause of action is attributable to them, when in or about due to allotment of the construction work to M/s Ritwik Construction Pvt. Ltd, in 2012, they were alarmed and upon enquiry came to know about commencement of illegal project of Garudeshwar Weir. Needless to say, starting point of cause of action ought to have been shown in the Application and taking a worst case and assuming that

illegality of the project of Garudeshwar Weir came to knowledge of the Applicants, in or about 2012, the Application ought to have been filed within six (6) months thereafter as required under Section 14(3) of the NGT Act, 2010. Instant Application filed on 16.1.2014, is, in any case, much beyond prescribed period of six (6) months from the date on which cause of action for raising environmental dispute had first arisen.

38. Reliance of the Applicants on certain observations in ***Kehar Singh vs. State of Haryana*** (Application No.124 of 2013), decided by Principal Bench of NGT at New Delhi, is misplaced. A Five Member Bench headed by **Hon'ble Chairperson (*Hon'ble Sh. Justice Swatanter Kumar*)** categorically observed that term "cause of action" has to be understood in contradistinction to the nature of form of a suit. It is further observed that in the restricted sense cause of action means the circumstances of forming infraction of right of immediate occasion for action.

39. In "***Aradhana Bhargav & Anr Vs MoEF and Ors*** (Application No.11 of 2013) a co-ordinate Bench of NGT, held that "a person who wishes to

invoke jurisdiction of the Tribunal or Court, has to be vigilant and conscious of his right and should not let the time to go by not taking appropriate steps. The principle of continuing cause of action is not applicable to the provisions of NGT Act, 2010". It is observed at the fag end of para-30

> ***30**. Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negatived for more than one reason. The said letter dated 05.11.2012by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:*
>
> > *"Yesterday on 4th November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4th November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter....."*
>
> *Nowhere ii is stated in the letter that construction work commenced on 4th-5th November, 2012. From the reading of the letter, it would be quite*

clear that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non-production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara."

40. There is basic difference between substantive provision in the section of the Act, which specifies particular limitation and excludes provisions of the Limitation Act, 1963 and Rules of the Code of Civil Procedure. As stated before, the concept of 'extent of limitatoin' under the Limitation Act, 1963, is inapplicable to provisions of the NGT Act, 2010, inasmuch as it is a special statute. In ***"Chhatisgarh State Electricity Board Vrs. Central Electricity Regulatory Authority and Ors (2010)5, S.C.C. 23"***, the Apex Court considered Section 125 of the Electricity Act 2003, along with Proviso appended thereto. The Apex Court held that "*limitation period provided under section 125*

is of 60 days and could be extended up to 60 days under Proviso to Section 125 but there is no provision in the said Act for extension beyond this period". It is held that "*the Electricity Act is a special legislation which is excluded from purview of the Limitation Act, 1963 by virtue of Section 29 (2) of the Limitation Act and, therefore, Section 5 of the Limitation Act, cannot be invoked in relation to proceedings of the special enactment*". It is, therefore. Obvious that this Tribunal has no power to extend period of limitation.

41. In "***Gram Ppanchayat Tiroda & Anr vs MoEF & ors***". This Bench also took similar view. The period of limitation of five (5) years will be available if the Application can be considered under Section 15(3) of the NGT Act, 2010. In our opinion, for filing of such Application under Sub-Clause (3) of Section 15, cause of action for compensation or relief will have to be read with Sub-clauses (4) and (5) of Section 15.

