

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

Original Application No. 132 of 2016

IN THE MATTER OF:

Nigam Priyae Saroop

R/o 1st Floor State Bank of India Building Rajouri
District- Rajouri, Pin-185131
(Jammu and Kashmir State)

..... Applicant

Versus

1. State of Jammu and Kashmir through Chief Secretary to Government, Civil Secretariat, Jammu-180001.
2. Secretary, Department of Forests, J&K State, Civil Secretariat Jammu-180001.
3. Principal Chief Conservator of Forests, J&K State, Van Bhawan, Gummat, Jammu-180001.
4. Special Secretary (Technical), Department of Forests, Environment and Ecology, Jammu and Kashmir State, Jammu-180001.
5. Secretary, Higher Education Department, J&K State, Jammu-180001.
6. Chief Wild Life Warden, J&K State, Jammu-180001.
7. Deputy Commissioner, Jammu-180001.
8. Union of India through Ministry of Human Resource and Development, through its Secretary, Govt. of India, Shastri Bhawan, New Delhi-110001.
9. Ministry of Environment, Forest and Climate Change through its Secretary, Govt. of India, Indira Paryawaran Bhawan, Jor Bagh Road, New Delhi-110003.

.....Respondents

COUNSEL FOR APPLICANT:

Mr. R.P Sharma, Adv

COUNSEL FOR RESPONDENTS:

Mr. Sunil Fernades and Mr. Arnav Vdiyarthi, Advs for respondent no. 1 to 7

Mr. B.V Niren, Mr. Ramesh Thakur and Mr. Varun Bhati, Advs for respondent no.8

Mr. Atiin Shankar Rastogi and Ms. Neha Rajpal, Advs for respondent no.9

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Dr. Justice Jawad Rahim (Judicial Member)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Reserved on: 13th February, 2017

Pronounced on: 1st May, 2017

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

RAGHUVENDRA S. RATHORE (JUDICIAL MEMBER) J

1. The applicant after being shocked on reading the news item, reported in Daily Excelsior Jammu dated 17th February, 2016 giving details of the transfer made by State Government of 159 hectares of forest land to the Higher Education Department for establishment of the Indian Institute of Technology (IIT) in Nagrota area of Jammu district, has filed this Original Application under Section 14, 15 and 18 (1) of the National Green Tribunal Act, 2010. Applicant has therefore prayed that:

(i) The decision taken by the Forest Advisory Committee in its 91st meeting agenda clause 91.09 on the proposal to allow use of 159 hectares of forest land for construction of IIT Jammu without requisite corum was incompetent, invalid, a fraud on the statute and not binding on the Govt. It is non-est and void ab-initio.

(ii) That the Government order no. 41/FST-2016 dated 11.02.2016 under which sanction has been accorded to the use of 159 hectare of forest land for construction of IIT

Jammu for Higher Education Department in Jammu Forest Division is liable to be quashed and set aside.

(iii) The transfer of forest land for non-forestry purpose is impermissible under the provisions of J&K Forest Conservation Act 1997 and Rules, Jammu and Kashmir State Forest Policy 2010, J&K Wild Life Protection Act, 1978 and Environment Protection Act, 1986 and Rules. It is fraught with serious consequences to ecology and environment besides resulting in irreversible damage to the eco system, health of the local populace and flora and fauna.

(iv) To grant appropriate orders for restoration of damage caused by cutting of forest trees and clearing of saplings etc without a valid transfer order.

(v) To save the green forest trees, forest land, wild life sanctuary which is natural habitat of forest fowls, black partridge, mountain quail, peafowl-peacocks, the national bird of India, wild dogs, deer, monkeys, langurs and other animals and birds besides other countless fauna and flora existing on the forest land which was transferred to the Higher Education Department for establishment of IIT Jammu in an illegal manner, at the cost of the environment and ecology of the area. The non-applicants be further restrained from entering upon the forest land, starting any construction of boundary walls or other buildings and roads in order to change the land use in any manner till the decision of matter.

