

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**M.A.NO.213 OF 2015**

**IN**

**APPLICATION NO. 15 OF 2015**

**CORAM:**

**HON'BLE MR JUSTICE U.D.SALVI  
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE  
(EXPERT MEMBER)**

**ABDUL HAMID ABDUL AZIZ HODEKAR**

Aged 72 years, Occu: Business  
Resident of 3050 Mirkar Wada,  
Dist. Ratnagiri, Maharashtra

**APPLICANT/ORG.R-12**

**In the Matter of :**

- 1. SINDHUDURG JILHA SHRAMAJIVI RAPAN  
MACHHIMAR SANGH,**  
At Post Wairy Bhuthnath,  
Tal. Malvan, District : Sindhadurg.
- 2. MR. MITHUN DAMODAR MALANDKAR,**  
Age : 33 yrs. Occn : Gillnet Operator  
Fisherman, R/at Waity Bhuthnath,  
Tal. Malvan, District : Sindhadurg.
- 3. MR. PRUTHVIRAJ SHANKAR JOGI,**  
Age : 36 Yrs., Occn : Fishing,  
R/at. Dhuriwada, Malvan  
Distt : Sindhudurg.

**4. ACHRA BANDAR MACHHIMAR SANGHATANA,**

Through Its President Mr. Narayan  
Vasudev Kubal, Age 42 yrs,  
Occn: Fishing,  
R/at. Achra Pirawadi, Tal. Malvan,  
Distt : Sindhudurg.

**5. MR. SANJAY PRABHAKAR BANDEKAR,**

Age : 44 yrs, Occn : Fishing,  
R/at. Anandwadi, at Post : Devgad,  
District : Sindhudurg.

....**APPELLANTS**

**VERSUS**

**1) THE GOVERNMENT OF MAHARASHTRA,**

Through Fisheries Department,  
Mantralaya, Mumgai 400 032.

**2) THE MINISTRY OF ENVIRONMENT AND FOREST**

Govt. of India, Paryavaran Bhavan, CGO  
Compex, Lodhi road,  
New Delhi 110 003, India.

**3) DEPARTMENT OF ANIMAL HUSBANDARY,  
DAIRYING AND FISHERIES,**

Ministry of Agriculture, Govt. of India,  
Krishi Bhavan, Dr. Rajendra Prasad road,  
New Delhi 110 001.

**4) THE MAHARASHTRA MARITIME BOARD,**

Government of Maharashtra,  
Indian Mercantile Chambers, 3<sup>rd</sup> floor,  
14 Ramjibhai Kamani Marg,  
Ballal Estate,  
Mumbai 400 038.

**5) MAHARASHTRA COASTAL ZONE MANAGEMENT  
AUTHORITY, (MCZMA)**

Environment Department, 15<sup>th</sup> Floor,  
New Administrative Building,

Mantralaya, Mumbai 400 032.

**6) THE CHIEF CONSERVATOR OF FOREST  
MANGROVE CELL,**

2<sup>nd</sup> floor, A Wing, S.R.A. Bld,  
Anant Kanekar Marg, Bandra (East)  
Mumbai 400 051.

**7) THE COLLECTOR,**

District Collector Office, Oros,  
District : Sindhudurg.

**8) THE SUPERINTENDENT OF POLICE,**

Oros, District : Sindhudurg.

**9) INDIAN COASTAL GUARD,**

Coast Guard Regional Head Quarters (W)  
Worli Sea Face PO  
Worli Colony, Mumbai – 30.

**10) COLLEGE OF FISHERIES,**

Through : Its Principal/Registrar,  
Shirgaon, Dapoli, Distt : Ratnagiri.

**11) SINDHUDURG JILHA ADHUNIK RAPANKAR  
PARSIN DHARAK ASSOCIATION,**

Through : Its Chairman  
Mr. Ashok Todankar, JIjus Machchimar  
Sahakari Society, Somvar Peth,  
Malvan, District : Sindhudurg 416 006.

