BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

APPLICATION NO. 116 (T_{HC}) OF 2013

In the matter of:

1. Kalpavriksh
   Through Neeraj Vagholikar
   Flat No. 5, 2nd Floor, Shri Dutta Krupa,
   908, Deccan Gymkhana,
   Pune – 411 004, Maharashtra

2. Goa Foundation
   Through Dr. Claude Alvares
   G-8, St Britto's Apts., Fiera Alta,
   Mapusa, Bardez 403 507, Goa

3. Manoj Misra
   C-603, Aashiyana Apartments
   Mayur Vihar, Phase – I,
   Delhi – 110 091

.....Appellants

Versus

Union of India
Through the Secretary
Ministry of Environment and Forests,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.

.....Respondent

Counsel for Appellants:

Mr. Raj Panjwani, Senior Advocate along with Mr. Rahul Choudhary, Advocate.

Counsel for Respondent:

Ms. Panchajanya Batra Singh, Advocate with Mr. Salauddin Khan, Advocate

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated: July 17, 2014

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

Petitioner No. 1, 'Kalpavriskha' claims to be a reputed environmental non profit organisation working since 1979. Amongst other subjects, the key focus area of this petitioner is stated to be research and advocacy on environmental governance aspects of developmental infrastructure projects and activities in the country. In legal and policy action this petitioner has given inputs on content and implementation of laws, impacting conservation and livelihoods under different laws. This petitioner participated in the preparation of Draft of National Biodiversity Strategy and Action Plan. Various investigation and research projects have been undertaken by this Petitioner. The petitioner claims to have raised various issues in the field of environment and is also raising issues of public interest in the application in hand. Similarly, petitioner No. 2, 'Goa Foundation' was founded in the year 1986 by a group of Goan environmentalists, each fighting his or her own individual environmental battles. The work of this

petitioner spans in different areas and fields, all related in some way or another with the conservation of the Goan environment. Petitioner No. 3, Mr. Manoj Mishra claims that he is a former member of Indian Forest Services and retired as the Chief Conservator of Forest, State of Chhattisgarh. He has been involved in many civil society initiatives relating to the conservation of environment. The said petitioner is the Convenor of the 'Yamuna Jiye Abhiyaan', an awareness and advocacy campaign for the revival of River Yamuna.

2. According to the petitioners, Ministry of Environment and Forest (for short 'MoEF') is the nodal agency of the Central Government with the primary objective of protecting the environment and all its constituents, to conserve the natural resources of the country and to undertake measures for prevention and control of pollution. To meet these objectives, the MoEF has made it mandatory for certain specified categories of projects to obtain an Environmental Clearance prior to commencing any project work. The decision whether or not to grant Environmental Clearance to a project depends mostly on the impact of the project on the environment as well as the potential implications of the project on the people. The decision making process surrounding the Environmental Clearance process is complex, as it requires the consideration of several factors which are spread across various disciplines and are not restricted only to environmental considerations. The social impacts of projects

are equally crucial as projects often cause displacement of thousands of persons along-with destruction of important cultural, historical and religious sites and symbols. The MoEF for taking decision in this regard relies upon the contribution of various experts in the field of environment. The MoEF appoints Expert Appraisal Committees (for short 'EAC') to assist it in this decision making process. Members of the EACs represent various areas of expertise and are expected to contribute towards a holistic decision making process. The MoEF while exercising its powers under Section 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 (for short 'Act of 1986') and Rule 5(3)(a) of the Environment (Protection) Rules,1986 (for short 'Rules of 1986') has issued several Notifications with regard to prohibition and restrictions on the locations of industries and the carrying on of processes and operations in different areas. In exercise of these powers various notifications have been issued *inter alia* specifying the projects which require Environmental Clearance under different categories and the procedure for obtaining such clearance.

3. In exercise of the above powers, the Central Government framed Environment Clearance Regulations, 2006 vide Notification No. S.O. 1533(E) dated 14th September, 2006. This is also known as EIA Notification, 2006 (for short 'the Notification of 2006'). The Notification of 2006, in Paragraph 7 stipulates four stages in the process of obtaining Environmental Clearance. Stage

(1) is screening. At this stage the EAC or the State Expert Appraisal Committee (for short 'SEAC') takes the decision whether Environmental Impact Assessment (for short 'EIA') Report has to be prepared for the proposed projects. Stage (2) is Scoping. At this stage, the EAC for category 'A' projects and the SEAC for category 'B' projects determines detailed and comprehensive Terms of Reference (for short 'TOR') addressing all relevant environmental concerns for the preparation of an EIA Report in respect of the proposed project or activity for which the prior environmental clearance is sought. Then the detailed environment impact study is carried out at proposed site by a team of experts from all the relevant fields, addressing all the Terms of Reference and thereafter a report, predicting all positive and negative impacts and their magnitude is prepared. This is followed by preparation of Environment Management Plan (for short 'EMP') which details out various measures to be taken to minimise the impact to an acceptable level. Such report along with EMP is submitted to the MoEF. Stage (3) relates to Public Consultation and has two components – 1) a public hearing, which is conducted by the concerned State Pollution Control Board at the project site or in its close proximity, explaining all the possible environment impacts and measures proposed in EMP. This is done for ascertaining the concerns of the locally affected persons. The procedure prescribed for public hearing is described in Appendix IV to the Notification and 2) obtaining written responses from

other concerned persons who have a plausible stake in the environmental aspects of the project or activity. Lastly, Stage (4) relates to Appraisal of the Project. Under para 7(i) of the Notification of 2006, 'appraisal' has been defined as the detailed scrutiny by the EAC or the SEAC of the application and other documents like the Final EIA Report and the outcome of the public consultations including public hearing proceedings, submitted by the Project Proponent to the regulatory authority concerned for grant of environmental clearance. In terms of the Notification of 2006 read in conjunction with its Appendices, the Project Proponent is expected to file documents and additional information, including possible alternative sites for the project, studies on the cumulative impact of the project due to proximity of other projects and the impact of the project on the local communities, disturbance to sacred sites etc. The EAC or the SEAC concerned has to make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior Environmental Clearance, together with reasons for the same. The Regulatory Authority will be the MoEF or State Environment Impact Assessment Authority (for short 'SEIAA') depending upon the category in which such project falls. Appraisal of the project is one of the most important steps to be taken in the entire process of grant or refusal of the Environmental Clearance to a proposed project or activity.

Appendix V to the Notification 2006 provides the procedure for Appraisal.

4. Appendix VI to the Notification of 2006 details the composition of the sector/ project specific EAC for Category 'A' projects and the SEACs for Category B Projects. These committees are to be constituted by the Central Government in consonance with the qualification and experience stated under this very Appendix. It is clear from the cumulative reading of the Notification of 2006 along-with its Schedule and Appendices that the recommendation made by the EAC or SEAC as the case may be are critical in the whole Environmental Clearance process thereby making it imperative that those who are Members of the EAC are well qualified and experienced persons so as to further the cause of environment and ensure appropriate consideration of the applications for grant or refusal of Environmental Clearance of projects. It is the case of the applicant that the MoEF had issued various Notifications and in all of them, the Government had stated that it would evaluate and assess an application for Environmental Clearance in consultation with a Committee of experts. The composition of the Committee of experts, as per the Notification of 2006, includes persons from various disciplines including eco-system management, air/water pollution control, water resource management, ecologists, social sciences particularly rehabilitation of project oustees and representatives from other relevant fields.

5. While Paragraph 3 of Notification of 2006 deals with Constitution of the SEIAA, Paragraph 5 of the same deals with the Constitution of EAC and SEAC. Appendix VI to the Notification of 2006 provides the eligibility criteria for the Chairperson and Members of EAC or SEAC. It is further averred by the applicant that in the EIA Notification of 1992, a different criteria, relevant for the purpose of considering Environmental Clearance application was stated by MoEF. This criteria came to be varied in the EIA Notification of 1994 to some extent, but in the EIA Notification of 2006, dated 14th September, 2006, the criteria was considerably varied. According to the applicant, this defeats the very purpose, object and attainment of environmental protection under the provisions of the Act and Rules framed thereunder. We may refer to all the three relevant provisions of the three Notifications to enable us to deal with the contentions raised by the applicant.

