

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

APPEAL NO. 83 OF 2014

IN THE MATTER OF:

1. SHRI HIRA SINGH MARKAM

S/o Shri. Devsay Markam
Aged 73 Years
R/o Gulab Nagar, Mopka,
Bilaspur-495006, Chhattisgarh.

2. PILLU PATAWI

S/o Shri. KejuramPotai
Aged 71 years
R/o 8, Senior H.I.G.
Sector 3, Shankar Nagar,
Raipur-492007, Chhattisgarh.

3. B.P.S. NETAM

S/o B.R.Netam
Aged 66 Years
R/o C/116, Achman
Behind Vijeta Complex,
Guru Ghasidas Colony,
New Rajendra Nagar,
Raipur-49001, Chhattisgarh

4. S.R.NETAM

S/o Shri. Mohan Singh Netam
Aged 64 Years
R/o O/18, Anupam Nagar, Shankar Nagar
Raipur-492007, Chhattisgarh

5. KALYAN SINGH PATEL

S/o Late Shri Dukhooram Patel
Aged 45 Years
R/o Shahid Nagar, Birgaon,
Raipur-403221.

...APPELLANTS

Versus

1.UNION OF INDIA

Through its Secretary
Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhawan, Jor Bagh Road
New Delhi-110 0030.

2.STATE OF CHATTISSGARH

Through its Principal Chief Conservator of Forests,
Aranya Bhawan, Medical College Road,
Raipur-492001, Chhattisgarh (India).

3.SOUTH EAST CENTRAL RAILWAY

Through its General Manager
Bilaspur-495 004.

4.STATE OF ORISSA

Through its Chief Secretary
Secretariat Building
Bhubaneswar-752 001.
Orissa.

....**Respondents**

CORUM:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Dr. Justice Jawad Rahim (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Counsel for Appellant(s):

Mr. Ritwick Dutta, Advocate and Mr. Rahul Choudhary, Advocate

Counsel for Respondent(s) :

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocate for Respondent No.1
Mr. Ravindra Shrivastav, Senior Advocate, Mr. C.D. Singh AAG, Mr.
Apporv Kurup, Mr. Sandeep Pathank Advocate for Respondent No.2.
Mr. Shipra Shukla, Advocate for Respondent No.3.
Mr. Kishnan Venugopal, Sr. Advocate, Ms Shreya Agrawal,
Mr. Sanjeev Kr., Mr. Yashraj Singh Deora, Mr. Shivendra Singh,
Advocate for Respondent No.4.

Reserved on : 29th February, 2016
Pronounced on: 23rd December, 2016

J U D G M E N T

1. This statutory Appeal has gained access to this Tribunal under the Provisions of Section 18 (1) read with Section 16(e) of National Green Tribunal Act, 2010.

2. The appellants in their joint action have brought in question the order passed by the State of Chhattisgarh dated 23rd May, 2014 granting Forest Clearance (FC) under Section 2 of the Forest (Conservation) Act, 1980 to divert 83.12 ha of land situate in East Bhanupratappur forest division for non-forest purpose i.e. for construction of phase-I of Dilirajhara-Rawghat Railway line. They also assail, in this Appeal, the first stage I forest clearance dated 16th April, 2010 and the second approval dated 12th May, 2014 by the Ministry of Environment, Forest and Climate Change (MoEF &CC).

3. The material propositions in support of relief so sought are:
(a) that the South East Central Railways who is arrayed as respondent no. 3 in the Appeal (herein referred to as project proponent) has planned laying of railway line to cover 235 km in Bastar District of Chhattisgarh. The project is planned in three phases. The first phase is to lay the broad gauge railway line from Dallerajhara to Rawghat up to Jagdalpur. The railway project envisages laying of railway line which will pass mainly through the area covering reserved forest on the hill slopes which lies between Dallerajhara to Rawghat. The proposed project would engulf 258.54 ha of forest land, 138.50 ha of

revenue land and 300.23 ha of private land. Out of 138.50 ha of revenue land the extent of 83.12 ha of land which is described as “Chote Bade Jhaar Ke Jungle” will be destroyed.