**12) ABDUL HAMID ABDUL AZIZ HODEKAR**

Aged 72 years, Occu: Business  
Resident of 3050 Mirkar Wada,  
Dist. Ratnagiri, Maharashtra

.....**RESPONDENTS**

**Counsel for Applicant/s/R-12):**

**Ms Gayatri Ingale, Mr. Sagheer Khan, Mr. M. Shoeb, Mr. Muchhala.**

**Counsel for Respondent(s):**

Mr. S.L.Jagtap for Respondent Nos. 1 and 7.

Mr. Asim Sarode, Rucha Pande, V. Gauri Kawade, Smita P. Mane for  
Original  
Applicants.

Mr. Milind M. Mahajan, Mr. Anirudh Tapkire h/f Mr. Amit Karkhanis for  
Respondent No.2.

Mr. Yogesh Hatagade i/b Legasis Partners, Mr. Dipesh Lad for Respondent  
No.4

Supriya Dangare, Mr. D.M.Gupte for Respondent No.5.

Mr. Shashank Vakil for Respondent No.13.

**DATE : JULY 14<sup>th</sup> , 2017**

**ORDER**

1. One Mr. Abdul Hamid Abdul Aziz Hodekar, resident of Mirkar Wada, District Ratnagiri, Maharashtra, newly impleaded as Respondent No.12 in the Original Application No.15 of 2015, has moved the present Misc. Application for dismissal of the Original Application on the following counts:

i) This Tribunal has no jurisdiction to entertain the Application and grant reliefs;

ii) No cause of action has accrued for filing the present Application.

2. Learned Counsel appearing on behalf of the Applicant/Respondent No.12 submits that, issue of the use of purse-seine gear/net is covered by the Maharashtra

Marine Fisheries Regulation Act, 1981 and the State Govt. in exercise of its powers under Section 4 of the said Act had initially issued Notification dated 10<sup>th</sup> December, 1987 and later on to replace the earlier Notification issued Notification dated 13<sup>th</sup> October, 1999, prohibiting use of purse-seine gear by any mechanized fishing vessels within territorial waters of 12 nautical miles of Greater Mumbai, Thane Raigad, Ratnagiri and Sindhudurg districts and further banned mechanized fishing vehicles/vessels operating purse-seine gear beyond territorial waters to land catch of the fish caught by such gear in any port other than Mirkar Wada, Ratnagiri; and the Hon'ble High Court after taking into consideration environmental aspect of fishing in shoals of Ratnagiri coast had struck down the said Notifications while disposing off Writ Petition Writ Petition No.285 of 1988 (2004(5)BCR 766: Abdul Hamid Abdul Aziz Hodekar & Ors Vs State of Maharashtra & Anr).filed by the present Applicant. He added that the said decision was challenged before the Hon'ble Apex Court in Civil Appeal No.8334 of 2004 (State of Maharashtra and Anr Vs Abdul Hamid Abdul Aziz Hodekar) but no stay to the decision of Hon'ble High Court was granted therein. He, however, further qualified that the Hon'ble Apex Court had disposed off the challenge to the decision of Hon'ble High Court vide order dated 5<sup>th</sup> April, 2017 as the said challenge had become infructuous with the State Govt. replacing the

earlier Notifications with fresh Notification dated 5<sup>th</sup> February, 2016 under Section 4 of the said Act on 26.5.2017.

**3.** According to him, it is for State of Maharashtra to take a policy decision as to the ban on fishing and regulate the activity of fishing by fishing vessels in the sea along the coastal line of State of Maharashtra as per the provisions of the Maharashtra Marine Fisheries Regulation Act, 1981, and, therefore, this Tribunal has no jurisdiction to entertain the present Application and grant any reliefs as solicited therein, particularly, when this Tribunal is a Statutory Tribunal and does not possess any power / jurisdiction / authority to issue any prerogative writ in the nature of 'Mandamus' or any other writ or directions to the State Govt. He added that a freshly issued Notification dated 5<sup>th</sup> February, 2016 now finds under challenge in Writ Petition No.9327 of 2016 as well as Writ Petition No.10740 of 2016, Writ Petition No.6929 of 2016 and Writ Petition No.9115 of 2014 before the Hon'ble High Court of Judicature at Bombay, and all these Writ Petitions have been admitted and listed for final hearing before the Hon'ble High Court.