EIA Notification 1992 (S.O. 85(E) 29.02.1992)	**EIA Notification 1994 (S.O. 60(E), dated 27.01.1994)**	**EIA Notification 2006 (S.O. 1533 dated 14.09.2006)**
FOR CHAIRPERSON		
An outstanding and experienced ecologist or environmentalist or technical professional in the relevant development sector having demonstrated interest in Environment Conservation and sustainable development. [PAGE NO 81 OF THE WRIT PETITION]	The Chairman will be outstanding and experienced ecologist or environmentalist or technical professional or wide managerial experience in the relevant development sector. [PAGE NO 97 OF THE WRIT PETITION]	The Chairperson shall be an outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector. [PAGE NO 156 OF THE WRIT PETITION]

FOR MEMBERS		
1. Members with M.Tech/Ph.D in the relevant field and long experience including at least 8 years experience in environmental management in relevant sectors: 2. Eco-system Manager with Systems Management and Modeling Experience. 3. Air Pollution Control. 4. Water Pollution Control. 5. Flora/Fauna Survey and Management. 6. Water Resources Management. 7. Land use Planning/Biological reclamation of degraded lands. 8. Conservation and Protection of Aquatic Life. 9-10. Ecologists (2). 11. Social Scientist with experience of rehabilitation of project oustees. 12. Specialist with background of economics and project appraisal. 13-14. Subject area specialists in relevant development sector (2) 15. Representative of NGO Environmental Action Groups. 16. Representative of Impact Assessment agency at Centre/State. **Note:** Experts inducted will serve in	(i) Eco-system Management (ii) Air/Water Pollution Control (iii) Water Resource Management (iv) Flora/Fauna conservation and management (v) Land Use Planning (vi) Social Sciences /Rehabilitation (vii) Project Appraisal (viii) Ecology (ix) Environmental Health (x) Subject Area Specialists (xi) Representatives of NGOs /persons concerned with environmental issues. [PAGE NO 96 OF THE WRIT PETITION]	The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields /disciplines. • **Environment Quality Experts:** Experts in measurement/monitoring, analysis and interpretation of data in relation to environmental quality • **Sectoral Experts in Project Management:** Experts in Project Management or Management of Process/Operations/Facilities in the relevant sectors. • **Environmental Impact Assessment Process Experts:** Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process • Risk Assessment Experts • Life Science Experts in floral and faunal management • Forestry and Wildlife Experts 42 • Environmental Economics Expert with experience in project appraisal. [PAGE NO 155 OF THE WRIT PETITION]

their individual capacities except those specifically nominated as representatives. [PAGE NO 81 OF THE WRIT PETITION]		

6. MoEF had issued the first Notification on 29th June, 1992 while the second was issued on 4th May, 1994 and the third on 17th September, 2006. Variation of eligibility criteria in these three Notifications according to the petitioners is not only disadvantageous to the interest of the environment but is also in contradiction to the qualifications provided in Appendix VI to the Notification of 2006.

7. According to the applicant, the MoEF has failed to appreciate the significance of the appraisal process as part of the Environmental Clearance procedure under the Notification of 2006 and has been appointing persons as Chairperson and members of the EAC who do not have the requisite expertise on the necessary issues of environmental significance. Given the complex nature of environment issue, it is essential that the EAC should have been composed of people who are well versed with social and environmental context of development related decision making. Since the Notification of 2006 recognizes the need to obtain expert opinion on the environmental impact of a proposed project,

before an Environment Clearance is granted to the project, hence it requires the impact assessment agency to consult with a Committee of Experts. The composition of the Committee as laid down in both the Notifications of 1992 and 1994, reflected the inter-disciplinary approach required to analyse the impact of a project. Under the Notification of 1992, the Chairperson/members had to be outstanding and experienced ecologists or environmentalists or technical professionals in the relevant development sector having demonstrated interest in environment conservation and sustainable development. The Notification of 1994 removed the requirement for demonstrating interest in environment conservation and sustainable development. Chairperson could be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector. The technical professional or any person with managerial experience in the relevant development sector was no longer required to have any relation with environmental conservation or sustainable development. The Notification of 2006 modified the requirements even further with regard to the Chairperson. The Chairperson now has to be an outstanding expert with experience in environmental policy, management or public administration with wide experience in

the relevant development sector. The words 'environmentalist' and 'ecologist' were entirely left out in this Notification and the emphasis has shifted from environment to management and public administration

8. According to the applicant, the result of this deletion and change in qualification of the Chairperson of EAC has led to conflict of interest. This conflict of interest has attained serious dimensions in the working of the EAC, as persons from either public administration or managerial posts are being appointed as Chairperson of EAC. This is prejudicial to the whole purpose of Environmental Clearance. With this background, the grievance of the applicant further extends to certain appointments of the Chairperson and members of the EAC. The applicant states that he moved an application under the Right to Information Act, 2005 on 27th September 2010 for seeking information with regard to the qualification and appointments of the Chairperson and members of the EAC. The replies to the said application and the file noting furnished therewith shows that persons who were not qualified to hold the position of the Chairperson and Members of the EAC were being appointed.

9. According to the applicant on 14th June 2010, MoEF reconstituted three EAC on River Valley and Hydro Electric

Projects; Thermal and Coal Mining Projects and Infrastructure Building Construction Projects. One Mr. Rakesh Nath was appointed as Chairperson of EAC on River Valley and Hydro Electric Projects and another Mr. V. P Raja for Thermal and Coal Mining Project. Representations were filed on 19th June, 2010 by various groups against the above two appointments but no response was received from MoEF.

10. It is the case of the applicant that these persons were not best suited for the job and they do not have any special qualification and experience vested in these persons to justify their appointment as Chairpersons. Conflict of interest is clear from the fact that Mr. V. P Raja who has been appointed for the Thermal Project and Coal Mining Project is also the Chairperson for Maharashtra Electricity Regulatory Commission and his previous experience does not evidence any exposure to ecological or social issues relating to thermal power projects and coal mining, etc.

Conflict of interest also arises from the bias that such members may have, as a result of their interests in private or other sectors. Bias has to be inferred on a reasonable ground. In other words, whether there is substantial possibility of bias animating the mind of the member against the aggrieved party, is to be examined with reference to the facts of the case, position

and participation of the member in the process in question (*Dr. G. Sarana v. University of Lucknow and others*, (1976) 3 SCC 585). The Supreme Court in the case of *J. Mohapatra and Co. and another v. State of Orissa and another,* (1984) 4 SCC 103, held that the possibility of bias cannot be excluded where the members of the committee set up for selecting books for educational institutions are themselves authors of the books which come up for selection.

11. The applicant has placed great emphasis on the growing conflict of interest in the appointment of members of EAC. Highlighting the disadvantages of appointing persons from private sector/industry or public administration to EAC, it has also been averred that two persons namely Mr. P. Abraham and Mr. M.L. Majumdar had to resign from the Chairpersonship of the concerned EACs because they were on the Board of Power or Mining companies; for the reason of conflict of interest. On the above premises, the contention of the applicant before us is that in order to protect the environmental interests, in order to avoid conflict of interest in examination of such application and to apply the settled principles of fairness, precautionary principle and substantial and effective compliance to the provisions of the Notification of 2006, it is necessary that Appendix VI to the Notification of 2006, should be struck down as being contrary to the Notification of 2006 and the provisions of the Act. Furthermore, the eligibility criteria stated under the Notification of

1994 should be read and applied by MoEF for appointing Chairperson and Members of the EAC or SEAC.