42. Initially, we were reluctant to take up the issue of Limitation and other issues for consideration. The question of limitation is a mixed question of facts and Law and ordinarily it has to be determined only when facts are very clear. Else, such an issue should not be taken up for decision at the outset. It is

pointed out by learned Additional Solicitor Generals, appearing for the Respondent No.1 that in case of "***Arun Agarwal vs Nagrika Exports (P) Ltd& Ors*** *(2002) 10, SCC 101, (2)* ***K. Sagar vs A. Bala Reddy & Anr*** *(2008) 7, SC 166 and (3)* **M/s *Reliance Infocom Ltd vs BSNL***" CM 1831/2005 in FAO (OS) 232/2004, the issue is thrashed out. In Reliance Info Co. Ltd. Vs BSNL, by order dated February 10th, 2005, the Hon'ble Delhi High Court held that "*it would decide the issue of jurisdiction/maintainability along with merits of the case*". That order was challenged before the Apex Court. The Apex Court by Judgment dated 7.7.2006, CA, 2930, 2006 (***BSNL Vs Reliance Infocom Ltd***) was pleased to set aside the order of Hon'ble Delhi High Court. It has been held that "*such preliminary issue, shall be decided first, if it can be demonstrated that such preliminary decision would be essential in the facts and circumstances of the given case*".

43. Perusal of the reliefs sought by the Applicants clearly indicate that mainly they seek injunction against commencement of construction work of Garudeshwar Weir. The prayers in the Application, thus, mainly purport to show that stoppage of any further construction in Garudeshwar Weir, is the main object (Prayer) of Application. The Applicants

incidentally say that actions may be taken against the officers, who have committed defaults in going ahead with construction work without following due compliance of the Environment (Protection) Act, 1986 and ESG and RSG of NCA before allowing commencement of construction. Obviously, grievance of the Applicants is that Clearance of the Environmental Sub Group (ESG) and NCA was essential before the construction work of Garudeshwar Weir could be commenced. In other words, the Applicants meekly surrendered to the authority of ESG as the proper authority to assess and approve downstream project of Garudeshwar Weir (G.W). It is *ipse-dixit* that communication of Sh. Shekhar Singh dated March 24th, 2013, addressed to Chairman Dr. V. Rajgopalan of ESG, gave them due alarm note. As a matter of fact, said communication was not placed in public domain. It was internal communication between the Members of ESG. We don't know as to how the Applicants could have access to the said communication and on basis thereof how could they affirm that there was no Clearance from ESG.

44. At this juncture, it would be appropriate to notice that meaning of expression 'Dam and Water

Works' is set out and considered in depth in case of ***State of Andhra Pradesh vs. State of Maharashtra and Ors.*** **(2013) 5 SCC 68**. The Apex Court observed as follows;

51.1. The same book with reference to Colwell v. May's Landing Water Power Co. 19. N.J.Eq. (4 C.E.Green) 245, 248, explains the word "dam" as follows:

> The word "dam" is used in two different senses. It properly means a structure raised to obstruct the flow of water in a river, but by well-settled usage it is often applied to designate the pond of water created by its obstruction. The word is used in this conventional sense in some statutes, and it is evidently used in this sense in a statute giving power to raise the "dam and water-works" to a height mentioned.

51.2. In the Indian Standard Glossary of Terms Relating to River Valley Projects, Part B, Dams and Dam Sections [First Revision], paragraph 2.27 explains "dam" as follows:

> A barrier constructed across a river or natural watercourse for the purpose of: (a) impounding water or creating reservoir; (b) diverting water there from into a conduit or channel for power generation and or irrigation

purpose; (c) creating a head which can be used for generation of power; (d) improving river navigability; (e) retention of debris; (f) flood control; (g) domestic, municipal and induses; (h) preservation of wildlife and pisciculture, (j) recreation etc.

51.3. Glossary of irrigation and Hydro-Electric Terms and Standards Notations used in India, Third Edition, published by Central Board of Irrigation and Power, explains "dam" as under:

> Dam: A structure erected to impound water in a reservoir or to create hydraulic head.

51.4. "Reservoir" is defined in the said publication as follows:

> Reservoir: A pond, lake, or basin, either natural or artificial, for the storage, Regulation and control of water.

51.5. "Introduction to dams", Publication No.220 by Central Board of Irrigation and Power under the Chapter "Dam Sites – Large Dams" with reference to book by J. Cotilon explains the position with regard to dam sites as under:

> A dam is a structure meant to retain water. Only hydraulic dams are dealt with in this paper; when

it is question of other dams, it will be specified "Talling dam", "industrial waste dam".

