

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**Original Application No. 182/2013**

**IN THE MATTER OF :**

1. Randhir Singh (Sarpanch), s/o Sundra Ram-Hathlana, District-Karnal
2. Sahib Singh, s/o Darshan Singh, Village-Jundla District-Karnal
3. Shabeg Singh, s/o Asa Singh, Village-Jundla District-Karnal
4. Sahib Singh, s/o Balkar Singh, Village-Jundla District-Karnal
5. Nishan Singh, s/o Sukha Singh, Village-Jundla District-Karnal
6. Bula Singh s/o Nishan Singh, Village-Jundla District-Karnal
7. Balbir Singh s/o Shri Ram, Village-Jundla District-Karnal
8. Ranbir Singh s/o Krishan Lal, Hathlana District-Karnal
9. Govind Singh, s/o Ishwar Singh, Manjura District-Karnal
10. Manoj Kumar, s/o Neki Ram, Hathlana District-Karnal
11. Sukhdev Singh, s/o Dalip Singh, Village-Jundla District Karnal
12. Naresh Kumar, s/o Ranpat, Hathlana District Karnal
13. Meher Singh, s/o Mahender- Hathlana District Karnal
14. Santosh Sharma, s/o Ved Prakash-Anugad District Karnal

15. Rakesh Kumar, s/o Kaladhari, Katlaheri District  
Karnal

.....Applicants

Versus

1. State of Haryana through Chief Secretary, Haryana Civil Secretariat, Chandigarh Pin-160017.
2. Financial Commissioner and Principal Secretary to the Govt. of Haryana, Department of Home and Justice, Haryana Civil Secretariat, Chandigarh Pin-160017
3. Pollution Control Board, Haryana at panchkula through its Chairman. Pin-134102.
4. Deputy Commissioner, Karnal, Haryana. Pin-122104
5. M/s Haryana Liquors Pvt. Ltd., House No. 1741, Sector-4, Panchkula, (Haryana), Pin-134102.
6. Central Govt. Authority
7. Ministry of Environment & Forest

.....Respondents

**COUNSEL FOR APPELLANT:**

Mr. Akhil Sibal, Mr. Aditya Garg, Mr. Amer Mustaq, Advs.

**COUNSEL FOR RESPONDENT:**

Mr. Anil Grover, AAG, Mr. Rahul Khurana, Adv. for respondent no. 1 to 4.

Mr. Yashraj Singh Deora and Shreya Agrawal, Advs. for respondent no. 5

Mr. B. V. Niren CGSC for respondent no. 6

Ms. Panchajanya Batra Singh, Mr. Pankaj Agarwal, Advs. for MoEF.

## JUDGEMENT

**PRESENT:**

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

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

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**Pronounced on: 29<sup>th</sup> January 2016**

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

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

1. The present application purportedly under Section 14, 15 (b), (c) and 16 (h) read with Section 18 of the National Green Tribunal Act, 2010, which is herein referred to as The NGT Act, has been instituted against the Respondents State of Haryana and its official Pollution Control Board and M/s Haryana Liquors Pvt. Ltd. on 19<sup>th</sup> August, 2013 for the following reliefs/injunctions:

- Restrain the respondents from carrying on construction activity for the proposed Grain/Molasses Distillery Unit in its current location in the village Jundla, District Karnal
- Direct respondent no. 1 to relocate the proposed Grain/Molasses Distillery Unit to an alternative location.

2. M.A. No. 880/2013 was moved by the applicants therein for impleadment of Central Ground Water Authority and Ministry of Environment and Forest and for amendment to the

pleadings including the prayer clause. On 29<sup>th</sup> October, 2013 the impleadment of CGWA and MoEF was allowed and accordingly the Authority and Ministry were arrayed as respondent nos. 6 and 7 in the present application. Amendment to the pleadings and the prayer clause was resisted by the respondents particularly the project proponent on the ground that by virtue of such amendment the applicant sought to make a claim to hopelessly time barred reliefs. On 4<sup>th</sup> April, 2014 the parties were heard on the issue of the amendment to the present O.A as solicited by the applicants. The applicants proposed to challenge the EC as well as the NOC issued by the CGWA and wanted the present application to be treated as an Appeal under Section 16 of the NGT Act. Parties were heard. The Learned Counsel appearing for the applicant thereupon made a choice not to press the application for amendment and accordingly made an endorsement to that effect below the M.A. No. 880/2013. Consequently, the application was dismissed as not pressed on 4<sup>th</sup> April, 2014.