12. The respondent, particularly, the MoEF has raised a preliminary objection to the maintainability of the writ petition (application) as well as on merits of the case. On behalf of the MoEF, it has been contended that Appendix VI to the Notification of 2006, which prescribes qualifications for members and the Chairperson of the EAC/SEAC is a subordinate legislation and no jurisdiction has been vested in this Tribunal to entertain and adjudicate upon vires of statutory provisions and subordinate legislations within the ambit of Section 14 of the NGT Act. Therefore, the application before the Tribunal is misconceived. It is also contended that the validity of a regulation made under the delegated legislation can be decided only in judicial review proceedings before the court and not by way of appeal before the Tribunal. Reliance in this regard is placed upon the judgement of the Supreme Court in the case of *PTC India Ltd. v. CERC,* 2010 (4) SCC 603.

13. The respondents have also raised a contention that the Notification of 2006 has been issued on 14th September, 2006 that is much prior to the coming into force of the National Green Tribunal Act (for short 'the NGT Act') which came into force on 18th October, 2010. Hence, the provisions of Section 16 of the NGT Act does not get attracted and the present application is untenable.

14. On merits, it is the case of the respondents that the notification in question was issued after due procedure and challenge to the same after almost seven years is highly belated, misconceived and frivolous. Further, challenging the jurisdiction of the Tribunal in terms of Section 14 of NGT Act, the contention is that there is no substantial question of environment and as such the present application would not be maintainable, even if the above objections are not accepted by the Tribunal.

15. In view of the above stated facts and the contentions raised, the following questions arise for consideration of the Tribunal:-

(1) Whether the Tribunal has power of judicial review wherein it can examine the validity and legality of notification issued by the authorities in exercise of the power of subordinate/delegated legislation?

(2) Whether the Notification issued under Environment Clearance Regulations, 2006 (for short 'Notification of 2006') in relation to prescribing the eligibility criteria for the Chairperson and members of the EAC/SEAC Committee would fall within the scope of Section 14 of the NGT Act?

(3) Will it be a substantial question relating to environment (including enforcement of any legal right relating to environment) and such question would arise out of the implementation of the enactments specified in Schedule I of the NGT Act?

(4) Whether the applicant cannot invoke the provisions of Sections 16 and/or 14 of the NGT Act and thus this application is not maintainable on the ground that the Notification of 2006 was issued on 14th September, 2006 much prior to 18th October, 2010, the date on which NGT Act came into force? It is only the order passed on/or after the commencement of NGT Act that can be assailed before the Tribunal?

(5) What directions, if any, can be issued in the present case?

Discussion on issue no. 1: "Whether the Tribunal has power of judicial review wherein it can examine the validity, and legality of notification issued by the authorities in exercise of the power of subordinate/delegated legislation."

16. As far as this issue is concerned, it need not detain us any further in view of the judgment of the Tribunal pronounced today in the case of *Wilfred J. and Anr. v. MoEF and Ors.,* Application No. 74 of 2014 and Appeal No. 14 of 2014. The learned counsel appearing for the MoEF had fairly stated that this Tribunal being a judicial tribunal with the trapping of a court and keeping in view the complex cases that come up for hearing before the Tribunal, it will be appropriate for the Tribunal to exercise limited power of judicial review, of course, as supplementary to the higher courts and not supplanting them. According to her, still the question of maintainability as discussed above would arise for consideration of the Tribunal. This statement is in consonance with the law as noticed in the case of *Wilfred J. and Anr* (supra).

In that judgement after considering the law at great length, the Tribunal took the view that this Tribunal is a judicial Tribunal having the trappings of a Court, with complete judicial independence, being manned by the judicial and expert minds in accordance with the procedure prescribed and keeping in view the legislative scheme of the NGT Act and Rules framed thereunder. For proper administration of environmental justice, the Tribunal has to examine the correctness or otherwise of Rules and Notification made in exercise of delegated legislation. The Tribunal is vested with the power of judicial review to a limited extent which it would exercise only as supplementing and not supplanting to the jurisdiction of the higher courts in accordance with law. In exercise of the power of judicial review, the Tribunal can examine the validity, *vires*, legality and reasonableness of the rules, provisions or notifications, made or issued in exercise of the powers vested in the concerned Government or authority by way of subordinate or delegated legislation, but only in relation to the Acts enumerated in Schedule I to the NGT Act. This power of judicial review would not extend to examination of provisions of the NGT Act or the rules framed thereunder; NGT being the creation of that statute.

17. For the reasons stated above and the fact that the matter is squarely covered by the judgment of the Tribunal in the case of *Wilfred J. & Anr.* (supra), we answer the question in the affirmative and as detailed above.

Discussion on issue no. 2: "Whether the Notification issued under Environment Clearance Regulations, 2006 (for short 'Regulations of 2006') in relation to prescribing the eligibility criteria for the Chairperson and members of the EAC/SEAC Committee would fall within the scope of Section 14 of the NGT Act."

and

Issue No. 3: "Will it be a substantial question relating to environment (including enforcement of any legal right relating to environment) and such question would arise out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act."

18. As there is inter-relation between issue no. 2 & 3 and common arguments have been addressed by the learned counsel appearing for the parties, it will be appropriate for us to deal with both these questions together**.**

19. Before we proceed to examine the merit of the contentions raised by the Learned Counsel appearing for the parties on this issue, we must notice a very important fact. As already noticed, the whole challenge in the Application was to the prescription of eligibility criteria and parameters for appointment of Chairperson and members of the EAC/SEAC. This challenge was relatable to the amendment of the Notification of 2006 which substituted or superseded the Notification of 1994. Paragraph 4 of Appendix VI to this Notification of 2006 was a matter of concern for the applicants. The paragraph 4 of Appendix VI has to be read in light of other paragraphs of the said Appendix. The relevant extract of unamended Appendix VI reads as under:-

> The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields

/disciplines. In the event that persons fulfilling the criteria of "Experts" are not
available, Professionals in the same field with sufficient experience may be considered:

- Environment Quality Experts: Experts in measurement/monitoring, analysis and interpretation of data in relation to environmental quality
- Sectoral Experts in Project Management: Experts in Project Management or Management of Process/Operations/Facilities in the relevant sectors.
- Environmental Impact Assessment Process Experts: Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process.

3. The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However the Chairperson may co-opt an expert as a Member in a relevant field for a particular meeting of the Committee.

4. The Chairperson shall be an outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector.

5. The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman /Chairperson.

6. A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.

7. The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.

8. The Chairman / Members may not be removed prior to expiry of the tenure without cause and proper enquiry.

Vide Notification dated 11th October, 2007, certain amendments were made in Appendix VI. Paragraph 2 of Appendix was substituted while Paragraph 4 was omitted vide the said Notification. Thus, after amendment/omission vide Notification dated 11th October, 2007, the relevant part of Appendix VI reads as under:-

"The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields /disciplines. In the event that persons fulfilling the criteria of "Experts" are not available, Professionals in the same field with sufficient experience may be considered:

- Environment Quality Experts: Experts in measurement/monitoring, analysis and interpretation of data in relation to environmental quality
- Sectoral Experts in Project Management: Experts in Project Management or Management of Process/Operations/Facilities in the relevant sectors.
- Environmental Impact Assessment Process Experts: Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process.
- Risk Assessment Experts
- Life Science Experts in floral and faunal management
- Forestry and Wildlife Experts 42
- Environmental Economics Expert with experience in project appraisal
- Public administration or management

3. The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However the Chairperson may co-opt an expert as a Member in a relevant field for a particular meeting of the Committee.

4. [*****]

5. The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman /Chairperson.

6. A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.

7. The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.

8. The Chairman / Members may not be removed prior to expiry of the tenure without cause and proper enquiry."

20. The real challenge by the Applicants was to paragraph 4 of the unamended Appendix VI on various grounds that we have afore-noticed. Either side argued the matter at great length and on the premise that said paragraph 4 of Appendix VI was in force and continued to be part of the rule book. It is only at the time of

dictating the judgment that it came to the notice of the Tribunal that above said Paragraph 4 of the Appendix VI was omitted vide Notification No. S.O. 1737(E) dated 11th October, 2007. Thus, after 11th October, 2007, Paragraph 4 no longer remained part of the Notification of 2006 and the entire challenge of the Applicant falls to the ground in view of the subsequent omission of the said paragraph. The Learned Counsel appearing for MoEF thus, was notified of that position to which the counsel agreed. However, learned counsel stated that the Ministry was passing administrative orders for constituting EAC/SEAC including nomination of the Chairperson for these Committees. As far as challenge to paragraph 4 of Appendix VI is concerned, it has been rendered infructuous and inconsequential.