**4.** In support of his submissions, learned Counsel appearing on behalf of the Applicant/Respondent No.12 relied upon the decision of the Hon'ble Apex Court in

**Madras Bar Association's case (2014 (2014)10 SCC:**  
**Madras Bar Association Vs Union of India & Anr)** and  
**M.P. Wakf Board's case (2006) 10 SCC 696: M.P. Wakf**  
**Board Vs Subhan Shah- since deceased by his L.Rs and**  
**Ors).** He argued that, the Hon'ble Apex Court while  
examining validity of the National Tax Tribunal Act, had  
reiterated its view that the power of judicial review over  
legislative action vested in High Courts under Article 226  
and in itself under Article 32 of the Constitution being  
integral and essential feature of the Constitution  
constituting part of its basic structure, and Tribunals will  
nevertheless continue to act like Courts of first instance in  
respect of the areas of law for which they have been  
constituted. He submitted that the Applicants in the  
Original Application did not approach the Central  
Government for the reliefs, and therefore no cause of action  
ever accrued for the present Application and the Tribunal  
being creature of the statutes cannot go beyond its  
mandate under the National Green Tribunal Act, 2010,  
particularly, when no Notification, Regulation have been  
issued by the Central Govt. in respect of use of purse-seine  
gear/net. He further submitted with reference to the  
Hon'ble Apex Courts observations in M.P. **Wakf Board's**  
**case** that the Tribunal cannot usurp the powers of the  
Authorities under the enactments specified in Schedule-I of  
the NGT Act, 2010 and enter upon a task to device a

scheme in respect of fishing activity with purse-seine gear/net.

**5.** Learned Counsel appearing on behalf of the Applicant/Respondent No.12 further submitted that, this Tribunal has jurisdiction to try and decide all the civil cases wherein substantial question relating to environment is involved, and such, question arises out of implementation of enactments specified in Schedule-I of the NGT Act, 2010, namely;

- 
- i) The Water (Prevention and Control of Pollution) Act, 1974;**
  - ii) The Water (Prevention and Control of Pollution) Cess Act, 1977;**
  - iii) The Forest (Conservation) Act, 1980;**
  - iv) The Air (Prevention and Control of Pollution) Act, 1981;**
  - v) The Environment (Protection) Act, 1986;**
  - vi) The Public Liability Insurance Act, 1991;**
  - vii) The Biological Diversity Act, 2002.**

**6.** However, he argued that, the Applicants are trying to invoke jurisdiction of this Tribunal to overreach the provisions of the Maharashtra Marine Fisheries Regulation Act, 1981, which regulates the fishing activity by different types of nets.

**7.** Learned Counsel appearing on behalf of the



Applicants [**Sindhudurg Jilha Shramajivi Rapan Machhimar Sangh, O.A.No.15 of 2015**] submits that, the Applicants have come forth with a civil case raising substantial question relating to environment inasmuch as whether to permit the use of purse-seine gear/net for fishing activity which is destructive of marine environment and harmful to marine bio-diversity. He took us through the Application placing forth their case before the Tribunal and invited attention of the Bench to the provisions of the Biological Diversity Act, 2002, particularly, Section-2 quoting definition of Bio-diversity, Bio-resources, commercial utilization, sustainable use, and Section-3 spelling out role of the National Bio-diversity Authority in granting approvals for obtaining any biological resource occurring in India.

**8.** Having heard these submissions on behalf of the Original-Applicants, we thought it fit to issue Notice to the Chairman, State Bio-diversity Board, Nagpur in order to consider their stance as regards to the present Application, vide order dated 8<sup>th</sup> November, 2016. The State Bio-diversity Board, Nagpur was eventually added as a Party-Respondent No.13 to the Application vide order dated 20<sup>th</sup> February, 2017. Respondent No.13- the State Bio-diversity Board, Nagpur tendered its reply affidavit dated 16<sup>th</sup> January, 2017 on 17<sup>th</sup> January, 2017 in the present

Application.