4. The respondent no.3-Project Proponent applied to State Government of Chhattisgarh for grant of Forest Clearance in respect of 83.12 ha of revenue land. The second and third phase is yet to be taken up. The application of respondent no.3 was incomplete and devoid of material information which is required to be furnished to State Government for seeking such forest clearance.

5. It is alleged, that Form IV submitted by respondent no.3-Project Proponent was not supported by the required documents. The certificate issued by the Chief Secretary of the State of Chhattisgarh dated 13th April, 2009 produced by respondent no.3 to obtain forest clearance itself bears testimony to the fact that the project will destroy forest. The Chief Secretary has categorically stated that there is no suitable non-forest Government land available for carrying out compensatory afforestation in lieu of 83.12 ha of forest to be diverted for setting up of broad gauge railway line in Bastar District of Chhattisgarh. Other annexures produced along with the application were contradictory as the plans and map of the area produced identify certain lands as being available for compensatory afforestation.

6. The appellants have produced copy of the certificate of Chief Secretary annexure A-2, the map of the area identified for compensatory afforestation as annexure A-3.

7. It is alleged, the report of Divisional Forest Officer that no Adivasi settlements are in existence in 10 Km area of the project was patently false and misleading statement as the entire area is inhabited by the Tribes i.e. gonds. The entire district of Bastar is declared in Schedule V. The certificate of Nodal Officer and Divisional Forest Officer annexed to the form declares that there is no historical place along the route of Dallirajahara-Rawghat railway line which is false. There are tribal temples, regular pooja are performed. Tribals have implicit faith in the Goddess and particularly the Tribal deity is regularly worshipped. The report of Nodal Officer is annexed as annexure A-4. It is urged that those documents were enough to decline the forest clearance but the Forest Advisory Committee to whom the application had come first for scrutiny and recommendations without applying its mind merely recommended the case to the MoEF. The MoEF, without applying its mind and without ensuring verification to satisfy the authenticity of material information and relevant issues, mechanically issued the order dated 16th April, 2010 granting first stage forest clearance. Referring to EIA report dealing with bio-diversity of the area it is contended that it clearly spelt out about the flora and fauna in the area. The EIA report produced gives information of rare and endangered species of wildlife in the area in question. The report also deals with likely adverse impact on the environment if such area is used for non-forestry purposes. The EIA report is at annexure A-6. They rely on these documents.

8. In response to the Notice issued in this Appeal, respondents have entered contest and have filed their detailed counters.

9. Amongst the respondents, 3rd respondent-Project Proponent is the main contester in this Appeal. It has filed affidavit of Mr. Sanjay Kumar Singh, the Chief Engineer, Raipur, as counter to the Appeal. While traversing factual aspects pleaded in the Appeal they have raised preliminary objections about maintainability of the Appeal.

10. Though respondent Nos. 1, 2 and 4 have also filed their counters independently, but, on perusal we find they have adopted defence urged by 3rd respondent-Project Proponent on all squares. Since the respondents have raised preliminary objections about maintainability of the Appeal, we are restraining ourselves from referring to or taking into account, the averments touching the merit of the appeal or merit of the grounds urged in the Appeal to assail the impugned orders and we are confining our consideration to the preliminary objections raised.

11. As stated in the above para, since the grounds urged by the respondent Nos. 1 to 3, to negate Appeal action are also the same, we would prefer to refer to the grounds of 3rd respondent, which may be sufficient to decide the grounds urged by the other respondents as well. To seek dismissal of the Appeal as not maintainable, respondent no. 3 has urged as follows:

1. That the Appeal is not maintainable before this Tribunal, as territorial jurisdiction comes within the Central Zone Bench of National Green Tribunal at Bhopal. In this behalf, it is averred based on the Appeal Memorandum that cause of action arose within territorial jurisdiction of State of Chhattisgarh and, therefore, in terms of Gazette Notification No.SO.1908 (e) dated 17.8.2011 jurisdiction lies in Central Zone Bench of National Green Tribunal at Bhopal. Copy of Notification is at annexure R/1.
2. That the Appeal challenges stage-I, and II FCs dated 16.4.2010 and along with FC dated 12.5.2014 granted by MoEF and FC granted by State of Chhattisgarh dated 23.5.2014. Hence appeal is not maintainable.
3. That Section 14(3) of the National Green Tribunal Act, 2010 postulates “no Application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is filed within period of six months from the date on which cause of action for dispute arose. Provided that the Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filing the Application within said period, allow it to be filed within further period not exceeding sixty days.”
4. As the appellants are questioning stage-I FC by MOEF dated 16.4.2010, the Appeal is beyond the period of limitation prescribed.