21. As it is evident from the above referred paragraphs of the amended Appendix VI, certain specific fields of expertise were added in relation to risk assessment, life science (flaural and faunal management) forestry and wild life, environmental economics with experience in project appraisal and public administration or management. Though, the challenge to paragraph 4 does not subsist but the expression 'public administration or management' in paragraph 2 is, according to the applicant, still an offending requirement. According to them, persons with experience in public administration or management, without any reference to environment in particular, cannot be appointed as members of EAC, much less as its Chairperson.

MoEF cannot by virtue of its administrative powers violate the statutory provisions or act contra to the spirit of the legislation and defeat the very purpose and object of the law. If persons having experience only in the administrative and management fields are appointed as members of the expert bodies who are to examine or appraise and recommend grant and/or refusal of Environmental Clearance in accordance with law, they would hardly be able to contribute in arriving at a proper decision in accordance with law. Furthermore, such persons can hardly be appointed to the EAC/SEAC keeping in view the provisions of the statutes, i.e. the Act of 1986 and the Notification of 2006. Such expert body is expected to examine all the four stages afore-stated and has to carry out the environmental impact assessment of the project not only on environment simplicitor, but even on rehabilitation, resettlements and the surroundings of the project sites. Thus, it is a specialised job and it will be appropriate that people with experience in the specialised field are appointed rather than persons with experience of general administration or management, whose contribution to such process would be negligible and would not effectively serve the ends of environment.

22. The Appendix VI of the Notification of 2006 in turn refers to paragraph 5 of the said Notification which provides for composition of EAC's and SEAC's. The expression 'shall consist of only professional experts fulfilling the following eligibility criteria' in Paragraph 1 of Appendix VI clearly suggests that it is only the

persons fulfilling the criteria according to Appendix VI, who would be eligible for being considered as members of the EAC. This essence of appointment as Members of the EAC certainly gets diluted by amendment of Paragraph 2. The professionalism referred to in Appendix VI has to be in the field of environment and not in connection with non environmental sciences. Even the amended Paragraph 2 has to be read in conjunction with Paragraph 1 of Appendix VI. By virtue of omission of Paragraph 4, the appointment of chairperson remains in vacuum as no specific criteria has been provided in Appendix VI. It may be possible for the MoEF to act by administrative order as a stop gap arrangement, but certainly cannot make it as a permanent feature. It must amend Appendix VI and provide the eligibility criteria for the Chairperson of EAC/SEAC in accordance with the Notification of 2006, the provisions of the Act of 1986 and in the best interest of the environment. It will not be in the interest of any of the stakeholders to leave such a significant appointment (Chairperson) in vacuum, when eligibility of other appointments are provided by exercise of subordinate legislation. Improper exercise of administrative power for such a vital aspect of Environmental Clearance is likely to give rise to arbitrariness. This may even result in avoidance of the prescribed eligibility criteria. Thus, we are of the considered view that it will neither be permissible nor in the interest of the environment, or any of the stakeholders, to appoint persons from only administrative or

management field, without having specific experience in the field of environment. Therefore, under the legislative scheme of the referred Acts, Notification of 2006 and Appendix VI to the said Notification, an appointment contrary to or against the spirit of these statutory provisions, would certainly lead to adverse impacts on environmental issues, which are to be dealt with by these specialized bodies in accordance with the provisions of the relevant Acts. However, the contention of the Respondents as to whether the Tribunal can examine the validity of such Notification or not, and whether it falls within the ambit of Section 14 of the NGT Act is a question that still remains to be answered.

23. Section 14 of the NGT Act reads as under:

> "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."

The ambit and scope of Section 14 and its features came to be discussed by the Tribunal in its judgment in the case of *Goa*

Foundation v. Union of India, (2013) 1 All India NGT Reporter 234, wherein the Tribunal held as under:

> "19.The Preamble may not strictly be an instrument for controlling or restricting the provisions of a statute but it certainly acts as a precept to gather the legislative intention and how the object of the Act can be achieved. It is an instrument that helps in giving a prudent legislative interpretation to a provision.
>
> In light of this language of the Preamble of the NGT Act, now let us refer to some of the relevant provisions. Section 14 of the NGT Act outlines the jurisdiction that is vested in the Tribunal. In terms of this Section, the Tribunal will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. Of course, in either of these events, a substantial question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Section 15 of the NGT Act provides for awarding of relief and compensation to the victims of pollution and other environmental damage, restitution of property damaged and restitution of the environment for such area(s) as the Tribunal may think fit, in addition to the provisions of Section 14(2) supra. Section 16 provides for the orders, decisions or directions that are appealable before the Tribunal. Any person aggrieved has the right to appeal against such order, decision or direction, as the case may be. This Tribunal, thus, has original as well as appellate jurisdiction. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. In terms of Section 14(2) of the NGT Act, the Tribunal shall hear disputes relating to the above matters and settle such disputes and pass orders thereupon.
>
> 20. The expression 'civil cases' used under Section 14(1) of the NGT Act has to be understood in contradistinction to 'criminal cases'. This expression has to be construed liberally as a variety of cases of civil nature could arise which would be raising a substantial question of environment and thus would be triable by the Tribunal. P. Ramanatha Aiyar's *The Law Lexicon*, 3rd ed. 2012, explains 'civil cases' as below:
>
> "In the short sense, the term 'civil case' means cases governed by the Civil Procedure Code (5 of 1908). It is

used in a large sense so as to include proceedings in income-tax matters...".

21. The word 'case' in ordinary usage means, 'event', 'happening', 'situation', and 'circumstance'. The expression 'case' in legal sense means a 'case', ' suit', or 'proceedings' in the Court or Tribunal. Civil case, therefore, would be an expression that would take in its ambit all legal proceedings except criminal cases which are governed by the provisions of the Criminal Procedure Code. The legislature has specifically used the expression 'all civil cases'. Reference to Section 15 of the NGT Act at this juncture would be appropriate. The legislature has specifically vested the Tribunal with the powers of granting reliefs like compensation to the victims of pollution and other environmental damage, for restitution of property damaged and for restitution of the environment for such area or areas. Once Section 14 is read with the provisions of Section 15, it can, without doubt, be concluded that the expression 'all civil cases' is an expression of wide magnitude and would take within its ambit cases where a substantial question or prayer relating to environment is raised before the Tribunal.

22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is a substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:

"'environment' includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."

Section 2(m) defines the term 'substantial question relating to environment' as follows:

"It shall include an instance where, --

(i) there is a direct violation of a specific statutory environmental obligation by a person by which, -
(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
(B) the gravity of damage to the environment or property is substantial; or
(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution”.”

24. The jurisdiction vested in the Tribunal under Section 14, which is a very wide jurisdiction, is in addition to the appellate jurisdiction under Section 16 and the special jurisdiction under Section 15 of the NGT Act. Under Section 14, it is not only that Tribunal can try all civil cases where a substantial question relates to environment and arises out of the implementation of the enactments specified in Schedule I of the Act but also where enforcement of any legal right relating to environment arises. Section 14 specifically refers to a substantial question relating to environment which itself has been defined and accepted in Section 2(m) of the NGT Act. The definition under Section 2(m) is an inclusive definition and thus, it has to be construed in a liberal manner in order to give it a wider connotation. In the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors.*1987 1 SCC 424, the Supreme Court while dealing with the expression ‘includes’ stated that:

> “All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context in the process of enlarging, the definition may even become exhaustive.”