Brief Facts

- 2.** As per the newspaper report, the Forest Advisory Committee (FAC) had on 30th November, 2015, under the chairmanship of Chief Secretary, Chairman FAC and with the approval of the Governor on 27th January, 2016, has authorized the Special Secretary (Technical), Department of Forest, Environment and Ecology, respondent no.4 to issue Govt. order no. 41/FST-2016 to transfer the forest land measuring 159 hectares for its use for the construction of IIT Jammu by the Higher Education Department. The said forest land has 1650 trees and 40133 saplings.
- 3.** The order of demarcation of land at Jagti Nagrota, intimated to the Deputy Commissioner, Jammu by the Tehsildar, Nagrota mentions total land measuring in 3247 Kanals- 07 Marlas, which is under the occupation of forest. The order of Deputy Commissioner, Jammu makes a mention of approval by the State Selection Committee to get the forest land converted into use as a site for the establishment of IIT at Jammu. The area is vital for lakhs of people residing in Jammu city and its suburb.
- 4.** The authorities have started felling and axing thick forest without any count which is like a disaster for the entire flora and fauna. It is likely to cause environmental and ecological damage beyond repair. There is no demarcation and the entire forest area has been exposed to the wild life poachers, timber mafia and land mafia. There are vast stretches of

waste land, shamlat land, State land and other barren unproductive lands available in abundance in Jammu district as well as other adjoining districts of Rajouri, Udhampur and Samba district of Jammu Division for the establishment of IIT in Jammu area.

- 5.** The case of the applicant is that the impugned orders, administrative in nature, have been issued by the respondents effecting the transfer of forest land, removal of forest trees in habitat of the forest are illegal, without the authority of law and malafide in accordance with the facts and circumstances of the case.

Further, the case of the applicant is that under the provision of Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997, restrictions have been laid down on de-notifying of demarcated forest or de-reservation or use of forest land for non-forest purposes. There is no provision for the transfer of forest land for any purpose other than given in the Act. The Act provides the purposes such as rural roads, not exceeding 5 hectares of forest land and 2 hectares of forest land for the execution of the electric, irrigation and public health engineering works. The said Act does not provide for transfer of huge chunk of 159 hectares of forest land in favour of Higher Education Department.

- 6.** The impugned orders have been passed in total violation of principles of natural justice, fair play and good conscience. No public notice, whatsoever, had been given to notify

objections. The entire action is grossly illegal which grossly affects a large number of public, besides the voiceless wildlife.

- 7.** The area under transfer is having a thick forest growth of pine trees, besides other protected species of trees and plants and a host of medicinal herbs etc. which provides life to the ecology and environment of the area and which are essential for the health of the citizens and for the maintenance of bio-diversity.

The estimation of 1650 trees and 40133 saplings given by the Forest Department is not correct. It would not be just and proper that land in a dense forest and a habitat of jungle fowls, black partridge, mountain quail, peafowl-peacocks, the national bird of India, wild dogs, deer, monkeys, and other animals, besides other countless fauna and flora is sought to be transferred for the construction of IIT. The transfer of land would further adversely affect the eco-sensitive zone of Ramnagar Wildlife Sanctuary which is a natural habitat of wild life. The sanctuary is a part of the forest area under transfer and cannot be sustained due to the development of huge building infrastructure of IIT in its vicinity.

- 8.** It is also the case of the applicant that the transfer of forest land and conversion of its use for the construction of IIT building is not justified, in view of the facts that large tracts of wasteland, State land, shamlat land and private land are

available in the district of Jammu, as well the adjoining districts of Samba, Udhampur, Reasi, Rajouri and Kathua.

The respondent had not been fair in respect of the valuation of the forest land in question as described in the newspaper of Rs. 14.93 crore and the compensation of trees calculated at Rs. 1.93 crore. Similarly, the calculation of compensatory afforestation requirement of Rs. 3.18 crore, projected by the Forest Department, is nothing but a farce. It is inestimable in terms of cost of land, trees, loss to the flora and fauna, environment and ecology, besides, the effects to the life of lakhs of citizens both in terms of health and living conditions. Therefore, it is submitted by the applicant that the impugned orders passed by the respondents be quashed and appropriate orders for restriction on damage caused by cutting the forest trees and clearing the saplings etc. be passed by this Tribunal.

- 9.** The respondent State has filed an affidavit in response to the Original Application. It has been submitted by the respondent that the allegations leveled in the application are misleading, misconceived and incorrect. The respondents have further submitted that the Government of India, in 2014, decided to establish an IIT at Jammu, in the State of Jammu & Kashmir, amongst other places in the country. Consequently, the Ministry of Human Resources & Development (MHRD) requested the State Government, in August, 2014, to identify suitable land measuring 500-600

acres, free of cost and any legal encumbrances, possessing requisite physical and social infrastructure, including good connectivity by road, rail and airways for the purpose of establishing the said IIT.