- 3.** A plain reading of the application as it stood after this futile exercise of carrying out amendment reveals that the applicants claiming to be the residents of village Hathlana, Jundla and Aungad, District Karnal, Haryana are virtually seeking relocation of the Grain/Molasses Distillery Unit run by respondent no. 5 M/s Haryana Liquors Pvt. Ltd. from its

present location at village Jundla, District Karnal Haryana to an alternative location mainly on the following grounds:

- Depletion of already exhausted ground water resources due to heavy extraction of ground water throughout the year and its wide spread wastage, thereby adversely affecting the environment and agriculture and the primary source of income to the locals.
- Burning of massive quantity of rice husk for the purpose of production, leading to Air Pollution.
- Fermenting of Grain/Molasses will give rise to pungent odour.
- Proximity to 'Khai' Canal which has religious as well as historical significance to the villagers.

**4.** Substantially, the applicants tend to question the grant of EC issued to the project by the Ministry of Environment and Forest vide letter No. J-11011/130/2011-1A11(i) dated 17<sup>th</sup> October, 2012 for the grounds stated herein above. Having given up the challenge to the EC dated 17<sup>th</sup> October, 2012 as envisaged under Section 16(h) of the NGT Act little would survive for our consideration in the application purporting to raise questions relating to environment including enforcement of any legal right relating to environment and purporting to seek relief for relocating the project at an alternative location.

**5.** The respondents particularly the respondent no. 5 the project proponent has raised preliminary objections to the

maintainability of the present application on the following grounds.

- The application for the relief sought is misconceived and not maintainable under Section 14 and/or 15 of the NGT Act.
- The application is grossly time barred.

**6.** Learned Counsel appearing for the respondent no. 5 submitted that the NGT confers two separate and distinct jurisdictions on the Tribunal, namely Original and Appellate: the Original jurisdiction to decide the dispute arising from questions relating to environment (including enforcement of any legal right relating to environment) arising out of the implementation of enactments specified in Schedule 1 is conferred under Section 14 of the NGT Act and Section 15 thereof confers jurisdiction to provide relief, compensation and restoration to the victims of pollution and other environmental damage, and whereas the appellate jurisdiction is conferred under Section 16 of the said Act - which allows any person aggrieved by the directions issued or orders passed or decision made by certain statutory authority to challenge the same before the Tribunal. Thus, Learned Counsel appearing for the respondent no. 5 submitted that these three sections operate in separate and distinct fields. Adverting to Section 3(ii), (v) of the Environment (Protection) Act, Environment Clearance Regulations, 2006 and Section 16(h) of the NGT Act, he submitted that the Environment Clearance granted is site

specific and as such the application for relocation of an industry to which EC has been duly granted without any challenge to the EC granted as provided in law is liable to be dismissed being misconceived and not maintainable under Section 14 and 15 of the NGT Act. In this context he submitted that it is a settled law that **where law requires thing to be done in a particular manner it shall be done in that manner alone and in no other manner**. In support of his submission he placed reliance on *Dhananjay Reddy Vs. State of Karnataka*; 2001(4) SCC 9 and *Chandra Kishore Jha Vs. Mahavir Prasad & Anr*; 1999 (8) SCC 226.

7. Section 3(ii) (v) of the Environment (Protection) Act, 1986 reads as under:

*“restrictions of area 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”*

Environment Clearance Regulations, 2006 regulating the procedure for grant of ECs were notified in exercise of the powers conferred by sub section (1) and clause (v) of sub section (2) of Section 3 of Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of EP Rules, 1986. Obviously, therefore, the EC granted for setting up of industry in a particular area is site specific as the impact assessment made on the basis of which it is appraised for such grant is undertaken and made in respect of the area in question. Any person aggrieved by grant of such EC with reference to particular area has, therefore, to challenge such EC as provided under Section 16 of the NGT Act. Admittedly, the

applicant choose not to challenge the EC but choose merely to raise questions relating to environment particularly as regards the depletion of ground water and sought relocation of industry on that ground alone.