Touching upon the liberal construction of Sections 14 and 2(m) of the NGT Act, the Tribunal in the case of *Kehar Singh v*

State of Haryana, (2013) ALL (I) NGT REPORTER (Delhi) 556, stated:

> "13. The NGT Act has been enacted with the object of providing for establishment of this Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and for giving other contemplated reliefs and even dealing with matters incidental thereto. The Tribunal thus, has original jurisdiction in terms of Section 14 of the NGT Act. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial questions relating to environment or enforcement of legal rights relating to environment, when it arises from the implementation of one or more of the Acts specified in Schedule I to the NGT Act. The pre-requisite for the applicant to invoke original jurisdiction of the Tribunal, subject to other limitations stated in Section 14 of the NGT Act, is that the application must raise substantial question relating to environment. This Tribunal, in the case of Goa Foundation & Anr. v. Union of India & Ors., pronounced on 18th July, 2013, on the scope of the expressions 'substantial question relating to environment' as well as 'dispute', as referred to in Section 14 of the NGT Act, held as follows:
>
> > "24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that

would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

***

35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in sub-section (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter-

connected and dependent upon each other. They cannot be given meaning in isolation or de hors to each other. The meaning of the word 'dispute', as stated by the Supreme Court in Canara Bank v. National Thermal Power Corporation (2001)1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'.

36. The counsel appearing for the respondents, while referring to this expression, relied upon the judgment of the Supreme Court in the case of Inder Singh Rekhi v. DDA , (1988) 2 SCC 338 to support the contention that the dispute, as referred under the Arbitration Act, 1940 arises where there is a claim and there is a denial and repudiation of such claim.

37. The judgment relied upon by the respondents is not of much help to them inasmuch as the Arbitration Act, 1940 operates in a different field and the meaning to the expression dispute appearing in that Act has to be understood with reference to the provisions of that Act specifically. The said Act is only intended to resolve the disputes between two individuals arising out of a transaction under the Arbitration law. However, the present case, the NGT which relates to environment as such. It is not individual or a person centric but is socio-centric, as any person can raise a question relating to environment, which will have to be decided by the Tribunal with reference to the dispute arising from such a question. It is not necessary that such a question must essentially be controverted by other person or even the authority. The essence of environmental law is not essentially adversarial litigation. To give an example, could any authority or person deny the question relating to cleanliness of river Yamuna? Any person could approach the Tribunal to claim that the pollution of Yamuna should be controlled, checked and even prevented. None of the parties or authorities may be able to dispute such a fact may even contend that steps are required to be taken to control, prevent and ensure restoration of clean water of Yamuna.

> Thus, dispute as understood to be raising a claim and being controverted by the other party is not apparently the sine qua non to invocation of Tribunal's jurisdiction under the scheme of Sections 14 to 16 of the NGT Act. This approach is further substantiated from the use of the expressions 'cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto' used in the preamble of the Act
>
> 14. In the present case, the applicant has invoked the jurisdiction of the Tribunal under Section 14 of the NGT Act with regard to establishment of STP on a location which, according to the applicant, is bound to create environmental problems and would adversely affect the public health. It will result in pollution of underground water besides causing emission of obnoxious gases and creating public nuisance, owing to being adjacent to residential colony and religious places. Thus, it would certainly involve a question relating to environment arising from the implementation of Acts specified in Schedule I to the NGT Act. Thus, the present case indisputably falls within the jurisdiction of the Tribunal, of course, subject to the plea of limitation."

25. We have to examine the jurisdiction of the Tribunal with reference to prevalent law of the land that right to clean and decent environment is a fundamental right. Dimensions of environmental jurisprudence and jurisdiction of this Tribunal, thus, should essentially be examined in the backdrop that the protection of environment and ecology has been raised to the pedestal of the Fundamental Rights.

Right to clean and decent environment is a Fundamental Right under Article 21 of the Constitution of India. The Supreme Court in the cases of *Virender Gaur and Ors v State of Haryana and Ors,* (1995) 2 SCC 577 and *N.D. Jayal and Anr. v. Union of*

India (UOI) and Ors, (2004) 9 SCC 362, has held that enjoyment of life and its attainment, including, their right to live with human dignity encompasses within its ambit the protection and preservation of environment and ecological balance free from pollution of air and water. Clean and healthy environment itself is a fundamental right.

26. The jurisdiction of the Tribunal is thus, very wide. Once a case has nexus with the environment or the laws relatable thereto, the jurisdiction of the Tribunal can be invoked. Not only the cases of direct adverse impact on environment can be brought within the jurisdiction of the Tribunal, but even cases which have indirect adverse impacts can be considered by the Tribunal. At this stage, we may refer to the judgment of the Rajasthan High Court in *M/s Laxmi Suiting v. State of Rajasthan & Ors*, Writ Petition No. 8074 of 2010 decided on 1st October, 2013 wherein the High Court of Rajasthan while transferring cases relating to the enactments stated in Schedule I of the NGT Act dealt with the length and width of the jurisdiction of the National Green Tribunal. The Court also held as under:-

> "Having regard to the ambit of right to life under Article 21 of the Constitution of India encompassing healthy environment and to actualize the same and also taking into account the large number of environmental cases pending in the higher courts involving multi-disciplinary issues, the Hon'ble Apex Court requested the Law Commission of India to consider the need for constitution of the 9 specialized environmental courts. Consequently, on the necessary recommendation of the Law Commission of India, a specialized Tribunal with original and appellate jurisdictions relating to environmental laws and equipped to handle multi-

disciplinary issues involving environmental cases was set up vide the Act with the objective of expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The National Green Tribunal Bill, 2009 followed which provided for establishment of the National Green Tribunal consisting of Chairperson and Judicial and Expert Members as The Central Government would notify. A person either an expert in physical sciences or life sciences or engineering or having administrative experience in dealing with environmental matters, was considered to be qualified for appointment as Expert Member. The comprehensive jurisdiction of the learned Tribunal commensurate to the task entrusted was outlined as well. This Bill having been passed by both the Houses of Parliament and on receiving the assent of the President of India, was integrated in the Statute Book as the National Green Tribunal Act, 2010. The preamble thereof proclaims that it has been enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and for giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The recital following the preamble amongst others demonstrates that in order to eventuate the resolutions adopted in the aforestated conferences and to fructify the comprehension of right to healthy environment as an integrant of life envisaged under Article 21 of the Constitution of India, the National Green Tribunal has been set up to settle the disputes involving multi-disciplinary issues relating to environment. Section 2(c) defines “environment” as hereunder:-

“2(c) “environment” includes water, air and land and the inter- relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;” The 'substantial question relating to environment' has been defined in Section 2(m), which is extracted herein below for ready reference:-

> “2(m) “substantial question relating to environment” shall include an instance where,-
>
> (I) There is a direct violation of a specific statutory environmental obligation by a person by which,-

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(II) the environmental consequences relate to a specific activity or a point source of pollution;"

A bare perusal of Schedule-III authenticates the amendments introduced in the legislations contained in Schedule I of the Act pursuant to Section 36 thereof. Section 33 of the Act in no uncertain terms assigns an over- riding effect thereof over any other Act inconsistent therewith for the time being in force or any instrument having the effect by virtue of any law and inconsistent therewith. A plain reading of Section 14 of the Act would irrefutably justify that thereby the learned Tribunal has been conferred with the jurisdiction over all civil courts where a substantial question relating to environment including enforcement of any legal right relating to environment is involved and where such question arises out of the implementation of the enactments specified in Schedule I, the learned Tribunal is to hear the dispute arising from such question and settle the same and pass order thereon. Considering the ambit and expanse of the definition of the expressions "environment" and "substantial question relating to environment" as engrafted in Section 2(c) and 2(m) respectively, we are unable to persuade ourselves to conclude that any constricted approach to scuttle the otherwise attributed wide jurisdiction of the learned Tribunal is either envisaged by the Parliament or is intended. Not only the environment includes water, air and land as defined and their inter- relationship alongwith human beings, other living creatures, plants, micro-organism and property, the substantial question relating to environment includes amongst others the eventualities set out in clauses (i) and (ii) of section 2(m) of the Act. The definition "substantial question relating to environment" as provided in section 2(m) is an to limit inclusive one and by no means can be ascribed a connotation the scope and sphere thereof. Apropos the factual backdrop of the