1. Generally, this retention takes place in a natural dispersions. But it can also take place in an artificial enclosure created, for instance, by embankments set-up along the banks of a river.

   Moreover, the enclosure can be fully artificial; this is the case of a basin filled by pumping, created on a plateau and closed by a ring embankment, in this case, we speak about an "embankment" rather than about a "dam".

2. Generally, the dam is set-up on a river.

   But it can be constructed in a dead valley where only a trickle of water flows; the reservoir is then filled by pumping and/or by gravity diversions.

   <u>It can also close a pass on the perimeter of a reservoir, it is then called "secondary dam" as opposed to "main dam" which closes the natural depression (living valley or dead valley)</u>.

3. The dam retains generally the upstream water, its purpose may be also to retain the downstream water for a few hours. That is, an exceptional tidal wave (anti-storm dam).

45. Along with affidavit of Applicant No.2 – Rohit, communication dated June 12th, 2014, (Annex-A) issued by R & R ESG of NCA, is placed on record. It appears that decision was taken in the Meeting dated June 27th, 2013, that phase-I proposal tilted as "construction of spillway Piers to full; Height and Bridge and Installation of Gates to be kept in raised position", was approved by SJ &-E and the Chairman of R&R Sub Group of NCA. So also, communication dated March 29/30 1984, (Annex-D) filed along with affidavit of Rohit Prajapati -Applicant No.2, reveals that Sardar Sarovar Construction Advisory Committee (SSCAC), (Govt. of India, Ministry of Irrigation) granted specific approval to Garudeshwar Weir in following way:

iv) A tail-pool dam located at Garudeshwar Weir about 12.0Km downstream of Sardar Sarovar Dam with a live of storage capacity of 34.36 Moum (27857 Acft) between pond level + 33.15m (103.7ft) and +27.33m (+89.6ft). The recommendation was communicated to

all the concern authorities. The acquisition of lands was started in 1991.

46. The Applicants, in fact, pleaded in the Application- para V(b) and para V(l), which shows that Garudeshwar Weir is a power component of Sardar Sarovar Project (SSP) and they were aware about litigation pertaining to entire project, which was taken up to the Apex Court. It would not be out of place to reproduce certain averments from the pleadings, before the Apex Court in a Petition that was filed in the Writ Petition (Civil) No.314 of 1994 (**Narmada Bachao Andolan)** case.

> "Far from preparing a master plan for resettlement and rehabilitation within two years from the Tribunal's award i.e. by 1981, the authorities had still not been able to prepare such a master plan. Till today, the authorities are unaware of even the approximate number of persons who are going to be affected by the reservoir alone and have not done any proper survey to determine the number of persons who will be affected by other project related works such as canal, colony, Garudeshwar Weir (in the downstream meant for pumping back water at night after power generation), compensatory afforestation etc.

47. The pleadings which are reproduced above go to show that Garudeshwar Weir was considered as part and parcel of SSP. It was known to all concern persons when Garudeshwar Weir in the downstream

was meant for pumping back water at night, after power generation, compensatory afforestation etc. Thus, the very purpose of Garudeshwar Weir was to utilize the storage capacity of reservoir as a pumping station to provide water, which could be pumped back in the night time, for power generation. One of the prayers in that Writ Petition (**Narmada Bachao Andolan**) case was thus:

> "To appoint independent members and representatives from outies organizations of statutory bodies like NCA, Sardar Sarovar Construction Advisory Committee (SSCAC) and Environmental Sub Group (ESG) etc."