12. Falling in line with defence of the respondent no. 3-Project Proponent, the respondent no.2 has also contended that the provision of Section 16(e) of the National Green Tribunal Act, 2010 non-suits to the Appeal under Section 18 (1) read with Section 16 (e) of the National Green Tribunal Act, 2010. In this regard it is urged that the appeal assails the first stage of forest clearance granted by the respondent no.1- MoEF on 16th April, 2010 and also the second stage of forest clearance granted on 12th May, 2014.

13. Referring to the provisions of 16 (a) of the National Green Tribunal Act, 2010 it is contended that forest clearance granted by the MoEF is for phase I dated 16th April, 2010 which is much prior to coming into force of National Green Tribunal Act, 2010 on 18th October, 2010. Therefore, the Appeal is barred under the provisions of Section 16 (a) read with Section 16 (e) of the NGT Act, 2010.

14. As regards the order dated 23rd May, 2014 passed by respondent no. 2- State of Chhattisgarh to divert 83.12 ha of forest land for non-forest purpose and the forest clearance dated 12th May, 2014 granted by MoEF for phase II it is contended that the appeal having being preferred beyond 30 days from the date of passing of those orders it is barred by time. This ground is similar to the ground urged by the respondent no.3 which we have referred to at para 13 (Supra).

15. We have heard the learned Counsel appearing for the appellants and the respondents at length and all the contentions have received our serious consideration.

16. As the respondent nos. 1, 2 and 3 assertively urged to consider maintainability of the appeal at the first instance and then pass order for final hearing, if the appeal is maintainable, we would deal with maintainability of the appeal for consideration. Following points are framed:

1. Whether the appeal under Section 16(e) read with 18 (1) of NGT Act, 2010 is not maintainable on the ground that the stage I forest clearance granted by MoEF dated 16th April, 2010 is before coming into force of NGT. If not, whether the appellant could still maintain appeal to question the legality of forest clearance dated 23rd May, 2014 granted by the State Government of Chhattisgarh under Section 2 of Forest (Conservation) Act, 1980.

2. Whether appeal is barred by period of limitation.

3. If the appeal is maintainable whether the Principal Bench at New Delhi has territorial jurisdiction or the territorial jurisdiction vests in Central Zone Bench at Bhopal.

Point No. 1

17. The factual matrix manifesting from the pleadings of the parties leaves no doubt that the appellants are assailing through this appeal primarily the forest clearance granted by State of Chhattisgarh dated 23rd May, 2014 to South East Central Railways which is the project proponent for construction of phase I Dilirajhara-Rawghat Railway line under Section 2 of the Forest (Conservation) Act, 1980. While doing so they have also impugned in this appeal, the first stage forest clearance dated 16th April, 2010 and stage II forest clearance dated 12th May,

2014 granted by MoEF & CC. It is not clear from the memorandum of appeal as to whether State of Chhattisgarh has granted similar forest clearance for phase II of the project to the respondent no.3. Thus, we shall confine to consider maintainability of appeal so far as it relates to the forest clearance granted by State of Chhattisgarh dated 23rd May, 2014 and the phase I forest clearance dated 16th April, 2010 granted by MoEF, for the reasons the forest clearance granted by State of Chhattisgarh and first stage forest clearance granted by MoEF relate to the same project.

18. It is not disputed, that phase I of the project envisaged by South East Central Railways is to lay the broad gauge railway line in the entire length of 235 Km within Bastar District of Chhattisgarh. The respondent no.3-Project Proponent has planned the project in three stages, the first stage will cover Dilirajhara to Rawghat a distance of 95 km. It will connect Rawghat up to Jagdalpur. The railway line to pass through the area covering reserved forest on hill slopes which lies in Dallirajhara to Rawghat.