legislation and the salubrious accomplishments thereof as intended, any endeavour to muzzle the legislatively intended contour thereof would be antithetical thereto and cannot receive judicial imprimatur. A purposive interpretation has to be essentially provided to the relevant 14 provisions of the Act so as to facilitate the wholesome implementation of its enjoinments lest the same is rendered otiose. The words contained in Section 14 delineating the jurisdiction of the learned Tribunal therefor have to be assigned the desired flexibility and amplitude to achieve the objectives thereof. Section 16 by no means ousts or regulates or circumscribes the ambit of Section 14. The reliefs grantable by the learned Tribunal and enlisted in Section 15 are also couched in compendious terms with adequate discretion to the learned Tribunal to mould the same within the framework thereof. The reliefs contained in clauses (a), (b) and (c) of Section 15(1) therefore do not admit of literal interpretation to circumvent the otherwise intended wide ambit thereof. Though the Act does not contain any provision in particular mandating transfer of any pending case or proceeding otherwise within the purview of the jurisdiction of the learned Tribunal to it, having regard to the framework thereof and the interplay of the relevant provisions, with the Tribunal as the envisaged fora to settle the disputes involving substantial questions relating to environment, in our view, the non-existence thereof (provision of transfer) is suggestive of impermissibility of such transfer.

To reiterate, the Act has been given an over-riding effect. Though the same per se would not oust the jurisdiction of the superior courts contemplated by the Constitution of India, the plea of inadequacy or inefficacy of the remedy provided by the Act does not weigh with us. The reference of Articles 323A and 323B of the Constitution of India and the enactments made thereunder ipso facto also do not, in our estimate, outweigh the otherwise unmistakable edict of the Act and the inbuilt exclusion of the jurisdiction of the civil courts in matters within the purview of the learned Tribunal for its adjudication. The contention that this Court is beyond the concept of civil court and thus, the provisions of the Act do not apply to the proceeding under Article 226 of the Constitution of India is to be recorded only to be rejected. There is no repugnance or conflict between the provisions of the

> Act and the jurisdiction of the learned Tribunal outlined thereby with that of the superior courts under the Constitution of India. No ouster of the writ jurisdiction of this Court as well is either conceived of or intended. This, however, does not detract from the necessity of transfer of the proceedings also under Article 226 of the Constitution of India to the learned Tribunal in view of the avowed mission of the Act and for the settlement of disputes relating to environment with suitable reliefs as a corollary thereof. It has been contended on behalf of the Board in its pleadings that the facts involved pertain to water pollution due to discharge of sewage and untreated trade effluent by the industries involved. Not only these outrages are due to conscious violations of the Act of 1974 and other environmental laws, remedial actions taken by it (Board) form the subject matter of challenge in the instant writ proceedings as well. Accusation of environmental pollution and ecological damage has been made. Having regard to the definitions of "environment" "substantial question relating to environment" as adverted and to hereinabove, we are thus of the unhesitant opinion that substantial questions relating to environment and arising out of the implementation 16 of the enactments amongst others the Act of 1974 is involved in the proceedings in hand warranting transfer of the cases to the learned Tribunal.

27. The jurisdiction of the Tribunal thus, would extend to all civil cases which raise the substantial question of environment and arise from the implementation of the Acts stated in Schedule I of the NGT Act. There has to be thus, a direct nexus between the cases brought before the Tribunal and a substantial question relating to environment. The 'cause of action' as contemplated under the provisions of the NGT Act would be complete only when the stated three ingredients, i.e. firstly, civil cases, secondly, concerns or raises a substantial question of environment or an enforcement of a legal right relating to environment and lastly that

such question arises in regard to implementation of the Schedule Acts, are fulfilled. In the case of *Kehar Singh* (supra), the Tribunal unambiguously stated the principle that there has to be a direct nexus or link between the case advanced by the applicant and the substantial question relating to environment. It has to be a civil dispute raising an environmental issue and arising from any/or all of the Scheduled Acts.

28. However, the Tribunal may not have jurisdiction to entertain and decide such proceedings even when above nexus is established, as there is still another *sine qua* non for exercise of the jurisdiction by the Tribunal, that is, it must arise or be relatable to the implementation of the Acts specified in Schedule I of the NGT Act. Thus the most significant expression in this entire gamut of law is the expression 'implementation'. The legislature in its wisdom has specified different class of civil cases that would fall within the jurisdiction of the Tribunal. The first class of cases may *per se* raise a substantial question relating to environment while others may relate to enforcement of legal right relating to environment. These classes of cases must arise out of implementation of enactment specified in Schedule I. Thus, now we should examine the meaning of the word 'implementation'. The expression 'implementation' appears under different Acts even under environmental laws. The Preamble as well as Section 22A of the Air (Prevention and Control of Pollution) Act, 1981 uses the word 'implement'. In the Preamble, it is stated that, 'whereas it is

considered necessary to implement the decisions' while Section 22A states, 'where the Board is competent to direct the person to implement the direction in such a manner as may be specified by the Court'. The Environmental (Protection) Act, 1986, in its Preamble as well as Section 3 (2) (xiv) uses the word 'implement' and 'implementation' respectively. The expression 'implement' has been used in the Preamble while 'implementation' in Section 3 (2) (xiv) relates to whether the Central Government vested with the power to take such measures in relation to matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of the Act under Article 243G(b) of the Constitution of India which vests powers in the Panchayats and Authorities in relation to various matters. The State can vest the Panchayat with the power to exercise the Authority to implement the schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

29. The above provisions clearly show that the expression 'implement'/'implementation' has been used differently in different contexts. It will derive its meaning from the context in which it has been used, but in every context this expression has been used liberally and would be construed accordingly. There is no reason for us to constrain or limit unnecessarily the meaning of 'implementation'. 'Implementation' has to be read in

conjunction with the provisions of the Acts, the Rules, the Regulations and the Notifications issued under those Acts. The expression, 'implementation' should be construed reasonably upon the cumulative effect of these provisions and the attending legislative intent. The Tribunal while giving it a liberal construction has to also ensure that it does not travel beyond the accepted norms of interpretation.

30. At this stage we may appropriately refer to the judgement of the date pronounced by the Tribunal in the case of *M.C. Mehta v. UGC,* Original Application No. 12 of 2014, where the Tribunal took into consideration various definitions and judgments of the Court and while explaining the expression 'implementation' the Tribunal held as under:

> "18. Phrase of significant importance appearing in Section 14 of the NGT Act is 'arises out of the implementation of enactment specified in Schedule I'. Even in this phrase, the word 'implementation' is of essence. 'Implementation' in common parlance means to take forward a decision or to take steps in furtherance to a decision or a provision of law. It sets into motion, the actions which are contemplated within the provisions of the Act to which reference is made. It is not synonymous to execution. 'Execution' in law, particularly under the Code of Civil Procedure, 1908 is a known and well-defined concept. 'Implementation' in contradistinction thereto is a milder expression but again operates within the limitations prescribed by the law or the provision in which such expression appears. Concept of implementation cannot travel beyond the framework of law and in that sense it is even similar to an execution as it must be executed in conformity to the provisions of the Code of Civil Procedure, 1908. There are some basic similarities between implementation and execution but they differ in scope and enforcement.
> 19. We may now examine some of the definitions of the word 'Implementation': -

Oxford Dictionary, 3rd ed., 2010, "implementation"- the process of putting a decision or plan into effect; execution.

Black's Law Dictionary, 9th ed., 2009, "implementation plan" in relation to environmental law means 'a detailed outline of steps needed to meet environmental quality standards by an established time.'