48. It is interesting to note that before Environment Impact Assessment (EIA) Notification dated September 14, 2006, the procedure was different in various respects. There was first EIA Notification, 1992, issued on 29.1.1992. The Notification of 1992 was followed by Environment Impact Assessment (EIA) Notification, 1994 that was further followed by Explanatory Note, regarding Environment Impact Assessment (EIA) Notification, 1992. Until 1994, however, EC from the Central Govt. was only of Administrative decision. It lacked

legislative support and did not mandate any kind of Environment Impact Assessment (EIA), as such. It is but natural that when SSP was in contemplation along with ancillary projects like Garudeshwar Weir only administrative decision could suffice the purpose, prior to 1994.

49. Sum and substance of discussion made above is that instant Application falls only within ambit of Section 14(1) of the NGT Act, 2010 and as such it is barred by limitation.

Point No. (iii) :

Whether the Original Application is maintainable at the instance of the Applicant or liable to be dismissed, due to absence of 'locus *standi*'?

50. It is submitted on behalf of the Respondent Nos.1 and 2 that the Applicant Nos.1 to 4, have no '*locus standi*' to file instant Application. Chief bone of their argument is that the Applicant No.4, has received compensation, when his land was acquired and as such, he is beneficiary of the project in question. Therefore, now, he cannot turn back and challenge Garudeshwar Weir project, when he has accepted compensation, challenged land acquisition

Award and also gained more compensation in the Appeal- proceedings before the Hon'ble High Court. The Applicant No.4, alone may be debarred from filing the Application on such a ground, in case, the Application is to be considered as covered under Section 15 of the NGT Act, 2010. For comparative purpose, the Applicant Nos. 1 and 2 were not required to file any Application before they noticed illegalilty of the alleged construction. In case of ***Goa Foundation and Ors Vs. Union of India & Ors*** **(M.A.No.49 of 2013 in Application No.26 of 2012)** Principal Bench of NGT, New Delhi headed by ***Hon'ble Sh.Justice Swatanter Kumar***, observed:

> **25**. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative,

he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacue Property, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others AIR 1976 SC 242 held as under:-

> "**27**. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably con fined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning

in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pertinent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the

advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and. if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably

clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

51. In order to keep judicial propriety and discipline, we deem it proper to go by logic enumerated above in dictum of Goa Foundation case. So, it goes without saying that the Applicant Nos. 1 to 3, may not be persons directly affected by Garudeshwar Weir project. It supposes that they have "interest in environment and desire to maintain required standard of environment in the area". Such persons can ventilate grievances by filing Application under Section 14(1), in view of Section 2(h) as well as 2(j) of the NGT Act, 2010. The expression 'aggrieved person' is not restricted to person, who is entitled to appeal against any adverse order, but a term used in

juristic sense. Hence, objection regarding maintainability of the Application for want of '*locus standi*' of the Applicants, is rejected.

Point No. (iv) :

Whether the Application is barred by principle of Res-judicata and, as such, is not maintainable in view of the principle underlying Explanation-IV of Section 11 of the Code of Civil Procedure, 1908:

52. As far as objections pertaining to bar of 'Res-judicata' is concerned, Learned Additional Solicitor General Sh. Maninder Singh vehemently argued that the provisions of Section 11 of Explanation IV and Explanation VI of the Code of Civil Procedure, debar the Applicants to file instant Application, when issues were decided by the Apex Court in the earlier Public Interest Litigation (PIL), initiated by a group of persons, who opposed SSP. The issue regarding environmental impact on downstream project, which is part and parcel of the SSP, cannot be reinvestigated or re- agitated at the instance of any other persons, only for the reason that such persons are group comprising of those persons, interested in the project of Garudeshwar Weir, were not parties to the earlier litigation. He vehemently argued that filing

of instant Application by Mr. Lakhan Musafir and others, is no short of 'abuse of process of Court' and, as such, the main Application filed by latter group deserves outright dismissal at the threshold. He mainly seeks to rely upon certain observations in the case of "***State of Karnataka Vs All India Manufactures Organization & Ors*" (2006) 4, SCC, 683**, particularly, which are set out in paragraphs 32 to 40 thereof.