**8.** Learned Counsel appearing on behalf of the applicant submitted that the respondent no. 5 have not filed any reply on merits of the application but has raised a preliminary objection that the application is barred by limitation and as such the objections of the respondent no. 5 is in the nature of an argument of demurrer; and therefore, at this stage this Tribunal must assume the truth and correctness of the case on merits as advanced by the applicants, consider it and answer whether, the application is nevertheless barred by limitation or not. He invited attention of this Tribunal to the Judgments of the Hon'ble Apex Court reported in (2006) 5 SCC 638; Ramesh B. Desai Vs. Bipin Vadilal Mehta and (2007) 5 SCC 614; hardesh Ores Vs. Hede & Co. in that regard. He further submitted that the applicant has raised a material issue of depletion of ground water due to abstraction of heavy quantity of ground water leading to severe water shortage in already 'over exploited' area. In this context he invited our attention to Annexure A-1, 3, 4 and 5 to M.A. No. 880/2013 and added that the Central Ground Water Authority ought not to have granted permission dated 17th June, 2011 to the respondent no. 5 for abstracting not more than 1,500 m<sup>3</sup> per day and not exceeding 4,95,000 m<sup>3</sup> per year of ground water



through two proposed tube-wells, particularly when subsequently the CGWA issued guidelines to come into effect from 15th November, 2012 that distilleries shall not be granted NOC from CGWA for groundwater withdrawal from 'over exploited' areas. He further submitted that the NOC granted by CGWA is not the one such order or decision specified in Section 16 and therefore, the questions relating to depletion of ground water following grant of NOC by CGWA can only be raised under Section 14 and not under Section 16 of the NGT Act.

- 9.** It is correct that there is no specific provision made for Appeal under Section 16 of the NGT Act, 2010. Question relating to grant of NOC by CGWA for abstraction of ground water therefore, is a question relating to enforcement of legal right relating to environment created on account of such permission in favour of the respondent no. 5 and such question arises out of implementation of Environment (Protection) Act, 1986 as CGWA is a creature of Environment (Protection) Act, 1986. Without going into the merits of the contentions raised in respect of depletion of ground water and propriety of granting NOC by CGWA, we can read this as an application under Section 14 of the NGT Act only on the ground of depletion of ground water and not an Appeal under Section 16(h) of the NGT Act. Next question that arise from the plain reading of the application is whether it can be regarded as an application under Section 15 of the NGT Act. Learned Counsel appearing

for the respondent no. 5 submitted that being faced with difficulty of limitation the applicant have also sought to contend that the prayers made by them can be granted under Section 15 of NGT Act which prescribes the period of 5 years from the date of which cause for such compensation or relief first arose for moving the application.

**10.** According to the respondent no. 5 this contention is erroneous on the face of it as when the application was moved, the distillery had not been set up by the respondent no. 5 and no case of damage for claiming compensation of relief of restitution/relocation was made out in the present application. Learned Counsel appearing on behalf of the respondent no. 5 further submitted that the Golden Rule of construction of statutes is to give the literal and plain meaning of the words and where the language of the statute is plain the argument of inconvenience and hardships is dangerous one and has been rejected by the Apex Court in *Catna Judgments* reported (2005) 2 SCC 271; *Nathi Devi Vs. Radha Devi*, (1984) 4 SCC 577; *Jeewanlal Ltd. & Ors. Vs. Appellate Authority under PGA & Ors.* and (2003) 2 SCC 577; *Nasiruddin & Ors. Vs. Sita Ram Agarwal*.

**11.** Section 15 of the NGT Act, 2010 reads as under:

15. Relief, compensation and restitution-
- (1) The Tribunal may, by an order provide-
    - (a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

- (b) For restitution of property damaged;
  - (c) For restitution of the environment for such area or areas, as the Tribunal may think fit.
- (2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of Sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).
- (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:  
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
- (4) The Tribunal, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
- (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.

