

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI,
NEW DELHI**

Original Application No. 24 of 2014

In the matter of:

1. Shiv Prasad
S/o, Sh. J.P. Dabral
R/o village Haldukhata
P.O. Kalalghati, Pauri Garhwal,
Uttarakhand-246149

..... Applicant

Versus

1. Union of India
Through Secretary
Ministry of Environment and Forests
Paryavaran Bhavan
CGO Complex, Lodhi Road
New Delhi- 110 003
2. State of Uttarakhand
Through Chief Secretary
Government of Uttarkhand
Uttarakhand Secretariat
4-B, Shubhash Road
Dehradun, Uttarakhand- 248001
3. Central Pollution Control Board
Through Chairman
Parivesh Bhawan,
CBD-cum-Office Complex East Arjun Nagar,
Delhi- 110 032
4. Uttarakhand Environment Protection & Pollution Control Board
Through Member Secretary
29/20, Nemi Road,
Dehradun- Uttarakhand- 248001
5. State Infrastructure and Industrial Development Corporation of
Uttarakhand Ltd. (SIDCUL)
Through Managing Director
29, IIE (IT Park) Sahastradhara Road,
Dehradun, Uttarakhand- 248001
6. Sub-Divisional Magistrate

Teshil Kotdwar, Badrinath Marg
Pauri Garhwal, Uttarakhand- 246149

7. Uttar Pradesh Pollution Control Board
Through Member Secretary
Building No. TC- 12V
Vibhuti Khand, Gomti Nagar
Lucknow, Uttar Pradesh- 226010
8. M/s Kukreti Steel Private Limited
Through Managing Director
Plot No. E-73-76 & F-23-27
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
9. M/s Shree Sidhballi Sugar Limited
Through Managing Director
Plot No. E-67-71
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
10. M/s Shree Dhanvarsha Steel Limited
Through Managing Director
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
11. M/s Sant Steels & Alloys Private Limited
Through Managing Director
Plot No. 1, Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
12. M/s Uttranchal Iron and Ispat Limited
Through Managing Director
Unit-1, Plot No. 3 & 4
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
13. M/s Uttranchal Iron and Ispat Limited
Through Managing Director
Unit- 2, Plot No. 5, 6 & 7
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
14. M/s Kotdwar Steel Limited
Through Managing Director
Block- E, Joshodharpur Industrial Area,

Kotdwar, Pauri Garhwal,
Uttarakhand- 246149

15. M/s Sumo Steels Private Limited
Through Managing Director
Block- E, Plot No. 45 & 50
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
16. M/s Hingiri Ispat
Through Managing Director
Plot No. E-27, 28, 39 & 46
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
17. M/s Pushkar Steels Private Limited
Through Managing Director
Plot No. D- 23 to 25
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
18. M/s HRJ Steels Private Limited
Through Managing Director
Plot No. F-12 to 22
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
19. M/s Jai Mteshwari Steels Private Limited
Through Managing Director
Plot No. E-51
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
20. M/s Poddar Alloys Limited
Through Managing Director
Plot No. E-29 & E-38
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
21. M/s Bhagyashree Steels and Alloys Private Limited
Through Managing Director
Plot No. E-17 to 24
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149

22. M/s JN Ispat Private Limited
Through Managing Director
Plot No. E-16
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
23. M/s Amritvarsha Udyog Limited
Through Managing Director
Plot No. D-12 & 13
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
24. M/s PL Steels Private Limited
Through Managing Director
Plot No. E-59 to 63
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
25. M/s Shri Sidhballi Sugar Limited
Through Managing Director
Unit-2, Plot No. B-3/1, 3/2 & 3/3
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
26. M/s Kotdwar Refractories Private Limited
Through Managing Director
Plot No. C-5 & C-6
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149
27. M/s Sidhballi Casting Private Limited
Through Managing Director
Plot No. D-17-20
Joshodharpur Industrial Area,
Kotdwar, Pauri Garhwal,
Uttarakhand- 246149

.....Respondents

Counsel for appellant:

Mr.Sanjay Upadhyay, Mr. Salik Shafique
and Ms. Esha Krishna, Advocates for applicant

Counsel for Respondents:

Mr. Vikas Malhotra, Adv. for respondent no. 1
Mr. Rahul Verma, AAG for respondent nos. 2 & 6
Mr. Abhishek Paruthi, Adv. for respondent no. 3
Mr. Mukesh Verma, Adv. for respondent no. 4
Mr. Aditya Singh, Mr. Anshuman Tiwari and
Ms. Bhakti Pasrija Sethi, Advocates for respondent no. 5
Mr. Pradeep Misra and Mr. Suraj Singh, Adv
for respondent no.7
Mr. Pinaki Misra, Sr. Adv. Mr. Sidharth Bhatnagar, Ms. Ritwika
Nanda and Ms. Petal Chandlok, Advocates for respondent nos. 8
to 21 and 23 to 25.

Present:

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

JUDGMENT

Per U.D. Salvi J.(Judicial Member)

Reserved on: 14th March, 2016

Pronounced on: 25th July, 2016

1. A preliminary issue as to whether the present application seeking closure of foundries/industries-respondent nos. 8 to 21, 23 to 25, operating without consent to operate/Environment Clearance and imposition of exemplary cost on them for causing irreparable loss to the environment as well as for directions to re-locate Jasodharpur Industrial Area to safer location, identify land for storing slag and such other incidental reliefs, is maintainable or not, being hit by the limitation prescribed under the Provisions of National Green Tribunal Act, 2010, herein referred to as the Act has been raised by the Respondent foundries/industries.
2. According to the respondent industries, the plain reading of the application reveals that the Jasodharpur Industrial Area

herein referred to as JIA wherein the respondent foundries/industries are situated was established in 1996-97 and in the year 2011 the JIA was transferred to respondent no 5- State Infrastructure and Industrial Development Corporation of Uttarakhand (SIDCUL); and as such the issue of environment clearance either to the foundries individually or JIA is miserably time barred and cannot be raised now by way of the present application filed on 10th February, 2014.

3. Learned Counsel appearing on behalf of the respondent foundries/industries further invited our attention to minutes of the meeting convened by Deputy Programme Manager of Centre for Science and Environment (CSE) following release of environment assessment report by CSE in June, 2012 at annexure R-1 to the reply of respondent no. 21 M/s Bhagyashree. He submitted that the applicant herein Mr. Shiv Prasad S/o Mr. J.P. Dabral was one of those who attended the said meeting held on 11th December, 2012; and as such he was aware of the environmental issues JIA posed and, therefore, the applicant having failed to file the present application within 6 months and further 60 days as prescribed under Section 14 of the Act, 2010 cannot agitate the said issues before this Tribunal and the delay thus caused is beyond the competence of this Tribunal to condone. In that context he invited our attention to the Section 14 of the Act, 2010 which reads as under:

14. Tribunal to settle disputes.- (1) *The Tribunal shall have the jurisdiction over all civil cases where a*

substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

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

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

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

4. To reinforce his submissions, Learned Counsel appearing for the respondent foundries/industries placed reliance on following reported Judgments: MANU/GT/0077/2013: O.A. No. 11/2013: *Aradhana Bhargav and Ors. vs. MoEF & Ors.*, MANU/GT/0053/2014: M.A. No. 39/2013 in O.A. No. 45/2013: *Munnial Girijanand Shukla and Ors. vs. Union of India & Ors.*, MANU/GT/0227/2015: O.A. No. 327/2015: *Doaba Paryanvaran Samiti vs. Union of India & Ors. and* MANU/SC/0922/2015: (2016) 1 SCC 332: *L.C. Hanumanthappa Vs. H.B. Shivakumar.*

5. According to the applicant, not only the industrial units individually nor JIA took prior environment clearance before being established though it is situate in an ecologically sensitive area i.e. Elephant Corridor and the Industrial units fall under Red category i.e. the industries having high potential to cause pollution; and their operations, more particularly, without consent to operate under the provisions of Air

(Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 have caused excessive air and noise pollution. Continued agitation of the local people led to the joint inspection carried out by SDM Kotdwar, District Industrial Association, Kotdwar, Uttarakhand Environment Protection and POLLUTION Control Board (UEPPCB) along with the representative of the Sangharsh Samiti in February, 2009. According to the applicant, their report revealed that 13 out of 16 foundries were operating without consent either under the Air or Water Act and most of the inspected foundries had not even applied for requisite consents. As a result of the agitation of the local people in December, 2011 the respondent no. 4- UPPCB requested the CSE to carry out the environmental impact assessment of the JIA; and the CSE inspection in March, 2012 found that only 17 were operational and yet CSE recorded the following observations in the report:

“CSE visits brings out the fact that the factories at JIA are operating in a highly unorganized way. In both the CSE visits, immense air pollution levels were observed. Stacks were seldom seen to be used. Most of the emissions were being emitted from the roofs of the factories which implied that the emissions were not being captured by the pollution control equipment. Also, the air pollution within the factory premises was huge making working environment extremely unhealthy.”

6. The applicant submits that CSE Report also reveals dumping of slag generated by the foundries at Sigaddi-near the river bank of Sigaddi Srot, a seasonal rain fed river and a tributary of River Ganga and most of the foundries operating illegally

without the consent to operate from respondent no. 4- UPPCB. It is on this background, the applicant submits, the reliefs thus worded in different terms but essentially for restoration of environment are being sought upon invocation of the provisions of Section 15 of the Act, 2010.

7. Learned Counsel appearing on behalf of the applicant urged us to read the entire application as a whole and to appreciate what the applicant is seeking is in fact restoration of the environment by removing or relocating the industries in JIA, the root cause of environmental degradation and impediment in the elephant corridor recognised by the Task Force Report titled 'Gajah: Securing the Future of Elephants in India' in commonly known Rajaji-Corbett Elephant Reserve. He submitted that having found no positive response to the CSE report 2012 and upon disclosure of the fact that there was no EC for JIA the present application was filed on 10th February, 2014. He invited our attention to Section 15 of the Act, 2010 which deals with the issue of restoration of environment. According to him, the local people of Jasodharpur including the applicant are the victims of the pollution caused by the industrial units/foundries referred to in the application and as such are seeking restoration of degraded environment by moving the present application within a period of 5 years from the accrual of the cause of action as prescribed under Section 15 of the Act, 2010 in the present case.

8. Learned Counsel appearing for the applicant further submitted with reference to Forward Foundation's Case reported in *MANU/GT/0089/2015: O.A. No. 222/2014: The Forward Foundation A Charitable Trust and Ors. vs. State of Karnataka and Ors.* that the cause of action in the present case from the facts as disclosed needs to be interpreted as 'recurring cause of action' and the exception taken to the maintainability of the present case needs to be rejected.

9. In *Aradhana Bhargav's Case (Supra)* commencement of construction of earthen dam on river Pench on 4th November, 2012 upon the environmental approval granted by the Environmental Appraisal Committee, Department of Environment and Forest and Wildlife Division, Government of India in 1986 but without prior EC was the subject matter of the application filed on 15th February, 2013 wherein the applicant sought the following reliefs:-

A declaration that no construction or other related activities of the Pench Diversion Project could commence without the prior environmental clearance under EIA Notification 2006 and the commencement of the project was illegal alongwith a direction to MoEF to ensure that without prior environmental clearance, no activities continued.

A declaration that the environmental clearance dated 21.04.1986 and communication dated 30.11.2005, were not valid.

A direction to the concerned person or authorities responsible for the alleged illegal commencement of construction to restore ecology alongwith other consequential reliefs like stay on construction, appropriate damage compensation etc.

10. Learned Counsel appearing on behalf of the respondent industries submitted that Section 14 of the National Green

Tribunal Act, 2010 particularly made use of the words “first arose” thereby unambiguously indicating that the concept of continuous cause of action as referred to in the application in the limitation clause stood excluded, and viewed from that angle the present application is miserably time barred. It is correct that in Aradhana Bhargav’s Case of Central Zonal Bench at Bhopal of this Tribunal pointed out what the legislature intended in making use of the phrase “first arose” in Section 14 of the Act, 2010. However it remains to be seen from the entire reading of the application and in context with the legal provisions available for obtaining the relief as to whether the present application would be hit by limitation as prescribed under Section 14 of the Act, 2010.