10. The State Government had suggested three sites to the MHRD namely:-

- a. Badla-Mohargarh, District Samba;
- b. Harsath-Nonath, District Samba; and
- c. Jangalote, District Kathua

11. The above mentioned sites were inspected by the Site Selection Committee of MHRD in April, 2015 and the said Committee rejected all the three sites on account of inadequate facilities and lack of adequate connectivity. The State Government was once again requested to submit fresh sites in Jammu. The State Government had again suggested five other sites which were:

- i. Khanpor, Nagrota, District Jammu
- ii. Jagti Village, Tehsil Nagrota, District Jammu
- iii. Panjgrain
- iv. Thathar, Keran and
- v. Sunjwan

12. Subsequently the Site Selection Committee of MHRD visited the above sites in June 2015 and selected the site at Jagti Village, Tehsil Nagrota, Jammu District, i.e., the present site, for the establishment of IIT. Consequently, the Central Govt. had issued various instructions to the State Government so as to ensure that the land is made available for the

establishment of IIT, Jammu. According to the respondents the State Government had no role whatsoever in selecting the said site and it was solely done on the expertise and advises of the Central Government. i.e. MHRD. The State Government has merely executed the instructions issued by the Central Government in this regard. Therefore, the allegations contained in the instant application against the State Government are wholly incorrect and misleading.

13. It is further submitted by the respondent that based on the instructions issued by the Central Government, the State Government undertook the procedures, as prescribed under law, to obtain the requisite Forest clearance. The land selected by the Central Government was under the ownership of the Forest Department and therefore the indent (i.e. Application/Request) dated 28.07.2015 for various clearances, as per law, was placed by the user agency i.e Higher Education Department, Government of Jammu & Kashmir with the Principal Chief Conservator of Forest (PCCF), Government of Jammu and Kashmir.

14. Thereafter, a Joint Verification Committee consisting of the officers of Forest and Higher Education Department of the State Govt. was constituted to conduct verification of the trees at the site. The said verification was completed on 01.10.2015 and a case for compensation and forest clearance was sent to the PCCF, Jammu & Kashmir on 04.11.2015.

- 15.** A proposal of the PCCF was placed before the State Forest Advisory Committee, which considered the same in its meeting held on 30.11.2015. The proposal was cleared in the meeting to use 159 hectares of forest land in village Jagti, Tehsil Nagrota, District Jammu for construction of an IIT campus.
- 16.** The Forest Department, had accordingly issued sanction to use 159 hectares of forest land vide G.O No. 41 FST-2016 dated 11.02.2016, after duly complying with the procedure contemplated under Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997.
- 17.** Pursuant to the Notification dated 11.02.2016, the Forest Department was asked to mark the trees which will have to be cut down for the construction of IIT. The Divisional Forest Officer (DFO), Jammu submitted a list of 1311 trees/saplings falling under the land sanctioned for the IIT, Jammu, which would have to be felled. It is pertinent to note that there were only 51 trees, which were more than 30-40 cm in diameter and the remaining 1260, were small plants and saplings.
- 18.** The technical sanction to cut the marked trees was issued by Conservator of Forests on 13.02.2016 and accordingly felling of 1311 trees (51 trees above 30/40 cm diameter and rest were minor trees/saplings) had started by the Forest Department, which was completed on 28.02.2016.

19. The respondent has submitted that the proposed IIT campus at Jammu is not a part of Ramnagar Wildlife Sanctuary, as alleged in the Application. The campus lies outside the boundary of the Wildlife Sanctuary. However, it does fall within the eco-sensitive zone of the sanctuary. The G.O dated 11.02.2016 contains detailed instructions which the IIT was to follow with regards to area that fall under eco-sensitive zone of wildlife sanctuary. Clauses 1 to 16 of the said G.O clearly stipulates that the State Government shall comply with the obligation and notification issued, from time to time, by the Ministry of Environment and Forest (MoEF) with regard to building and construction projects for educational institution in an area falling in eco-sensitive zone.

20. The State Government has duly complied with the notification dated 22.12.2014 issued by MoEF, along with the clarificatory O.M dated 09.12.2015, in its letter and spirit. The State Government has also followed the stipulation contained in the MoEF circular and O.M dated 22.12.2015 which clarifies the above notification dated 22.12.2014 and contains various guidelines to be followed in respect of building projects.