9. Respondent No.13- the State Bio-diversity Board, Nagpur besides quoting the provisions of the Biological Diversity Act, 2002 namely; Ss.19 and 21 and making reference to Ss. 3 and 7 thereof, asserted that the fishing technology like Trawl purse-seine and mini purse-seine nets caused serious bio-damage to the fish diversity especially when fishing with this technique is done near the seashore or within 12 nautical miles and increased biological catch due to trawl fishing is unsustainable and would be causing major ecological as well as economic loss to India and also to the traditional fishermen community. Respondent No.13- the State Bio-diversity Board, Nagpur added that although the data supporting the said findings is of 1996 the situation has further worsened threatening marine bio-diversity and eco-system as non-traditional fishing technique is unsustainable due to collection of juvenile biological resources. Learned Counsel appearing on behalf of Respondent No.13-State Bio-diversity Board submitted that, commercial fishing by using purse-seine gear/net is exploitation of huge bio-resources without any permission of Respondent No.13-the State Bio-diversity Board, Nagpur or the National Bio-diversity Authority, and as such, is unlawful being in complete violation the Biological Diversity Act, 2002.

**10.** The record reveals that Respondent Nos. 1,2,4, 7 and 11 have filed their replies to the Original Application. Only Respondent No.11 towed the line of Respondent No.12 Mr. Hodekar and raised preliminary objection of the kind raised by Respondent No.12 Mr. Hodekar. However, Respondent Nos. 1 to 11, despite the opportunity being given to them to make submissions, preferred to remain silent. In this backdrop, we have examined the case of the Applicant as revealed in the Application to find out whether preliminary objections raised are sustainable without going into the merits of the case as framed.

**11.** The Applicants claim to be represented by the traditional fisherman, who felt aggrieved by the threat of illegal i.e. unregulated fishing by mechanized trawlers using purse-seine gear/net within territorial waters along the coastal line in State of Maharashtra. The Applicants pleaded that the fishing activity done by the traditional fishermen being selective is environmentally sustainable method and does not harm fishes, small fishes, whereas, fishing with purse-seine gear/net or mini purse-seine gear/net being non-selective method, is totally destructive/harmful to the marine bio-diversity inasmuch unwanted fish/non targeted marine species, including Sea-Turtles, Shacks, Dolphins, marine Mammals and such, other endangered marine species necessary to maintain

ecological balance, are caught, eventually only to face extinction. The Applicants have further pleaded that mechanized trawlers using purse-seine gear/net not only reduce catch for the poor fishermen using indigenous method of fishing, but also reduce their catch progressively and destroy standing fish-stocks. The Applicants have specifically pleaded the importance of marine bio-diversity in maintaining ecological balance and highlighted that an adverse impact of fishing by use of purse-seine gear/net and mini purse-seine gear/net on marine bio-diversity and consequently on its the interrelationship with the material component of environment namely; water, air and land to raise a substantial question relating to environment, which has never been dealt with by the concerned Authority. The Applicants have, therefore, prayed for the following reliefs:

**(A) Directions may kindly be issued to strive a ban on the use of purse seine and mini purse seine (ring seine) in the state of Maharashtra and in its territorial water jurisdiction of 0-12 nautical miles.**

**(B) Directions may kindly be issued to the State Government to create a committee that could find alternatives to purse seine and mini purse seine (ring seine) so that the people who rely on the business can continue to do so. The committee should include a marine biologist well known in his area of work, a governmental official who works for the Fisheries Department of Maharashtra, a traditional fisherman community members, women from the families**

of traditional fishermen and a person who conducted business using purse seine and mini purse seine (ring seine) nets.

(C) Help, assistance and expert scientist's backing may kindly be taken from any of the institutes on the subject matter of the application which will help the Hon'ble Tribunal to assess the matter in more scientific way.

(D) Directions may kindly be issued to Respondent no.2,4,6,8 and 9 to establish vigilance committee for monitoring the illegal actions of purse seine net and mini purse seine fishing and also violating provisions of Maharashtra Marine Fisheries Regulation Act, 1981 in Maharashtra territorial waters. They may be directed to submit action plan as to how they will function in coordinate manner.

(E) It will be just and proper in the interest of environment to have 'ban period of fishing' during monsoon in adjoining States of the same coastal regions like Gujarat, Goa, Maharashtra and Daman and Diu. The traditional fishermen community have demanded common 90 days ban during monsoon period and there were constant agitations for such demands and hence this may be considered.