Res Judicata

".....32. Res Judicata Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim ***nemo debet bis vexari pro una et eadem causa*** (P. Ramannatha Aiyer, Advanced Law Lexicon (Vol3 3rd Edn. 2005) at p.3170) ("No one ought to be twice vexed for one and the same cause") and second, public policy that there ought to be an end to the same litigation. (Mulla, Code of Civil Procedure (Vol.1, 15th Edn, 1995) at p.94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. (See, Kalipada De v. Dwijapada Das) The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognizes this principle and forbids a court

from trying any suit or issue, which is res judicata, recognizing both 'cause of action estoppel' and 'issue estoppel'. There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to Public Interest Litigations and second, whether the issues and findings in Somashekar Reddy constitute res judicata for the present litigation.

33. Explanation VI to Section 11 states:

> "**Explanation VI**. Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

34. Explanation VI came up for consideration before this Court in Forward Construction Co. and Ors. v. Prabhat Mandal (Regd.). (Hereinafter "Forward Construction Co."). This Court held that in view of Explanation VI, it could not be disputed that Section 11 applies to Public Interest Litigation, as long as it is shown that the previous litigation was in public interest and not by way of private grievance. (Ibid at pp. 112-113 (paragraph 21) further, the previous litigation has to be a bona fide litigation in respect of a right which is common and is agitated in common with others. (Id)

35. As a matter of fact, in a Public Interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous Public Interest Litigation would be a judgment in

rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised/should have been raised on an earlier occasion by way of a Public Interest Litigation. It cannot be doubted that the petitioner in Somashekar Reddy (supra) was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy(supra) , as a Public Interest Litigation, could bar the present litigation.

36. We will presently consider whether the issues and findings in Somashekar Reddy (supra) actually constitute res judicata for the present litigation. Section 11 of the CPC undoubtedly provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute res judicata in the subsequent proceeding. Explanation III to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other:

> **Explanation III** to Section 11 provides that for an issue to be res judicata it should have been raised by one party and expressly denied by the other: "Explanation III. The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."

37. Further, Explanation IV to Section 11, states:

> "**Explanation IV**. Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

38. The spirit behind Explanation IV is brought out in the pithy words of Wigram, V.C. in Henderson v. Henderson (All ER pp.381 I-382A) as follows:

"The plea of res judicata applies, except in special case (sic), not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." (Ibid. at pp.381-382).

39. In Greenhalgh v. Mallard (hereinafter "Greenhalgh"), Somervell L.J. observed thus:

> "I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the Court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them." (Ibid. at p.257)

40. The judgment in Greenhalgh (supra) was approvingly referred to by this Court in State of U.P. v. Nawab Hussain . Combining all these principles, a

Constitution Bench of this Court in Direct Recruit, Class II Engineering Officers' Association v. State of Maharashtra expounded on the principle laid down in Forward Construction Co. (supra) by holding that:

> "An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata. (Ibid. at .741 (paragraph 35) , per LM Sharma, J.) "

53. Learned Additional Solicitor General, Sh. Maninder Singh would submit, therefore, that though issue of Garudeshwar Weir was not separately and specifically referred to or mentioned being a component of SSP while delivering Judgment in case of ***Narmada Bachao Andolan***, by the Apex Court, yet, it cannot be overlooked that estimated cost of Garudeshwar Weir was included by the Planning Commission of India (PCI), in 1988, while

approving total estimated cost of SSP and moreover, there is reference to Garudeshwar Weir in the Judgment of the Apex Court, which impliedly goes to show consideration of such a project as part and parcel of SSP. Thus, it is vehemently argued that when during pendency of PIL before the Apex Court in ***Narmada Bachao Andolan*** case, group of the Applicants (Lakhan Musafir & Ors) never agitated issues pertaining to Garudeshwar Weir and environmental impact of SSP, vis-à-vis Garudeshwar Weir, nor it was conveyed before the Apex Court that Garudeshwar Weir, is a separate component and is not part of SSP, the original Applicants cannot be permitted now to raise such issues, inasmuch as the Judgment of the Apex Court in ***Narmada Bachao Andolan*** case. Learned Additional Solicitor General Sh. Maninder Singh also seeks to rely upon certain observations in the case of ***M. Nagbhushana vs State of Kerala & Ors*** **(2011) 3, SCC 408** and ***State of Tamil Nadu Vs State of Kerala & Ors*** **(2014) 12 SCC 696**.