A perusal of the notification of MoEF dated 22.12.2014 along with O.M dated 09.06.2015 clearly reveals that schools, colleges and hostels for educational institutions are exempted from obtaining prior environmental clearances

under the provisions of Environment Impact Assessment Notification 2006, (thereafter referred as EIA Notification 2006).

21. Therefore, according to the respondents, the applicant has legally and factually erred in contending that the State Government has not obtained environmental clearance from MoEF for the construction of IIT, Jammu. Since IIT Jammu is an educational institution, it is per se exempted from the requirement of obtaining environmental clearance.

22. It is further alleged that the State Government has incorrectly calculated the Net Present Value (“NPV”). As per respondent State the allegation is absolutely incorrect. Attention of the Tribunal has been invited to the contents of the G.O dated 11.02.2016 (marked as Annexure-B) wherein summary of amounts to be deposited under various heads are provided. The NPV has been calculated as per order dated 28.03.2008, issued by the Hon’ble Supreme Court in the case of *T.N. Godavarman Thirumulpad V/s U.O.I & Ors. (W.P (C) 202/1995)*, where it comes to be 14,93,01,000/-. Apart from the NPV, an amount of Rs. 3.18 crores is also determined with regards to compensation for afforestation and an amount of Rs. 1.93 crores is fixed for compensation of trees/poles/saplings. Therefore the total amount is in excess of Rs. 20 crores which is already deposited by User Agency i.e. the Higher Education Department to the Forest

Department and therefore, the allegations leveled by the applicant herein are totally misconceived and baseless.

23. In the response filed to the application, by MoEF (respondent no.9), it has been submitted that the Environment (Protection) Act, 1986 authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industry facility on environmental grounds.

24. The answering respondent has issued EIA Notification, 2006 vide S.O No. 1533 (E) on 14.09.2006 with an objective to formulate a transparent, decentralized and efficient regulatory mechanism; to integrate environmental concerns into the developmental process for ensuring the goals of sustainable development in a time bound manner and to implement the provisions of the EIA Notification, 2006, the Ministry issued Notification/office memorandum as and when required.

25. The Environment Impact Assessment Notification, 2006 issued on 14.09.2006 with respect to the provisions relating to building and construction projects, was amended vide Notification No. S.O (E) 3252 dated 22.12.2014, in exercise of the powers conferred by Clause (v) of Sub Section (2) of Section 3 of the Environment (Protection) Act, 1986, by the answering respondent. Vide this amended Notification; certain projects were excluded/exempted from the ambit of

building and construction projects. The relevant part of the amended Notification is as under:

(1)	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area Development projects and Townships		
8(a)	Building and construction on projects	≥20000 sq. mtrs and <1,50,000 sq. mtrs of built-up area	<p>The term “built up area” for the purpose of this notification the buildup or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects.</p> <p>Note 1.- The projects or activities shall not include industrial shed, school, college hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.</p> <p>Note 2.- “General conditions” shall not apply.</p>	
8(b)	Townships and area Development projects	Covering an area ≥50 ha and or built up area ≥1,50,000 sq. mtrs	<p>A project or Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category B1 Project.</p> <p>Note.- “General Conditions” shall not apply.</p>	

26. The aforementioned entries 8(a) and 8(b) are qualified as category ‘B’ projects under the EIA Notification, 2006 and the said projects are appraised by the State Level Expert Appraisal Committees (SEACs) and approved by the State Environmental Impact Assessment Authorities (SEIAAs).

27. It is submitted by the respondent that vide Notification No. S.O (E) 3252 dated 22.12.2014, it has exempted the buildings for industrial shed, school, college, university and hostel of educational institutions from the requirement of prior environmental clearance subject to sustainable

environmental management. The provisions have further clarified the meaning of industrial shed and guidelines for sustainable environmental management therein. Sufficient environmental safeguards have been mandated to ensure sustainable environmental management for solid and liquid waste discharge, rain water harvesting and use of recycled materials in construction and others.

28. The Building of educational institutions including universities are exempted from the process of environmental clearance. However, the institute has to follow the guidelines for building projects i.e. educational institute has to ensure sustainable environmental management as per the O.M. dated 09.06.2015 issued by the respondent.