19. The appellants would contend that particular area is Adivasi and tribal area. There is a thick inhabitation of these tribes, who have their temple places of worship. If the area is eco-sensitive zone which is also inhabited by rare and endangered species of wildlife. They have seriously questioned the correctness of the statement made by Nodal officer contrary to the fact and circumstances. Incidental reference is made to the certificate issued by Chief Secretary which bears testimony

to the fact that State of Chhattisgarh was conscious of the fact that there is no alternative land available for afforestation if 83.12 ha is diverted for non-forest purpose i.e. for the project of respondent no.3. The appellants have placed on record other sufficient material in the form of substantial reports, survey reports, maps and the findings recorded by several authorities to support their contentions that the area is eco-sensitive zone and grant of forest clearance for conversion of forest land for non-forest purposes would cause divesting effect on ecology and endangered species causing irreparable damage to environment and ecology. However, at this stage we refrain ourselves from referring to details of such material for the reasons we are confining this order to consider maintainability of the appeal which is questioned by the respondent nos. 1, 2 and 3.

20. It is not in dispute, that the State Government is conferred with jurisdiction and powers to grant forest clearance for diversion of forest land for non-forest purpose as envisaged under Section 2 of the Forest (Conservation) Act, 1980. The question is whether the appeal against grant of forest clearance is maintainable before this Tribunal. We necessarily need to refer to section 16 of the National Green Tribunal Act, 2010 for clarity and to avoid repetition. We prefer to extract the provisions of Section 16 of NGT Act which is quoted hereunder:

16. Tribunal to have appellate jurisdiction. - Any person aggrieved by,-

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),
- may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

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

21. Section 16 creates right of appeal to any person aggrieved by the order or decision referred to in clause (a) to (j) above.

22. For our purpose Section 16 (e) is relevant which reads as under:

16(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

23. The impugned order is a decision made on or after commencement of National Green Tribunal Act, 2010 by the State Government under Section 2 of Forest (Conservation) Act, 1980. The provisions referred to above explicitly spells out the right of the aggrieved person and the conditions that are to be fulfilled to entertain and adjudicate the appeal. The first condition stipulated is that right to appeal to question an order or decision must be in respect of order or decision made after commencement of the National Green Tribunal Act, 2010 by 'State Government' or 'other authority' named under Section 2 of Forest (Conservation) Act, 1980. Thus, an aggrieved person may question the order under Section 2 of the Forest (Conservation) Act, 1980, if the order is passed by State Government or other authority which excludes Central Government i.e. an order passed by MoEF. The provisions also exclude order/decision made by State Government or any other

authority if such order or decision is made prior to coming into force of the National Green Tribunal Act, 2010

24. In the instant case, the appellants have brought in question the order dated 23rd May, 2014 granting forest clearance in respect of 83.12 ha of forest land for non-forest purpose, exercising power under Section 2 of Forest (Conservation) Act, 2010. Thus the appeal filed by the appellant would come within the ambit of Section 16 (e) of the National Green Tribunal Act, 2010. As regards date of passing of order is concerned, it is not in dispute that impugned order is dated 23rd May, 2014 which is after coming into force of the National Green Tribunal Act, 2010 on 18th October, 2010. Therefore, un-hesitantly we conclude that the appeal preferred by the appellants invoking Section 16 (e) read with 18 (1) of the National Green Tribunal Act, 2010 to question the order dated 23rd May, 2014 granting forest clearance to respondent no.3 under Section 2 of Forest (Conservation) Act, 1980 is maintainable.