54. We are called upon to consider the principle of "Public Trust doctrine" and "Precautionary Principle". The Apex Court held that: "*Principle of Public Trust Doctrine has no application in the context of safety*".

The Apex Court observed: "*the contesting party, by applying 'public trust doctrine' or 'precautionary measure' cannot through legislation do an act in conflict with the judgment of the highest Court which has attained finality. If a legislation is found to have breached the established constitutional limitation such as separation of powers, it has to go and cannot be allowed to remain. It is true that the State's sovereign interests provide the foundation of the public trust doctrine but the judicial function is also a very important sovereign function of the State and the foundation of the rule of law. The legislature cannot by invoking "public trust doctrine" or "precautionary principle" indirectly control the action of the courts and directly or indirectly set aside the authoritative and binding finding of fact by the Court, particularly, in situations where the executive branch (Government of the State) was a party in the litigation and the final judgment was delivered after hearing them*."

55. No doubt, the Apex Court further observed that "*Rule of Res-judicata is not merely technical Rule, but is based on high public policy*". Much emphasis was led on observations in Paragraphs 168,170,174 and 175 of the Judgment in ***State of Tamil Nadu Vs State of Kerala*** (supra). For ready reference, these paragraphs may be quoted as follows:

168. Nanak Singh has been followed by a three Judge Bench of this Court in Bua Das Kaushal. In our view, the rule of res judicata which is founded on public policy prevents not only a new decision in the subsequent suit but also prevents new investigation. It prevents the defendant from setting up a plea in a subsequent suit which was decided between the parties in the previous proceedings. The legal position with regard to rule of res judicata is fairly well-settled that the decision on a matter in controversy in writ proceeding (Article 226 or Article 32 of the Constitution) operates as res judicata in subsequent suit on the same matters in controversy between the same parties. For the applicability of rule of res judicata it is not necessary that the decision in the previous suit must be the decision in the suit so as to operate as res judicata in a subsequent suit. A decision in previous proceeding, like under Article 32 or Article 226 of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit on the principle of res judicata.

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170. In light of the above legal position, if the 2006 judgment is seen, it becomes apparent that after considering the contentions of the parties and examining the reports of Expert Committee, this Court posed the issue for determination about the safety of the dam to increase the water level to 142 ft. and came to a categorical finding that the dam was safe for raising the water level to 142 ft. and, accordingly, in the concluding paragraph the Court disposed of the writ petition and the connected

matters by permitting the water level of Mullaperiyar dam being raised to 142 ft. and also permitted further strengthening of the dam as per the report of the Expert Committee appointed by the CWC. The review petition filed against the said decision was dismissed by this Court on 27.7.2006. The 2006 judgment having become final and binding, the issues decided in the said proceedings definitely operate as res judicata in the suit filed under Article 131 of the Constitution.

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174. The rule of res judicata is articulated in Section 11 of the Code of Civil Procedure.

175. Explanations VII and VIII were inserted in the above provision by Code of Civil Procedure (Amendment) Act, 1976 w.e.f. 1.2.1977. Explanation VIII in this regard is quite relevant. The principles of res judicata, thus, have been made applicable to cases which are tried by Courts of limited jurisdiction. The decisions of the Courts of limited jurisdiction, insofar as such decisions are within the competence of the Courts of limited jurisdiction, operate as res judicata in a subsequent suit, although, the Court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the Court of limited jurisdiction, which was within its competence, operates as res judicata in a subsequent suit even when the subsequent suit is not triable by

it, a fortiori, the decision of the highest Court of the land in whatever jurisdiction given on an issue which was directly raised, considered and decided must operate as res judicata in the subsequent suit triable exclusively by the highest Court under Article 131 of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