11. In Munnilal Girijanand Shukla’s case, the Western Zonal Bench of this Tribunal was dealing with an application filed for condonation of delay in initiating the proceedings/application against the construction work under Section 14 (3) and 18 of the National Green Tribunal Act, 2010 with the aid of Section 5 of the Limitation Act, 1963. One M/s. Rashmi infrastructure Ltd. after carrying out substantial construction work without seeking prior environmental clearance either under Notification 1994 or 2004 had sought prior EC in accordance with the office memorandum dated 12th December, 2012 issued by the MoEF. According to the applicant, they came to know that the application for grant of EC was filed by M/s. Rashmi infrastructure Ltd on 25th April, 2011; and no EC could be

granted to M/s. Rashmi infrastructure Ltd after substantial construction had been done and the construction work carried out on the site could not be regularised. The applicant also alleged suppression of material facts by the developer M/s. Rashmi infrastructure Ltd leading to 'continuity of cause of action'. The developer contended that the Limitation Act is not applicable to the proceedings before the NGT in view of specific provision prescribing period of limitation envisaged under Section 14 and 16 of the NGT Act, 2010. The developers pointed out that the Slum Rehabilitation Authority had issued permission for construction of the property under the project site on 5th June, 2003 and the Original Application in question was filed approximately after 12 years from the date of grant of such permission.

12. Taking stock of the case, the Western Zonal Bench in Munnilal Girijanands Shukla's Case (Supra) observed that the applicants were challenging the development permission granted for the project and the construction activity has been going on since long and the applicants had already filed Writ Petition against the owner and the developers challenging various orders passed by the authorities except the issue regarding legality of OM dated 12th December, 2012. The Bench further observed that mere issuance of O.M dated 12th December, 2012 by the MoEF cannot trigger the cause of action for the application, particularly when the SR scheme was being implemented since 2003 onwards. Referring to the Judgment delivered by the

Principal Bench of the NGT in *Kehar Singh S/o Sh. Singhram vs. State of Haryana (Original Application No. 124/2013)* as well as to the Judgment in Nikunj Developers' case reported in (2013) All (I) NGT (1) (PB-40): *Nikunj Developers and anr. vs. State of Maharashtra and Ors.* the Western Zonal Bench took note of the principles evolved for interpreting the provisions of Section 14 of NGT Act, 2010 that "statutorily prescribed limitation has to be strictly adhered to and cannot be relaxed merely on equitable grounds" and "applying the rule of liberal construction, power to condone the delay beyond 90 days, as prescribed under Section 16 of the NGT Act, which is worded identically to the proviso to the Section 14(3) of the NGT Act, cannot be exercised by the Tribunal." Western Zonal Bench also took note of the Principle culled out by the Hon'ble Principal Bench that "limitation has to be counted from the date when there was firm decision by the Government or other authorities concerned and it was so publicly declared". Adverting to the facts of the case the Western Zonal Bench observed that the O.M dated 12th December, 2012 could not have been challenged after period of 90 days, even though it is held that the application is maintainable against such O.M under Section 14(1) of the NGT Act, 2010; and it cannot be said that the construction work done by the owner and the developers was not within the knowledge of applicant and as such delay condonation application, filed on 27th November, 2013 cannot be allowed.

13. In Doaba Paryavarn Samiti's case (Supra) the Principal Bench of this Tribunal while dealing with the issue of limitation in the application under Section 14 and Section 15 (b) and (c) read with Section 18 (1) and (2) of the NGT Act, 2010 for the relief seeking ban on the flying of the helicopter at Kedarnath Wildlife Sanctuary, Uttarakhand and direction to the Union of India and State of Uttarakhand to declare eco-sensitive zone of Kedarnath Wildlife Sanctuary, Uttarakhand and such other appropriate reliefs engaged itself with the exercise of interpreting the terms "cause of action first arose, recurring cause of action, continuous cause of action", and considering the factual matrix of the case observed that though the helicopter service has started years back and applicant approached the Tribunal in the year 2015 with the contention that the helicopter were flying without permission of the Board and in a manner which has serious effect on flora and fauna and the eco-system, eco-sensitive zone of the sanctuary and biodiversity thereof, "each flight would be an independent cause of action which will be a recurring cause of action, where the expression 'Cause of action first arose' appearing under Section 14 (3) of the Act would not be attracted and renders the remedy of the applicant as barred by time".