(F) Various illegal activities are taking place in different ports and hence carrying capacity of Ports in the coastal zone from Mumbai to Goa needed to be defined and hence directions may kindly be given to Respondent No.4 to define carrying capacity of each port falling on the range of 720kms of coastal zone of Maharashtra.

(G) The Respondent No.5- Maharashtra Coastal Zone Management Authority (MCZMA) may kindly be directed to

submit detailed report regarding what necessary measures for protecting and improving the quality of the coastal environment and preventing and controlling environmental pollution in the coastal areas and aquatic life of species have been taken by them in the past 2 years.

(H) The Respondent No.6 Chief Conservator of Forests Mangrove Cell may kindly be directed to submit report on attempts regarding mainstreaming coastal and marine biodiversity and integrated options suggested by them for sustainable development regarding maintaining fish stocks within safe biological limits. Directions may be given to Respondent No.6 to submit report regarding endangered species and threat to aquatic life at the coastal marine area of Sindhudurg.

(I) Respondent No.6 may kindly be directed to submit data and report about their collaborative work with UNDP, Ministry of environment and forests, Government of India, Department of Forests, Government of Maharashtra on biological diversity and conservation of ecology in the Sindhudurg coast area.

(J) Respondent No.7 may kindly be directed to take a fresh meeting of Advisory Board constituted under Maharashtra Marine Fisheries Regulation Act, 1981 and submit its report and minutes of meeting before the Hon'ble NGT.

(K) The Fisheries Department which is Respondent no.1 may kindly be asked to submit detailed report regarding number of actions taken by them against illegal fishing. They may kindly be directed to submit bifurcated report as to how many actions against local traditional fishermen and how

many actions have been taken against fishermen using purse seine nets.

(L) The Respondent no.1 may kindly be directed the basis on which they issue fishing method license to purse seine nets. They may be directed to submit the detailed list of fishing license holders to whom such licenses issued from the year January, 2010 to January, 2015.

(M) It will be just and proper to direct the Respondent no.10 to submit list of various reports with its subject heading before the Hon'ble NGT. Directions may also be given to Respondent no.10 to submit copies of relevant report to the subject matter.

(N) Directions may kindly be issued to Respondent No.1 and others to set up Fisheries Terminal Authority in Maharashtra.

(O) Compensation be paid to the members and their families under Sindhudurg Julha Shramjivi Rapan Machhimar Sangh affected because of the loss of livelihood by the purse seine and mini purse seine net (ring sine) users.

(P) Considering the socio-legal and environmental aspect of this matter the costs of this Application be awarded to the victim-Applicants from the Respondents.

(Q) Permission may kindly be given to submit translation of some Marathi documents as and when required by the Hon'ble Court.

(R) Permission may kindly be granted from time to time to the

Applicants to submit various research papers and documents add and delete some paragraphs if needed. And permission to amend the Application may also be granted whenever required.

(S) Any other just and equitable order in the interest of environment may please be passed.

**12.** Whether to grant such reliefs or any of them or any other such reliefs appropriate in the facts and circumstances of the case, will largely depend on merit of the case established upon hearing of the parties. Only question that remains to be answered in the present Application is: whether we can entertain such a case for its adjudication as per the provisions of the National Green Tribunal Act, 2010 or not.

**13.** From the nature of the case as pleaded before us, we are not expected to examine *vires* of any Law, notifications or Regulations or exercise writ jurisdiction. From the reading of Madras Bar Associations' case (supra) relied upon by the Applicant-Respondent No.12, we find that time and again the Hon'ble Apex Court observed that jurisdiction vested in the Tribunals would be deemed to be discharging of Supplemental Role to that of the High Courts in exercise of the powers conferred by Article 226/227 of the Constitution, and it affirms that such Tribunals would be deemed to be possessing competence to test the



constitutional validity of Provisions and Rules. N. Chandra Kumar's case (***L.Chandra Kumar Vs Union of India: (1997) 3 SCC 261***). Accordingly, we had answered issues as regards Tribunal's powers of judicial review of the Notification issued by Authorities in exercise of powers of subordinate and delegated legislation under the Acts enumerated in Schedule-I of the National Green Tribunal Act, 2010 affirmatively in the case of ***Wilfred J. Vs MoEF & Ors [Application No.74 of 2014 and Appeal No.14 of 2014]***.