25. Admittedly, the first stage of forest clearance granted by MoEF is on 16th April, 2010 based on which the State Government of Chhattisgarh has granted forest clearance for conversion of 83.12 ha of land for non-forest purpose for the project of respondent no. 3. The appeal would lie only under Section 16 (e) as extracted above which spells out that orders passed under Section 2 of Forest Clearance by the State Government or any other authority is amiable to appeal before this Tribunal. There is no reference to Central Government or any other authority, therefore, in clear terms and the language of

Section 16(e) render orders passed by the respondent No.1 beyond the challenge in appeal under Section 16 (e) of the NGT Act. We are, therefore, satisfied that the appeal in the present form would be maintainable only against the order passed by respondent no. 2- State Government of Chhattisgarh dated 23rd May, 2014 and not independently to question the order of the Central Government dated 16th April, 2010 granting first stage forest clearance for the project but we need to answer as to whether, while questioning order passed by State Government granting forest clearance, could this Tribunal examine the legality, justification or propriety of the order passed by the Central Government as the impugned order relate to the same project. This issue had come up for consideration before this Tribunal in **Appeal No. 7 of 2012** in the case of **Vimal Bhai & Ors. Vs. Union of India and Ors.** On serious context on this issue this Tribunal has recorded a firm and clear finding. To avoid further conflict on this issue, we would refer to the said finding which is quoted herein:

[Extracted from paragraph Nos.9, 29 and 30]

9. The parameteria provision to Section 2 (A) of FC Act is Section 16 (e) of the NGT Act. The said section stipulates that any person aggrieved by an order or decision, made, on or after the commencement of NGT Act, 2010 by the State Government or other authorities under Section 2 of the FC Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him prefer an appeal to the Tribunal.....

29. Cumulative reading of Section 2 (A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the State Government or other authorities. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

30. However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be ab initio void. An Appeal can be filed against the said order of the State Government under Section 2 (A) of FC Act and/or under Section 16 (e) of the NGT Act. **In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.** [emphasis supplied by us]

26. For the reasons discussed above, we are of the considered opinion that the appeal is maintainable against the order dated 23rd May, 2014 passed by the respondent no. 2- State of Chhattisgarh and incidentally stage I approval granted by respondent no.1- MoEF could also be tested. We, therefore, discount all the contentions urged to the contrary by and on behalf of respondent nos. 1, 2 and 3 to this regard.

Point no. 2

27. The second challenge posed by the respondents to this Appeal is that it is barred by time. The impugned order is dated 23rd May, 2014. The appeal has been preferred before this Tribunal on 10th November, 2014. It is contended by the appellant that they did not have information or the knowledge of the impugned order nor they were aware of the forest clearance granted by the respondent no.1 dated 16th April, 2010. According to them, having learnt of the project activity of the respondent no.3 they approached the authority which was of no

avail. They thus, applied on 11th October, 2014 to the authorities under the provisions of Right to Information, Act, 2005 to furnish details and documents, if any, of the project. They did not receive full and complete information but received incomplete information about application filed by the respondent no. 3 and the date of grant of forest clearance dated 23rd May, 2014 only on 11th October, 2014. Soon thereafter they have preferred this appeal before the Tribunal on 10th November, 2014 within the period of 30 days.

28. This is disputed by the respondents, who contend that the date of knowledge to the appellants of the impugned forest clearance cannot be reckoned from the 11th October, 2014. It should be reckoned from the month of May, 2014 when the order was uploaded on the website. Such ground is opposed by the appellants who allege that the Project Proponent had not uploaded the first stage forest clearance granted by MoEF and also the forest clearance granted by the State Government of Chhattisgarh dated 23rd May, 2014 on the website. It had also failed to publish these orders and the details of the project in the daily newspaper and notice board of local bodies as it is mandate by Section 10 of Forest (Conservation) Act, 1980.

29. The respondent nos. 2 and 3 have not countered specifically or produced documents supporting the plea that the order dated 23rd May, 2014 was uploaded in the month of May, 2014 itself on the website. Admittedly, stage I clearance granted by MoEF has not been uploaded. The Project Proponent has also failed to upload these clearances and orders obtained by it for

the project on its website. He has also failed to publish it on the notice board of local bodies. There is no compliance of Section 10 of Forest (Conservation) Act, 1980 by the Project Proponent or other respondents.