14. In Hanumanthappa's case the Hon'ble Supreme Court vetted the use of phrase "first arose" in article 58 of the Schedule to the Limitation Act, 1963 and made following observations:

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of

Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

15. “Cause of action” as understood in legal parlance is bundle of essential facts necessary to be proved by the claimant to the relief before he can succeed. Thus, these are entire set of facts which give rise to an enforceable claim. Naturally, therefore the facts asserted in the application seeking relief need to be read in its entirety and not piecemeal to find out therefrom what would have prompted the applicant to seek reliefs as sought. In the instant case, the applicant is seeking closure of foundries/industries operating without EC or consent to operate under Water or Air Act and relocation of Jasodharpur industrial area which houses such industries. The applicant is further seeking effective reuse of solid waste slag generated by the respondent foundries and identification of alternative piece of land for storing slag, measures for pollution control such as installation of adequate pollution equipments, common effluent treatment plant, facility to monitor ambient air quality in and around JIA, besides seeking costs for environmental degradation caused. All these reliefs the application reveals are warranted by high levels of environmental degradation reached as disclosed through the CSE report following the inspection and the comprehensive study of JIA carried out in March, 2012. The applicant has further specifically pleaded that despite

making of recommendations by CSE in March, 2012, the respondent no. 4- Uttarakhand Environmental Protection and Pollution Control Board had chosen to over look such recommendations vide para 19 of the application.

16. It is true that the applicant in the application pleaded “that the present application is being filed within six months from the date on which the cause of action, which is ongoing, and is, therefore, in accordance with Section 14 (3) of National Green Tribunal Act, 2010”. However, this statement cannot give true meaning of what the applicant is seeking in relation to the provisions of law and facts of the case spelling out the nature of cause of action.

17. What surfaces through the report of CSE in March, 2012 is the cumulative wrong the foundries or industries running without EC or without consent under Water and Air Act or otherwise has done to the environment in and around Jasodharpur industrial area. Whether prior EC was/is required for establishing Jasodharpur Industrial area or the individual foundries/industries therein is a question which need not be answered at this stage. Answers to these questions could beget more questions necessary to be answered before adjudication for the reliefs as sought is done. Going by the case of the applicant as it is the cumulative wrong referred to herein above has prompted this application and the reliefs sought are those required for restitution and restoration of environment as well as for compensation for damage done due to pollution caused

by the running foundries/industries in Jasodharpur industrial area as envisaged under Section 15 of the NGT Act, 2010.

Section 15 of the NGT Act, 2010 reads as under:-

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.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

18. Sub clause 3 of Section 15 of the Act in clear terms as under
Section 14 of the Act prescribes the period of limitation but with
a difference in the extent of the period that is 5 years from the

date on which case for such compensation or relief first arose. Both the Sections circumscribe power of the Tribunal to condone the delay in identical language in the provisos to the said Sections.

19. Learned Counsel appearing on behalf of the applicant invited our attention to para nos. 23, 24, 30 and 31 in the Judgment delivered by the Principal Bench in the Forward Foundation's case (O.A. No. 222/2014: The Forward Foundation A Charitable Trust & Ors. vs. State of Karnataka and Ors.) dated 7th May, 2015 for our better understanding of concept of recurring cause of action which according to him comes into play in the present case. He urged us to consider the real gravamen of the case of the applicant and not to be carried away by the Statement in the application that the cause of action is "ongoing". Material para nos. 30 & 31 in the Judgment delivered in Forward Foundation's case (Supra) are reproduced hereunder:

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of M. R. Gupta v. Union of India and others, (1995) 5 SCC 628, the Court held that:

“The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by 43 him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1.”