P. Ramanatha Aiyar's The Law Lexicon, 3rd ed., 2012, "implementation'- giving practical effect to.

Wharton's Law Lexicon, 15th ed., 2012, "implementing agency"- includes any department of the Central Government or a State Government, a Zilla Parishad, Panchayat at intermediate level, Gram Panchayat or any local authority or Government undertaking or non-governmental organization authorized by the Central Government or the State Government to undertake the implementation of any work taken up under the Scheme.

20. In the case of *Sanjay Gandhi Grih Nirman Sehkari Sansthan, Indore v. State of Madhya Pradesh,* MP Reporter 1999, 528, where the High Court was concerned with the expression 'Implementation' appearing in Section 54 of the Adhiniyam Scheme read in conjunction with Sections 4, 6, 17(1) of the Land Acquisition Act, where the word 'Implementation' means commencement or completion of a decision taken (under the Scheme Adhiniyam), the Court took the view that the expression 'Implementation' has to be construed liberally so as to ensure that the object is achieved and not frustrated. Therefore, the Court held that 'Implementation' would mean that the steps under the Scheme have been taken and not that they ought to have been completed within the period of three years so as to make the scheme lapse.

21. One also finds use of the expression 'implement' in the very Preamble of the Environment Protection Act, 1986 where it states that it is considered necessary further to implement the decision aforestated (decision taken at the United Nations Conference on Human Environment held at Stockholm in June 1972). List I of the Seventh Schedule in terms of Article 246 of the Constitution of India also uses similar expression in Entry 13. Entry 13 reads as follows: -

> 13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
>
> 22. The word 'Implementation' as used above clearly indicates that it is a direct reference to the decision taken and which are sought to be implemented by taking further action thereof. Thus, when we have to construe the word 'implementation' appearing in Section 14 of the NGT Act with reference to the Acts stated in Schedule I of the said Act, it must confine itself to the implementation of the provisions contained under those Acts and that too, relating to a substantial question of environment and not beyond that."

31. 'Implementation', therefore, within the provisions of Section 14 of the NGT Act would relate to implementation of the various provisions, rules, regulations and the notifications issued in exercise of subordinate or delegated legislation with regard to any or all of the Acts stated in Schedule I of the NGT Act. It is not only implementation of the enactments, but even the questions which arise out of such implementation that would clearly fall within the ambit of Section 14 of the NGT Act. 'Implementation', would therefore cover all questions relating to application, enforcement and regulations under these enactments. There should be a nexus between the pleaded cause of action and the environment, making it a substantial question of environment. This may be in relation to environment or even enforcement of any legal right relating to environment. The word 'implementation' thus, has to be understood in its wider perspective and connotation. The interpretation should be one which would further the cause of effective implementation of the provisions of the Scheduled Acts. Any matter in relation thereto would

squarely fall within the jurisdiction of the Tribunal. The nexus with environment could be direct or even indirect. The present case is one, which would fall in the latter category. It will be obligatory to constitute appropriate expert committees in consonance with the provisions of the scheduled Acts and the Notifications issued thereunder otherwise this is bound to have adverse effects on effective prevention and control of pollution.

32. We may also notice here that both the expressions 'environment' and 'substantial question relating to environment' has been given an inclusive definition in terms of Section 2 (c) and (m) respectively of the NGT Act. In other words, this expression would have to be given wider connotation as they are generally understood but would also include what is specifically stated in these Sections. If any activity or action of any authority under various provisions of the Acts, would directly affect the environment, then it would be a matter which would come within the ambit of Section 14. The members of the EAC/SEAC are an integral and inseparable part of the process of Environmental Clearance which is the ethos of environmental jurisprudence particularly with reference to the Scheduled Acts to the NGT Act. The question arising from implementation of Appendix VI of the Notification of 2006 would have an impact on environment. It would also involve an enforceable legal right of the project proponent and even public at large in relation to environment. Hence, they will have an enforceable legal right that EAC/SEAC

should be constituted in accordance with law to consider their case for Environmental Clearance. Thus, examined from either of the point of views stated above the present case would fall within the ambit and scope of Section 14 of the NGT Act.

33. The expression, 'implementation' appearing in different statutes has been discussed by us in some detail above. At this stage, we must notice that under the Statement of Objects and Reasons of the Act 1986, the primary concern was over the existing state of environment, that is the decline in environmental quality, increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. Thus, to prevent and control these pollution related problems and to preserve wholesome environment for the community at large, the provisions of the Act of 1986 Act were enacted. The Act of 1986, provided both for procedure as well as regulatory regime for protection of environment thereto. In exercise of the powers conferred under Section 6 and 25 of the Act of 1986, the Central Government had framed the Rules of 1986. Under Rule 5 of the said Rules, the Central Government is empowered to pass certain prohibitory or restricted directions in relation to the fields stated under that Rule. In terms of Rule 5(3)(d), it is empowered to issue prohibition or restriction on location of such industry and the manner in which the process is to be carried on. The grant or

refusal of Environmental Clearance/Authorization is, thus, the most important aspect of environmental jurisprudence in as much as it is only after grant and refusal of Environmental Clearance/Authorization that any project or activity can be carried on in that area. As already noticed, this process is to be completed by an expert body i.e. the EAC/SEAC. Therefore, to implement effectively the provisions of environmental law, EAC/SEAC performs the most important and significant functions. If the members of this expert body are non-environmentalists and do not fall within the eligibility criteria of Appendix VI, then besides violation or infringement of such provisions, its direct impact would be on the environment. If people who are not strictly qualified and eligible and who do not professionally belong to this field, are selected as members of EAC/SEAC, the obvious result would be improper application of mind to the project reports and the application moved by the Project Proponent for grant of Environmental Clearance/Authorization. The EAC/SEAC has to perform functions of a very scientific and technical nature and has to analyse comprehensive terms of reference and environmental impact assessment report in respect of the project activity and then submit its report and recommendations to the Government for grant/consideration of the appropriate authority. Persons who are not eligible or are not having requisite expertise and experience in relation to the various fields of environment and the

process involved therein, would cause serious prejudice to all the stake-holders and more particularly to the environment and ecology of the country. It is an accepted social norm that prevention is better than cure. If the projects are cleared by class of the persons afore-stated then such projects when made operational, may have serious adverse impacts on the environment and cause environmental hazards. It would be better to prevent participation of such persons in the process of appreciation and grant of consent/clearance/authorization rather than to find remedies to the problems of pollution resulting from improper exercise of powers by such persons. Appendix VI to the Notification of 2006 issued in furtherance to the powers vested by the Act and is subordinate/delegated legislation and thus, would be an integral part of the Act. Therefore, compliance and proper implementation of the provisions falling under and arising from the specified Acts in Schedule I would be matters raising substantial questions of environment, hence covered under Section 14 of the NGT Act.

34. The selection and appointment of the members of the EAC is duly provided under Appendix VI. It states the eligibility criteria in that regard. Satisfying the eligibility criteria is a *sine qua non* for being appointed to the committees. On one hand it states legal requirement for selection of the EAC members, on the other it gives a legal right *in rem* to ensure that appointments are made in accordance with law. The exercise of jurisdiction by these

committees has a direct impact on the right of the Project Proponent and as such the Project Proponent would have an enforceable legal right to claim that EAC/SEAC members are appointed in accordance with the specified criteria in the interest of environment. This matter cannot be left to the discretion of the authorities. Even examined from this point of view, the application would be maintainable.

The Chairperson or Members who are to deal with complex environmental issue while considering grant of Environment Clearance or otherwise to the proposed projects must be possessed of appropriate qualification and experience in that field. They are expected to discharge functions of an expert body that has serious ramifications not only on the rights of the parties before it but even upon the development of the country. The appointment of appropriate people with desired qualification thus would be of concern and within the jurisdiction of this Tribunal. The Supreme Court in the case of *State of Assam v Sristikar Dowerah & Ors* AIR 1957 SC 414 was concerned with the question of excessive delegation where, while referring to the desirability of requisite qualifications of the members of the Tribunal, the Court observed as under:

> It is clear that the Tribunal was to sit in appeal over the decision of the Excise Commissioner and that by itself gives some indication that the person or persons to be appointed to the Tribunal should have the requisite capacity and competency to deal with appeals from such high officials. We do not consider that there has been an excessive delegation of legislative power.