30. Similar issue had come up for consideration on more than one occasion and the Tribunal has clearly ruled that there must be communication in reality of the order impugned for determining the date from which limitation could be reckoned. In the instant case for want of material it is difficult to accept that the order in question was published on the website of MoEF or State of Chhattisgarh in the month of May, 2014. On the contrary the appellants have pointed out to the date of their application under the Right to Information Act, 2005 submitted to the Authorities in response, to which they received information on 11th October, 2014. Hence the period of limitation has been reckoned from 11th October, 2014 for determining the period of limitation. We are satisfied that the appeal is in time.

Point no. 3

31. This point deals with the territorial jurisdiction of the Tribunal. The National Green Tribunal is established under Section 3 of the National Green Tribunal Act, 2010 and its jurisdiction and powers are defined by Chapter III of the Act. In exercise of the powers conferred on it, the Central Government having established National Green Tribunal and zonal Benches has issued Gazette Notification No. SO.1908 (e)/817/2011. The notification reads as under:

Ministry of Environment and Forests
Notification
New Delhi, the 17th August, 2011

S.O. 1908(E).- In exercise of powers conferred by the sub-section (3) Of Section 4 of the National Green Tribunal Act, 2010(19th of 2010), the Central Government hereby specifies the following ordinary places of sitting of the National Green Tribunal which shall exercise jurisdiction on the area indicated against each.-

Serial Number	Zone	Place of Sitting	Territorial jurisdiction
1.	Northern	Delhi(Principal Place)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh
2.	Western	Pune	Maharashtra, Gujarat, Goa with Union Territories of Daman and Diu and Dadra and Nagar Haveli.
3.	Central	Bhopal	Madhya Pradesh, Rajasthan and Chhattisgarh
4.	Southern	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep.
5.	Eastern	Kolkata	West Bengal, Orissa, Bihar, Jharakhand, seven sister States of North-Eastern region, Sikkim, Andaman and Nicobar Islands:

Provided that till the Benches of the National Green Tribunal become functional at Bhopal, Pune, Kolkata and Chennai, the aggrieved persons may file petitions before the National Green Tribunal at Delhi and till such time the notification No. S.O. 1003 (E), dated the 5th May, 2011 in the Ministry of Environment and Forests, shall continue to be operative.

[F.No. 17(4)/2010-PL]
Rajneesh Dube, Jt. Secy.

32. It could thus be seen that notifications spells out territorial jurisdiction of the Principal Bench at New Delhi and zonal Benches. The jurisdiction of the Central Zone Bench at Bhopal is declared as follows:

Serial Number	Zone	Place of Sitting	Territorial jurisdiction
3.	Central	Bhopal	Madhya Pradesh, Rajasthan and Chhattisgarh

33. The Territorial jurisdiction of Principal Bench at New Delhi is spelt out as under:

Serial Number	Zone	Place of Sitting	Territorial jurisdiction
1.	Northern	Delhi(Principal Place)	Uttar Pradesh, Uttarakhand, Punjab, Haryana, Himachal Pradesh, Jammu and Kashmir, National Capital Territory of Delhi and Union Territory of Chandigarh

34. Based on the above Notification, the Project Proponent and the State of Chhattisgarh has raised the plea that the jurisdiction of the Principal Bench of National Green Tribunal at New Delhi is excluded. They rely on the Notification to contend that the State of Madhya Pradesh, Rajasthan and Chhattisgarh come within the jurisdiction of Central Zonal Bench of National Green Tribunal at Bhopal, which is opposed by the Appellants referring to the project of Project Proponent which covers laying of railway line for a length of more than 285 kms. They assert before us that the jurisdiction of the Tribunal must be examined with reference to occurrence of cause of action and we are also convinced, to decide the jurisdiction of the Bench of the

Tribunal, the accrual of cause of action will be material consideration.

35. In this Appeal the appellants have brought in question the proposed project of South East Central Railways arrayed as respondent No.3 which is planned for laying of railway line to cover 235 kms in Bastar District of Chhattisgarh. The project is planned in three phases. The first phase is to lay the broad gauge railway line from Dallirajhara to Rawghat upto Jagdalpur. However, in this present Appeal, the Order passed by State of Chhattisgarh granting forest clearance for conversion of 83.12ha of the forest land. There is no dispute that second phase and third phase of the project will cover the entire length of 235 kms. Besides, the appellants have assailed the first stage and second stage clearance granted by MoEF on 12th May, 2014.