56. We do not find it essential to discuss elaborately third case law cited by learned Additional Solicitor General, which, of course, is in keeping with same line of observations, which are in case of ***State of Karnataka Vs All India Manufactures Organization & Ors***". There cannot be duality of opinion that the principle of "Constructive Res-judicata" would be applicable when any issue which is 'directly and substantially' involved in earlier litigation, is not agitated though could have been so pleaded/agitated and decision in the earlier litigation is rendered on such issue. A careful reading of observations in ***State of Tamil Nadu Vs State of Kerala,*** go to show that the principles of 'Res judicata' is made applicable to cases, which are tried by the Courts of limited jurisdiction. The plea of Res-

judicata cannot be considered in isolation and in generality as such, this is procedural defence, which ordinarily, is applicable when the issue is same and is decided by the Court, having same kind of jurisdiction, or, jurisdiction of higher level and identity of the parties is of similar nature. Obviously, there must be semblance of the parties, the issue of jurisdiction before embargo is to be directly or impliedly placed by invoking such defence under Section 11 of Explanation IV or VI of the Code of Civil Procedure, 1908. Admittedly, the present Applicants were not parties before the Apex Court in **Narmada Bachao Andolan** case. We have perused pleadings in the PIL Writ Petition No.319 of 1994, filed in the matter of **Narmada Bachao Andolan** case. The pleadings in the petition of said PIL, do not refer to issue of Garudeshwar Weir and Environmental Impact Assessment (EIA) thereof. The only statement made in paragraph 15, of the said petition is as follows:

> *"far from preparing a master plan for resettlement and rehabilitation within two (2) years from the Tribunal Award by 1981, the authorities had still not been able to prepare such master plan till today. The authorities are unaware of even the approximate number of persons, who are going to be affected by*

the reservoir alone and have not done any proper survey to determine the number of persons, who will be affected by other project relied work, such as Canal, Colony, Garudeshwar Weir, if in the downstream meant for pumping back the water at night after power generation, compensatory afforestation etc."

In the earlier pleadings, it was only stated that

"there is no figure available as to how many families will be adversely affected by other national park and sanctuary proposals connected with this project, Garudeshwar Weir to be built downstream of SSP and other such necessary parts of the project".

57. The prayers in that PIL Writ Petition were to issue Writ of Mandamus for stoppage of construction of SSP to appoint an independent body for implementation of R & R programme and to constitute appropriate NCA. It does not appear that specific issue regarding construction of Garudeshwar Weir, without EIA was raised in that petition. Mere fact that certain lands were acquired for implementation of Garudeshwar Weir will not by itself amount to raising of such an issue in the earlier litigation and any particular finding of the Apex Court in case of **Narmada Bachao Andolan,** notwithstanding certain ***Obiter Dictas*** which are referred by learned Additional Solicitor General Sh. Maninder Singh. It is pertinent to note that purpose

of Garudeshwar Weir is to pump water by pumping the same to the main reservoir of SSP during night hours for power generation and affected villages are only within State of Gujarat. The cost of Garudeshwar Weir was not to be shared by three States i.e. Madhya Pradesh, Maharashtra and Gujarat, as per proposal of SSP, which was approved by the Planning Commission of India. It, therefore, appears that estimates for both the projects were prepared exclusive for each project and not comprehensively as such.

58. Be that may as it is, it is not necessary to examine whether Garudeshwar Weir is part and parcel of SSP and, therefore, it separately requires EIA. This aspect may need examination on merits of the case. We are not supposed to enter into thicket of merits of the case on facts and above observations are only *prima facie* observations to show that the issue of Garudeshwar Weir was not directly and substantially the same, which was before the Apex Court in **Narmada Bachao Andolan** case.