29. Jammu and Kashmir Forest (Conservation) Act, 1997 is applicable for the project in question, which deals with the demarcation, diversion of forest land or use of forest land for non-forest purpose. It is submitted by the respondent that whether land for the project in question is forest land or not, and has it been transferred to the university following due process of law, shall be responded by the State of Jammu Kashmir i.e. respondent no.1 in the present case, as per the provisions of the state of Jammu and Kashmir Forest (Conservation) Act, 1997.

30. The applicant in his rejoinder to the affidavit filed by respondent no. 1 to 7 has submitted that the available record shows that the proposal by the Principal Chief Conservator

Forests placed before the State Forest Advisory Committee was cleared in its meeting held on 30.11.2015. The minutes of the 91st FAC meeting reveal that it was a mere formality in which, as many as, 12 proposals were taken up. The proposal 91.09 pertaining to allow the use of 159 Ha of forest land for construction of IIT Jammu was cleared without any deliberation/consideration of provisions of J&K Forest (Conservation) Act meticulously, more particularly the mandate of Section 2 imposing restriction on de-notifying of use of forest land for non-forest purpose. The State Govt. had a responsibility and was required to exercise its own wisdom after receiving a valid advice of Advisory Committee. No such order independent of the advice has been shown or produced. The State Govt./administration failed in its statutory duty. The Act forbids to accord permission for any purpose other than rural roads etc., not exceeding 5 hectares. "Non-forest purpose" has also been explicitly explained. The sanction was invalid and illegal per se. The Coram of Advisory Committee required 2 eminent environmentalists. The private members incorporated are not environmentalists. A mere name does not suggest any contribution to environment. The powers under J&K Forest Conservation Act/State Forest Policy 2010 to protect forest land, in its public duty, have been abdicated by the State Govt./Administration.

31. Further, it is submitted that J&K State Forest Policy 2010 at Clause 4.4 (a) expressly lays down that diversion of forest land for non-forestry purposes will be considered only as a last resort after exploring all other alternatives and not in a routine manner “(c) In protected and ecologically sensitive areas, Environment Impact Assessment will be conducted in accordance with environmental policy and laws before allowing the use of forest land for non-forestry purpose”. No such effort to locate land has been indicated in the Govt. order.

32. It is also stated that there is no exemption under the J&K Forest Conservation Act./Rules/J&K State Forest Policy 2010 to get forest land. The admission in para 7 of the reply by the State Govt. that the site of forest land to be transferred falls within the eco-sensitive zone of the wild life sanctuary, a valid permission was required from National Board for Wild Life also under the Wild Life Protection Act. The Notification of MoEF regarding exemption from prior environmental clearance is not attracted in case of large chunk of forest land in J&K State in favour of the Higher Education Department.

33. The applicant further submitted that the transfer of forest land is illegal. The transfer of forest land for non-forestry purpose is impermissible under the provisions of J&K Forest Conservation Act 1997 and Rules, Jammu and Kashmir State Forest Policy 2010, J&K Wild Life Protection Act 1978

and Environment Protection Act 1986 and Rules. It is fraught with serious consequences to ecology and environment besides resulting in irreversible damage to the eco system, health of the local populace and flora and fauna. The decision taken by the Forest Advisory Committee in its 91st meeting agenda clause 9.09 on the proposal to allow use of 159 Ha. of forest land for construction of IIT Jammu without requisite Coram was incompetent, invalid, a fraud on the statute and not binding on the Govt. It is *non-est* and void *ab-initio*.

The Government order no. 41/FST-2016 dated 11.02.2016 under which sanction has been accorded to the use of 159 hectares of forest land for construction of IIT Jammu for Higher Education Department in Jammu Forest Division is liable to be quashed and set aside.

34. After considering the application as well as the material on record it is revealed that on having come across the news item of 17.02.2016 with regard to transfer of 149 hectares of forest land to the Higher Education Department in Nagrota area of Jammu district that the applicant has approached this Tribunal. The primary grievance and the relief sought by the applicant is against the resolution passed by the Forest Advisory Committee under the chairmanship of the Chief Secretary of the State of Jammu & Kashmir, on 30.11.2015 and the authorization, in consequence thereof, to the Special Secretary (Technical), Department of Forest,

Environment and Ecology, State of Jammu & Kashmir to issue order for transfer of the forest land for use of construction of IIT Jammu. Accordingly, respondent no.4 issued the order no. 41/FST-2016 on 11.02.2016 by which sanction was accorded to use the forest land for construction. Transfer of forest land for non-forestry purpose being impermissible under the provision of Jammu & Kashmir Forest (Conservation) Act, Rules, Forest Policy 2010 and therefore, the applicant has prayed to declare the said orders to be void.