35. Notification of 2006 has been issued in exercise of the powers conferred by Sub-Section (1) and clause (v) of the Sub-Section (2) of Section 3 of the Act of 1986 read with clause (d) of Sub-Rule (3) of Rule 5 of the Rules of 1986. As already noticed, the Central Government is vested with the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating pollution. Section 3(2) of the Act of 1986 specifies *inter-alia* the matters in relation to which measures could be taken by the Government. All the clauses of Sub-Section (2) relates to various fields of environment but clause (xiv) vests residual power in the Central Government. This residual power is of a very generic nature but has only one object, i.e. such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act. This clearly demonstrates the legislative intent of ensuring effective implementation of the provisions of the Act.

In view of the above reasoning, we have no hesitation in coming to the conclusion that providing of eligibility criteria under the Regulations of 2006 would be a matter that would squarely fall within the ambit and scope of Section 14 of the NGT Act. Further, keeping in view the function and powers of the EAC/SEAC and its impact on environment, it will be a substantial question relating to environment and or even an enforceable legal

right of the Project Proponent relating to implementation of the specified Acts in Schedule I of the NGT Act.

Discussion on issue no. 4: Whether the applicant cannot invoke the provisions of Section 16 and/or 14 and this application is not maintainable, on the ground on the ground that the EIA Notification was issued on 14th September, 2006 much prior to 18th October, 2010, the date on which NGT Act came into force? It is only the order passed on/or after the commencement of NGT Act that can be assailed before the Tribunal?

36. This contention of the respondents has to be noticed only to be rejected. It is obvious that the present application is not an appeal as it challenges no order within the ambit and scope of Section 16 of the NGT Act. It is only the orders stated under Section 16 (a) to (j) which can be challenged before this Tribunal under Section 16 of the NGT Act and subject to the limitation prescribed thereunder. None of the provisions of Section 16 makes the Notification of 2006 appealable before the Tribunal.

37. It is a petition which was filed before the High Court of Delhi in New Delhi under Article 226/227 of the Constitution of India seeking for striking down the qualifications prescribed in Appendix VI to the Notification of 2006 for the Chairperson and the members of the EAC, who are not experts from the field of environment, ecology and other connected fields. This Writ Petition came to be transferred to this Tribunal vide order dated 17th April, 2013. The transferred order was passed by the High Court with the consent of the parties. The said order read as under:

> "The consent of both the counsel for the parties, the writ petition is transferred to National Green Tribunal (NGT). The Registrar General is directed to forward the matter to the Registrar General, NGT within one week from today.
>
> The application stands disposed of."

38. Upon the transfer, the case was registered as main application under the provisions of the NGT Act. The case was heard on merits. This is, thus, an application under Section 14 of the Act. But respondents, in our considered opinion could hardly be permitted to raise objections of maintainability in face of the order of the High Court aforenoticed. We may also notice here that appointments as Chairperson of EAC were made by MoEF by passing administrative orders because Para 4 of Appendix VI has been omitted in the year 2007. This process does not appear to be strictly in consonance with law. The relevant materials were provided to the Petitioners vide letter dated 11th November, 2010 and the Writ Petition had been filed in the High Court on 25th April, 2011 within the prescribed period of limitation under Section 14.

39. We would make it clear that neither any arguments were heard nor any arguments were addressed, with reference to the allegations made in the application in relation to selection/appointments of various Chairman/members of EAC/SEAC. These selections/appointments appear to have been made under the administrative orders passed by the MoEF, as

Para 4 of Appendix VI was not in the rule book after 11th October, 2007.

40. We are restricting our discussion and conclusion in this judgment to the question of law raised for consideration of the Tribunal and the directions, if any, required to be passed in relation to the issues in the present application. In the facts and circumstances of this case, issuance of certain directions have become necessary to ensure the effective implementation of the provisions of the various environmental Acts, particularly with reference to the grant or otherwise of Environmental Clearance. Appendix VI, as it exists today, is silent with regard to the eligibility criteria and qualifications for appointment as Chairman of EAC. The Supreme Court in the case of *Vineet Narain & Ors. v. Union of India and Another,* (1998) 1 SCC 226, has held that in exercise of the powers conferred upon the Supreme Court under Article 32 read with Article 142 of the Constitution, the guidelines and directions have been issued in large number of cases. Thus, an exercise of providing guidelines by the court was stated to be well-settled practice, which has taken firm roots in the constitutional jurisprudence. This exercise is essential to fill the void in absence of suitable legislation to cover the field. This principle was also followed by the Supreme Court in the case of *Supreme Court Bar Association v. B.D. Kaushik,* (2011) 13 SCC 774. Of course, this Tribunal, under the NGT Act, is not vested with the above constitutional powers, however, the various

provisions of the NGT Act, gives to the Tribunal discretion to effectively interpret the law and ensure that objectives of the Scheduled Acts are achieved. The Tribunal will have general powers to do what is necessary for it to administer environmental justice. In the case of *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors.,* AIR 1981 SC 606, the Supreme Court while dealing with various provisions of the Industrial Disputes Act, 1947 and examining the powers of the Industrial Tribunal held as under: -

> "6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed there under giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

41. In the case of *D.P. Maheshwari v. Delhi Administration,* (1983) 4 SCC 293, the Supreme Court held that in the exercise of jurisdiction by the Tribunal, neither the High Court nor the Supreme Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues. The approach of the Courts is to permit the Tribunals to exercise their jurisdiction to the fullest

so as to ensure that the Tribunals do complete and effective justice. While examining the ouster of jurisdiction of the Tribunals or the appellate authorities under a statute, the Supreme Court in the case of *Hakam Singh vs M/s. Gammon (India) Ltd, 1971 1 SCC 286* noticed that in common law it is well accepted that unless Parliament/legislature expressly ousts the jurisdiction of the Court, the law must be interpreted in a manner of conferring jurisdiction. The ouster of Court's jurisdiction – whether express or implied must be clear and unambiguous. The assumption of jurisdiction cannot ordinarily be negatived by implying limitations. If the language is not clear, the Court must interpret the legislative clause in a narrow manner and sustain the jurisdiction of a Court.

In light of these principles and to achieve the objective that properly constituted EACs consider the cases of the Project Proponents for grant of Environmental Clearance ensuring environmental protection, it will be appropriate for this Tribunal to issue required directions. Any observations made in this judgment and findings recorded would not vitiate the appointments of/or the recommendations made by such members/Chairperson of the EAC/SEAC in the past.

42. Having answered the above formulated questions against the respondents and in favour of the applicant, we dispose of this petition with the following directions:

a) It is not necessary for this Tribunal to comment upon the validity, correctness or otherwise of Para 4 of Appendix VI to Notification of 2006, as it no longer remains on the statute.

b) As far as expression 'public administration or management' appearing in Para 2 of Appendix VI to the Notification of 2006 is concerned, we direct MoEF not to appoint experts as members/Chairperson of the EAC/SEAC under these head unless the said experts in the above field is/are directly relatable to the various fields of environmental jurisprudence.

c) We direct MoEF to provide eligibility criteria and specific requirements for the person to be appointed as Chairperson of the EAC/SEAC in Appendix VI within one month from today.

d) Till such prescription is made we direct MoEF not to appoint persons as Chairperson/members of the EAC/SEAC who do not have experience in the field of environment under the above head and who do not satisfy the prescribed eligibility criteria as that would lead to improper consideration and disposal of application for clearance filed by the Project Proponent. Further, it is bound to prejudicially affect the purpose of environmental enactments and the environment itself.

43. We, however, leave the parties to bear their own costs.

Hon'ble Mr. Justice Swatanter Kumar
Chairperson

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

Hon'ble Dr. D.K. Agrawal
Expert Member

Hon'ble Mr. B.S. Sajwan
Expert Member

Hon'ble Dr. R.C. Trivedi
Expert Member

Dated: July 17, 2014