**14.** In the instant case, we are not called upon to devise any scheme contrary to the provisions of law governing the issue under consideration. What the Applicants are seeking is implementation of enactments specified in Schedule-I of the NGT Act, 2010 and, as such, have invoked provisions of Ss. 14,15, 17 and 18 of the NGT Act, 2010. Both the Judgments cited by Applicant/Respondent No.12 Mr. Hodekar, therefore are of no avail in the present case.

**15.** Though learned Counsel appearing on behalf of Applicant/Respondent No.12 Mr. Hodekar, submits that, the State and National Bio-diversity Boards have no role to play in the present case, as their activity does not fall within the meaning of commercial utilization, bio-survey and bio-utilization. The definitions of 'biological diversity,

biological resources, bio-survey, bio-utilization and commercial utilization' under Section 2 (b), (c),(d) and (f) respectively in the Biological Diversity Act, 2002 are required to be considered for understanding the role of the National and State Bio-diversity Boards and, as such, are quoted herein below for ready reference:

## 2. Definitions

In this Act, unless the context otherwise requires,—

(a) xxx xxx xxx

(b) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems;

(c) "biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material;

(d) "bio-survey and bio-utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;

(e) xxx xxxx xxxx

(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional **practices** in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;

**16.** Under Section 18 of the Biological Diversity Act, 2002, the National Bio-diversity Authority is obliged to regulate the activities referred to in Ss.3,4 and 6 therein; and by regulation issue guidelines for access to biological resources and for fair and equitable benefit sharing. The National Biodiversity Authority may also grant approval for undertaking any activity referred to in Ss. 3, 4 and 6, and is further obliged to advise the Central Government on matters relating to the conservation of bio-diversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources; and also advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of Section 37 as heritage sites and measures for the management of such heritage sites. Pertinently, any person referred to in Section 2 of sub-section (3) of the said Act, who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any research relating to biological resources occurring in, is required to make an application to the National Biodiversity Authority, as per Section 19 of the said Act for its approval. For ready reference Sub-section-2 of Section 3 is quoted herein below:

**Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority**

3. (1) xxx                      xxxx                      xxx                      xxx

(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely:

- (a) a person who is not a citizen of India;
- (b) a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 196 1;
- (c) a body corporate, association or organization-
  - (i) not incorporated or registered in India; or
  - (ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

**17.** Thus, prohibition on obtaining any biological resource occurring in India either for research or for commercial utilization or for bio-survey and bio-utilization without approval of the National Biodiversity Authority, is imposed only on the said category of persons referred to in Sub Section (2) of Section 3 of the said Act.

**18.** Likewise, Section 23 of the Biological Diversity Act, 2002 spells out the functions of State Bio-diversity Board in the following terms:

**Functions of State Biodiversity Board**

**23. The functions of the State Biodiversity Board shall be to–**

- (a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components

and equitable sharing of the benefits arising out of the utilization of biological resources;

**(b)** regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;

**(c)** perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

**19.** Section 7 of the Biological Diversity Act, 2002 cast certain obligations vis-à-vis obtaining of biological resource for commercial utilization and the State Bio-diversity Board as follows:

**Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes**

7. No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned. Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakims*, who have been practicing indigenous medicine.

**20.** Be that as it may, the Applicants have come up with a case raising substantial question/issue relating to environment inasmuch as it questions propriety of fishing with mechanized trawlers of fishing with purse-seine and mini purse-seine gear/net at the cost of marine biodiversity and consequently; the environment. Section 2(c) of

the National Green Tribunal Act, 2010 and Section 2(a) of the Environment (Protection) Act, 1986 define “Environment” alike as follows:

**“‘Environment’ includes water, air and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.”**

**21.** The Applicants have invoked Section 14 of the National Green Tribunal Act, 2010, which reads as under:

**14. Tribunal to settle the dispute:-**

(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.