35. The State Government undertook the procedure, as prescribed under law, to obtain requisite forest clearance. The ownership of land was under the Forest Department and therefore indent dated 28.07.2015 for forest clearances was placed under the user agency i.e. Higher Education Department, with the Principal Chief Conservator of Forest, Government of Jammu & Kashmir. The Forest Department had issued sanction to use the land vide order dated 11.02.2016 after duly complying with the procedure contemplated under Section 2 of the Jammu & Kashmir Forest (Conservation) Act, 1997.

36. The Ministry of Environment and Forest, respondent no.9, in its reply to the application has also submitted that it is the Jammu & Kashmir Forest (Conservation) Act, 1997 applicable for the project in question, which deals with demarcation, diversion of forest land or use of forest land for

non-forest purpose. Further, it is submitted by respondent that whether land for the project in question is a forest land or not, and it has been transferred to the University following due process of law, shall be responded by the State of Jammu & Kashmir in the present case, as per the provisions of the State of Jammu & Kashmir Forest (Conservation) Act, 1997.

Further, it is the Jammu & Kashmir Forest (Conservation) Act, 1997 which is relevant law on the basis of which the issue raised in the present case is to be adjudicated.

37. In the circumstances of the present case, the first and foremost question for our consideration is that while the matter relates to State of Jammu & Kashmir Forest (Conservation) Act, 1997, whether this Tribunal has the jurisdiction to adjudicate upon the present case.

38. A look to the relevant provisions of NGT Act, 2010 would show that this Tribunal has jurisdiction where any question arises as to implementation of the enactment which has been enumerated in Schedule I. Relevant provisions of the Act of 2010 is as under:

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

SCHEDULE I

[See Sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]

1. *The Water (Prevention and Control of Pollution) Act, 1974;*
2. *The Water (Prevention and Control of Pollution) Cess Act, 1977;*
3. *The Forest (Conservation) Act, 1980;*
4. *The Air (Prevention and Control of Pollution) Act, 1981;*
5. *The Environment (Protection) Act, 1986;*
6. *The Public Liability Insurance Act, 1991;*
7. *The Biological Diversity Act, 2002'.*

39. In other words, the Tribunal has jurisdiction over civil cases where a substantial question relating to environment is involved which arises out of enforcement of the aforesaid seven enactments as given in the Schedule. The Tribunal is to settle disputes, under Section 14 of the Act in all civil cases where substantial question relating to environment is involved. It is important to note that the conjuncture 'and' used in the later part of the provision has significance. The civil cases involving substantial question relating to environment must be the one which arises out of implementation of the enactments given in the Schedule namely; Water (Prevention and Control of Pollution) Act, 1974, Water (Prevention and Control of Pollution) Cess Act, 1977, Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991 and Biological Diversity Act, 2002.

This view finds support in the principle of law laid down by the Hon'ble Supreme Court in the case of Bhopal Gas

8 SCC 326 the Hon'ble Court held that:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short “the NGT Act”) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short “NGT”).”

40. In the case of **T.N Godavarman Thirumulpad vs. Union of India (1997) 2SCC 267** which is a case of great significance relating to the protection and conservation of the forest throughout the country, the Hon'ble Supreme Court of India heard the Central Government as well as the Governments of all the States and in so far as State of Jammu & Kashmir is concerned it had issued directions, in para 5 II as under:

“4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam.”

As has been laid down by the Hon'ble Supreme Court of India any felling of trees in forest area otherwise or any clearance of land for execution of projects, shall be in direct compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto.

41. Therefore, the controversy raised herein is in respect of the transfer of land for the project in question which is very

much part of the State of Jammu and Kashmir. On the count that the State of Jammu & Kashmir Forest Act 1990 not being one of the enactments mentioned in Schedule I of the Act of 2010, the Tribunal does not have jurisdiction to adjudicate the present controversy as it does not fall within the purview and scope of Section 14 of the NGT Act, 2010 so as to settle the dispute herein.