36. Under the provisions of the Forest (Conservation) Act, 1980, the powers conferred on the Central Government and State Government are defined. Whenever there is a request for grant of permission to divert the forest land for any project, the Project Proponent would approach the State Government who exercises power under Section 2 of the Forest (Conservation) Act, 1980 to grant clearance but the grant of such permission is dependent upon stage-I clearance that would be granted by MoEF permitting diversion of forest land by the State Government.

37. The appellants have challenged the forest clearance granted by State of Chhattisgarh dated 23rd May, 2014 to the Project Proponent for construction of first phase of Dilirajhara-Rawghat Railway line under Section 2 of the Forest (Conservation) Act,

1980. While doing so they have assailed the Ist stage forest clearance and stage II forest clearance dated 12th May, 2014 granted by MoEF&CC. Similar issue was considered in the case of **Vimal Bhai & Ors. Vs. Union of India and Ors.** by the Principal Bench of NGT in **Appeal No.7 of 2012** wherein the appellants had assailed the order of MoEF granting first stage clearance.

38. Considering the scope of Appeal under Section 16(e) of the National Green Tribunal Act, 2010 it was held [in the case of Vimal Bhai] that though in the Appeal under Section 16(e), only the Order passed by the State Government under Section 2(a) of the Forest (Conservation) Act, 1980 would be assailable and not the Order of Central Government but it was observed **“In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government”**(emphasis supplied). The relevant observation in the Judgment in **Vimal Bhai’s case** is quoted below:

9. The parameteria provision to Section 2 (A) of FC Act is Section 16 (e) of the NGT Act. The said section stipulates that any person aggrieved by an order or decision, made, on or after the commencement of NGT Act, 2010 by the State Government or other authorities under Section 2 of the FC Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him prefer an appeal to the Tribunal.

29. Cumulative reading of Section 2 (A) of the FC Act and 16(e) of the NGT Act, leads to an irresistible conclusion that under the said Sections an Appeal is provided for only against an order passed by the State Government or other authorities. In other words, the Legislature in its wisdom has kept the order of approval/clearance passed by the Central Government under FC Act beyond the scope of Appeal.

30. However, a party cannot be remediless, a person who is aggrieved by the Approval/Clearance granted by the Central Government has to

avail an opportunity to assail the same. In the aforesaid scenario it can safely be concluded that after receiving a Stage - I and/or Stage - II Clearance, thereby granting a consent to permit use of forest land for non-forest purposes, from the Central Government, it is incumbent upon the State Government to pass a reasoned order transferring and/or allowing the land in question for being used for non forest purpose. It is needless to be said that bereft or such order no forest lands can be put to use for non-forest purpose. Further, all activities done without such orders would be ab initio void. An Appeal can be filed against the said order of the State Government under Section 2 (A) of FC Act and/or under Section 16 (e) of the NGT Act. In the event such an Appeal is filed it would be open for the person aggrieved, to assail the order/Clearances granted by the Central Government under Section 2 of the Act which forms an integral part and sole basis of the order passed by the State Government.

39. As the appellants have assailed the order of State of Chhattisgarh passed under Section 2 of the Forest (Conservation) Act, 1980 and stage I clearance by MoEF, the question is will the jurisdiction be confined to Central Zone Bench at Bhopal or will the jurisdiction also lie with the Principal Bench. The answer is obvious.

40. In view of clear observation in **Vimal Bhai case (supra)** that while questioning the order passed by the State Government under Section 16(e) of the National Green Tribunal Act, 2010, the person aggrieved can also assail the order of Central Government under Section 2 of the Forest (Conservation) Act, 1980 granting first stage clearance because both form integral part, the jurisdiction of the Principal Bench will also be saved as the order of Central Government will have effect throughout the territory of India.