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the

first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, 44 M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

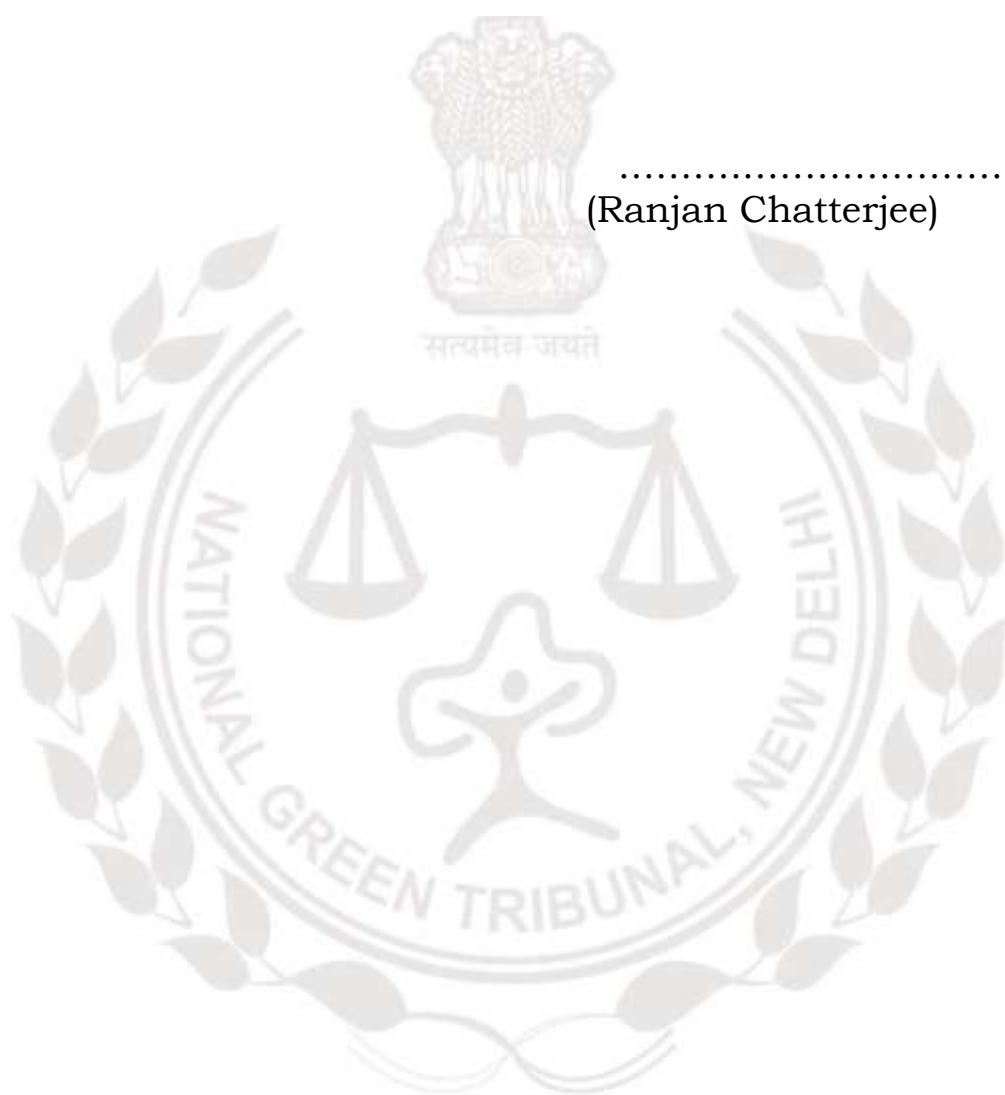
20. In light of the legal principles which have evolved through the judgments quoted by the rival parties, the facts in the present case clearly reveal the case of recurring cause of action craving for reliefs under Section 15 of the NGT Act, 2010. Running of industries without EC or without enough environmental safeguards have generated serious adverse effect on flora and fauna and eco-system in and around such industries and cumulatively have given rise to an independent cause of action which will be recurring cause of action. As noted above, the CSE report brought to surface serious adverse impacts of running of the said industries on eco-system in and around such industries and made recommendations for remedying the situation and yet authorities remained cold. Obviously, this fact is an incident of recurring cause of action- a fresh composite and distinct which would prompt the application as one before us for remedial action not hit by the concept of cause of action first arose.

21. In our considered opinion, therefore, the present application filed on 10th February, 2014 is well within the period of limitation and calls for further enquiry in the matter. plea of the

respondents not to entertain the present application is therefore, rejected. Case to proceed further.

....., JM
(U.D. Salvi)

....., EM
(Ranjan Chatterjee)



NGT