42. For the aforesaid reasons it is crystal clear that the controversy of transfer of forest land for non-forest purpose on the proposal of the Forest Advisory Committee, and the order dated 11.02.2016 passed by the State of Jammu & Kashmir whereby use of 159 hectares of land has been sanctioned for construction of the institution for Higher Education Department in Jammu Forest Division, cannot be adjudicated by this Tribunal on account of lack of statutory jurisdiction.

43. Consequently, this Original Application is dismissed, without any order as to cost.

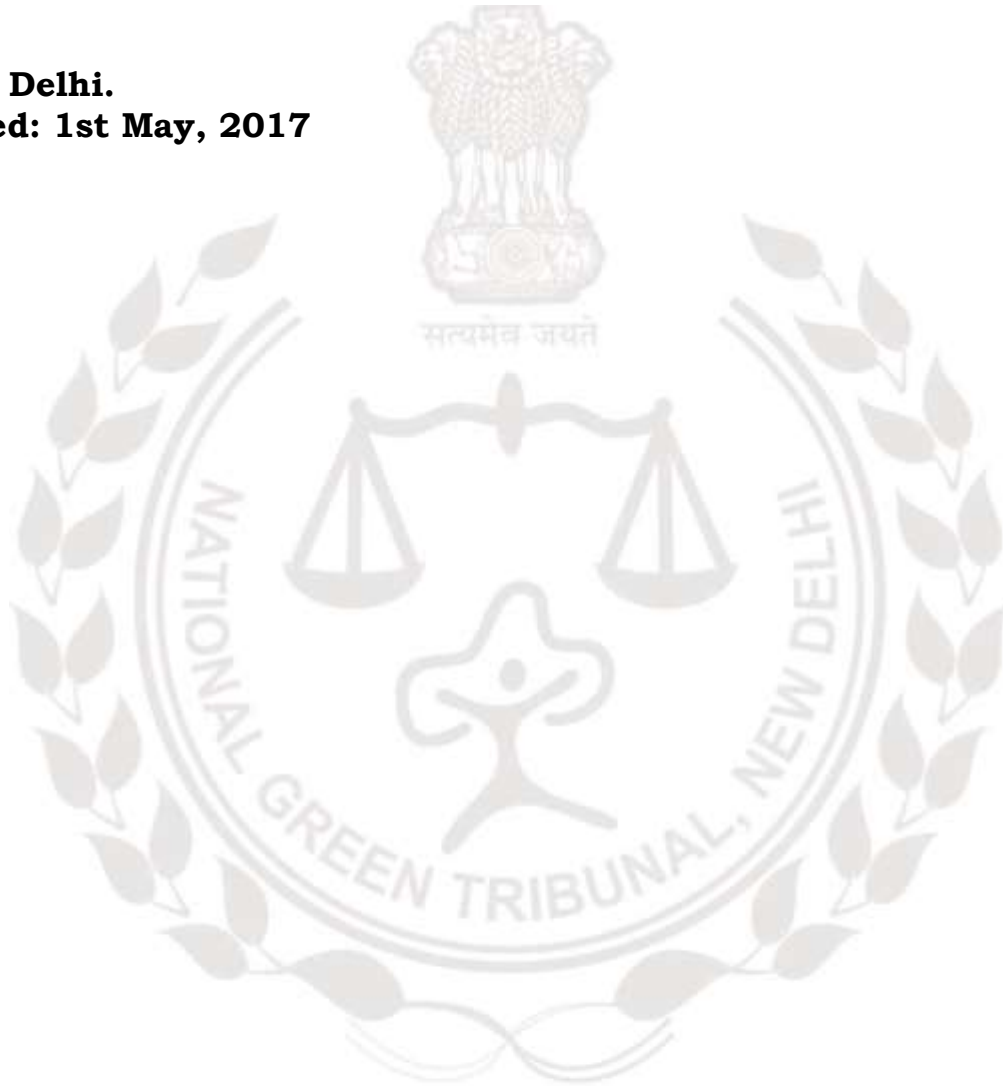
.....
Justice Swatanter Kumar
(Chairperson)

.....
Dr. Justice Jawad Rahim
(Judicial Member)

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Justice Raghuvendra S. Rathore
(Judicial Member)

.....
Dr. Ajay. A. Deshpande
(Expert Member)

New Delhi.
Dated: 1st May, 2017



NGT