41. This view finds support from the decision of the Principal Bench of National Green Tribunal at New Delhi in the case of **Wilfred J. and Anr. Vs. Ministry of Environment and Forests and Ors. [Original Application No.74 of 2014 decided on 17th July, 2014]** wherein the Principal Bench has elaborately dealt

with the jurisdiction of various Benches of the National Green Tribunal and opined that when part of the cause of action has arisen in the jurisdiction at particular Bench and if the order in question assailed is of the Central Government then the Principal Bench would have the jurisdiction.

42. In that case also the cause of action had arisen in the State of Kerala which comes within the territorial jurisdiction of Southern Bench at Chennai. However, the Principal Bench took a view that the order impugned was passed by MoEF and therefore, the Principal Bench would also have jurisdiction. For clarity, the relevant observations are extracted below:

“115. In the case in hand, the Notification of 2011 was issued by MoEF (6th January, 2011), who are respondents in these petitions and against whom the relief has been claimed at New Delhi. The moment the CRZ Notification is issued, its impact and consequences follow in the entire country, particularly the entire coastal zone area. The CRZ Notification is a Notification in general and is in rem. It binds all, including the States, the Central Government, all persons and legal entities, etc. Upon issuance of such Notification, the restriction as contemplated in law, to the area covered under the Notification, operates without any further action from any quarter. Thus, the impact of the Notification follows instantaneously with its issuance, without any further requirement. Thus, in our considered view it fully satisfies the principles laid down in the aforesaid judgments and even in the case of Kusum Ingots and Alloys Ltd. v. Union of India and Anr. (supra), in so far as the issuance of the Notification by MoEF at New Delhi has itself triggered the consequences thereof. Hence, not only but specifically cause of action has also arisen at Delhi in as much as the consequences of the Notification published at New Delhi have come into play instantaneously.

116. In the facts and circumstances of the case, it has to be held that a part of cause of action has arisen within the area under jurisdiction of the Principal Bench. Of course, it has also arisen at Kerala and the areas squarely falling in other coastal states within the territorial jurisdiction of the Southern Bench of the National Green Tribunal. The Courts and Tribunals have often invoked the doctrine of forum conveniens. The Authority which issued the Notification of 2011 and which is expected to deal with the consequences thereof is situated at New Delhi. The Notification was itself issued at New Delhi. The applicants have approached both the Southern Bench and the Principal Bench by filing distinct applications, claiming for different reliefs in terms of Rule 14 of the Rules of 2011, where the application or appeal is to be filed upon a single cause of action, claiming one or more relief provided that they are consequential to one another. The Notification, its correctness, legality or otherwise and a prayer for maintaining 'areas of outstanding natural beauty' and 'areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time', not covered under the Notification, are the prayers which will have serious ramification for the larger parts of the country and falling under the jurisdiction of different benches.

117. Thus, even applying the doctrine of forum conveniens, it would be appropriate for the Principal Bench to hear these matters. In support of what we have concluded, we may refer to Para 30 of *Kusum Ingots and Alloys Ltd. v. Union of India and Anr.* (supra) that reads as under:

"We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary

*jurisdiction by invoking the doctrine of forum
conveniens”.*

118. The applicability of doctrine of forum conveniens is more aptly applicable to the provisions of the Act in relation to the field of territorial jurisdiction of the Tribunal. The use of word ‘ordinarily’ in Rule 11 is indicative of the legislative intent to provide for ‘otherwise’. This appears to be the purpose of law, the Tribunal could refer to the intent of the legislature. This is not a new theory. It was pithily put by Learned Judge L. Hand who observed that the statutes “should be construed not as theorems of Euclid but with imagination of purpose behind them”. One can call it the “liberal” approach.”

43. In this view, it is held that Principal Bench also has jurisdiction to entertain and consider this Appeal on merit.

44. For the aforesaid reasons the preliminary issues raised by respondents opposing maintainability of this Appeal are hereby answered in the negative and in favour of the appellants. We shall now hear the Appeal on merit.

Post this Appeal for final hearing on **2nd February, 2017.**

However, we make no order as to costs.

.....
Justice Swatanter Kumar
Chairperson

.....
Justice Dr.Jawad Rahim
Judicial Member

.....
Mr. Bikram Singh Sajwan
Expert Member

New Delhi.

DATE: 23rd December, 2016.