**22.** The larger Bench of NGT, New Delhi in Kalpavriksh’s case (***Kalpavriksh Vs Union of India***) decided on 17<sup>th</sup> July, 2014, had taken panoramic survey of the law and analyzed Section 14 of the National Green Tribunal Act, 2010 in the following words:

..... **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, 3<sup>rd</sup> 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 a substantial question is 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 interrelationship, 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.**

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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 subsection (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 interconnected 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 conTrawled,**

*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 1<sup>st</sup> 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 multidisciplinary 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 aforesaid 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 enjoinders 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 overriding 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 nongovernmental 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 aforesaid (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.

**23.** The Biological Diversity Act, 2002, an Act to provide for conservation of biological diversity in a large measure deals with sustainable use of its components and fair and equitable sharing of benefits arising out of use of biological resources, knowledge and the matters connected therewith or incidental thereto. It regulates obtaining of any biological resource occurring in India or knowledge sustainable thereto for research or commercial utilization, bio-survey and bio-utilization with simultaneous exemption from such regulation to the local people and communities of the area, including growers and cultivators of bio-diversity and restricting extent of commercial utilization by existing traditional practices in use of any Agriculture, Horticulture, Poultry, Dairy Farming, Animal Husbandry or

Bee keeping. Pertinently, the Bio-diversity Act, 2002 does not deal with the manner of acquiring or obtaining of any biological resource i.e. fish with use of purse-seine gear/net. As in the present case. Seemingly, therefore, one may get feeling that there is a void in Schedule-I of the NGT Act, 2002 regarding the law which ought to have governed this field. However, close perusal of the Environment (Protection) Act, 1986 betrays the myth of contentions raised by Applicant/Respondent No.12 Mr. Hodekar that there is no Notification, Regulation or law governing the field and, therefore, no cause of action accrues in the present case.

**24.** The Environment (Protection) Act, 1986 is an umbrella Act enacted to provide protection and improvement of environment and for the matters connected therewith. The Act defines the term “Environment” with wide amplitude and empowers the Central Govt. to take all such measures both necessary or expedient to protect and improve it with the powers as per Section 3 of the said Act, which reads as under:

### **3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT**

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include

measures with respect to all or any of the following matters, namely:--

- (i) co-ordination of actions by the State Governments, officers and other authorities--
  - (a) under this Act, or the rules made thereunder, or
  - (b) under any other law for the time being in force which is relatable to the objects of this Act;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (iii) laying down standards for the quality of environment in its various aspects;
- (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:  
Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;
- (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
- (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) 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.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

**25.** Vesting of powers entails corresponding obligations. Significantly, therefore, the Central Government is under legal obligation to take such measures for coordination of actions of the State Govt. officers and other Authorities under any other law for the time being in force i.e. the Maharashtra Marine Fisheries Regulations Act, 1981, which is relatable to the objects of the Environment (Protection) Act, 1986, and further restrict the area in which operations like one of fishing with purse-seine gear/net shall not be carried out or shall be carried out subject to certain safeguards and to effectively implement the provisions of Act in terms of Section 3 (2) (i), (v) and (xiv) quoted hereinabove.

**26.** The present Application discloses not only the case of fishing with purse-seine gear/net, but its adverse impact on Marine Bio-diversity in particular and environment in general. Growing unrest amongst the fishermen and its

outbreak in form of public agitation is a manifestation of growing adverse impact of fishing with purse-seine gear/net on environment and its pinch felt by the traditional fishermen due to decrease in fish catch. It will, therefore, be a folly to say that no cause of action had accrued for the present Application.

**27.** In our considered opinion, therefore, a substantial question relating to marine environment and arising out of implementation of the provisions of Environment (Protection) Act, 1986 and the Acts specified in Schedule-I of the NGT Act, 2010 thus arises in the present case due to inaction of the Central Government to discharge its obligations and take necessary steps for restitution of environment. We, therefore, are well within our bounds to consider such question and adjudicate upon the dispute arising from such question.

Hence, M.A.No. 213 of 2015 is dismissed.

Main Application No. 15/2015, be listed on 24th August, 2017 in the cause list.

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

.....**EM**  
**(Dr.Ajay A. Deshpande)**

**DATE: JULY 14th, 2017.**

**PUNE.**

**hkk**