59. In our opinion, Rule of 'Constructive Res judicata' in the facts and circumstances of the present case, would depend upon close examination of the facts on which findings will have to be rendered

before we would be able to deal with such preliminary question. In our opinion, if the issue requires 'construction' for the purpose of applicability of Rule of Res-judicata and that too on consideration of facts of a particular case, such issue should not be decided as a preliminary one. In ***Ramesh Desai and Ors Vs Bipin Vadilal Mehta* 2006 (5) SCC 638** the Apex Court held that "*mixed question of fact and law, cannot be determined as preliminary issue".* It is observed that "*where a decision on issue of law depends on facts, there it cannot be tried as preliminary issue".* In the given case, it was held that "question of limitation in the particular facts and circumstances of that case was mixed question of fact and law and, therefore, it was improper to decide the same as a preliminary issue".

60. The issues pertaining to environment are flexible. There cannot be strict embargo in respect of environmental issues, inasmuch as juxta position would go on changing due to lapse of time. For example; the forest land available at the time of commencement of project activity may be reduced to large extent at the time of its implementation after the EC. There may be a case where due to afforestation the forest canopy density would be more

than what was available at the time of EC as compared to that of the earlier. In other words, environmental issues are not static and decision may not be binding on the same parties if the issues are directly involved in the earlier litigation with different identity on findings of such issues.

61. In so far as powers of the National Green Tribunal are concerned, it may be mentioned that Section 19 of the NGT Act, 2010, give leverage to this Tribunal to mould/regulate its own procedure and makes it clear that it should not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice.

62. The words "shall not be bound" as used in Section 19(1) clearly indicate the intention of legislature in unambiguous words. The legislative mandate reveals that this Tribunal is not required to be under binding procedural Rules of the Code of Civil Procedure, 1908. The Apex Court in ***V. Purushottam Rao Vs Union of India*** **(2001) 10, SCC, 305** held that "*issue of 'constructive Res judicata' is excluded when the Code of Civil Procedure is not applicable to the proceedings under Article 226 of the Constitute, in view of Explanation appended to Section 141 of the Code of Civil*

Procedure". Therefore, it is held that Code of Civil Procedure is not required to be followed in a proceeding under Article 226, unless the High Court itself has made provisions of Civil Procedure Code, applicable to the proceedings under Article 226 of the Constitution. The Court further noted that "*the provisions of Section 11 as well as Order 2, Rule 2 of the Code of Civil Procedure, contemplate adversarial system of litigation where Court adjudicates the rights of the parties and determines issues arising in a given case*". The Public Interest Litigation (PIL), filed for ensuring interest of public, cannot be held to be an adversarial system of adjudication. Similarly, the Apex Court in ***Rural Litigation Entitlement Kendra vs. State of U.P.*** **1989 SUPP (1) SSC 504,** declined to Rule of 'Constructive Res judicata' to a PIL raising issues of public importance on the grounds that a PIL, the disputes raised were not of interested parties and that 'Constructive Res judicata' is a technical defence which could not preclude determination of said matter. The Apex Court further observed that

"*even though, an earlier order could be treated as final one, then also in the dispute like PIL, it would be difficult to entertain 'plea of Res-judicata'* ".

(Emphasis supplied by us)

63. Considering the legal position discussed hereinabove, we are of the opinion that contentions of learned Additional Solicitor General Sh. Maninder Singh, are unacceptable. We do not accept the objections raised by the Respondent Nos.1 and 2 that the Application is barred by the principles of 'Constructive Res judicata' as envisaged under Section 11, Explanation IV and VI of the Code of Civil Procedure, 1908. The objection of such technical defence is, therefore, overruled.

64. In the result, the Misc. Application is allowed. We hold that the main Application No.10 of 2014, is barred by limitation. Hence, the Misc. Application is allowed and Application No.10 of 2014, is dismissed. No costs.

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(Justice V. R. Kingaonkar)

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(Dr. Ajay A. Deshpande)

DATE: 1st SEPTEMBER, 2015.
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