According to the learned Counsel appearing for the applicant the respondent no. 5 has wrongfully been permitted to abstract ground water as raw material for its distilleries in an over exploited area which will lead to severe depletion of water resources to the detriment of environment and agriculture, and such proposed **abstraction poses a clear, present and immediate, danger to the environment.** According to him Section 15(a) of the NGT Act empowers this Tribunal to provide “relief” apart from “compensation” to “victims of pollution” and “other environmental damage arising under the enactments

specified in the Schedule”. He further submitted that at first blush it may appear that the aforesaid Section is attracted only when environmental damage is caused, and it could not have been the intention of the legislature that where environmental danger is about to be caused the Tribunal could not intervene under Section 15 and that applicant must approach the Tribunal only after the damage has been caused within 5 years thereto; but a closer look suggests that in the said Section prevention is contemplated. The term “victims”, according to the Learned Counsel appearing for the applicant, would include those who potentially would be victims and not just those who have already suffered from the damage as such interpretation is in consonance with the object and purpose behind the Act and in particular the “Precautionary Principle”.

**12.** Learned Counsel appearing on behalf of the applicant further submitted that there is some ambiguity in language of Section 15 and for the purposes of deriving its meaning as such an interpretation which advances the cause of environment, which is overarching purpose of the NGT Act, ought to be preferred. He placed reliance on the Judgment of the Hon’ble Apex Court reported in (1975) 1 SCC 76 Shri Umed Vs. Raj Singh, AIR 1961 SC 1170; J.K. Cotton Spinning and Weaving Mills Vs. State of Up, (2004) 11 SC 497; Sri Ram Saha Vs. St. of WB, (2011) 11 SCC 334; Grid Corp. of Orissa Vs. Easter Metals & Alloys, (1984) 2 SCC 302; Prem Chand Jain Vs. R.K. Chhabra, (2002) 3 SCC 722 Harbhajan Singh

Vs. Press Council of India and 2002 (64) DRJ181; Govt. of NCT of Delhi Vs. Rajpal Singh.

**13.** It is well settled Principle of Statutory interpretation that meaning must be attributed to all the words employed by the Legislature. A mere look at the Section 14 and 15 of the NGT Act points that two distinct periods of limitation are prescribed under the said provisions. Obviously, these Sections operate in separate and distinct fields. Primarily, the object and purpose of prescribing the period of limitation is to ensure that the person who wishes to agitate a legal right before a legal forum, does so within a stipulated time frame and not whenever he pleases, so as to bring greater certainty and finality to litigation and legal disputes. Pertinently, under Section 14 a period of six months from the date when cause of action for the dispute first arose has been prescribed as a period of limitation. Whereas under Section 15 of the NGT Act a period of 5 years from the date on which the cause for such compensation or relief first arose has been prescribed as the period of limitation. Undoubtedly, the issue concerning environmental protection and conservation of forests and other natural resources involve public interest and therefore, Section 18(2) of the NGT Act envisages a wide spectrum of entities, who can move an application for grant of relief or compensation or settlement of dispute before the Tribunal. At the same time the legislature keeping in mind the object and purpose of the Act i.e. to provide for the effective and expeditious environmental justice prescribed the period of limitation under Section 14 and 15 of the NGT Act in a manner peculiar to the

provisions made in the NGT Act for achieving sustainable development.

**14.** From the perusal of Section 15 we do not find that there is any ambiguity in its language. In unequivocal terms, Section 15 of the NGT Act the Tribunal is obliged to grant relief and compensation to the “victims of pollution and other environmental damage” arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substances). There need not be any hair splitting of the phrase or words therein for understanding its plain meaning. Clauses (b) and (c) of Section 15 sub-clause (1) obliges the Tribunal to provide **restitution of Property damage and restitution of the environment for such area or areas.** Sub clauses (a), (b) and (c) Sub section (1) of Section 15 of the NGT Act need to be read in relation to one another and not in isolation. Keeping in view the disability the “victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance) may suffer, the legislature has in its wisdom kept a longer period of 5 years, than the one prescribed in Section 14 for moving an application for the relief under Section 15 of the NGT Act, 2010. If there is any prospective including immediate danger to the environment, the NGT Act conceives of remedy for injunctive relief under Section 14 read with Section 19 (4) (a) and (j) of the NGT Act, 2010 which has to be resorted to without any delay or latches. Judgments cited by the applicants therefore, find no application in the present application.

We are, therefore, of the considered view that the present application is simplicitor an application under Section 14 of the NGT Act, 2010.

**15.** In the instant case, therefore we are obliged to consider whether challenge to the liberty acquired by the Project Proponent for ground water abstraction under NOC dated 17<sup>th</sup> June, 2011 is barred by limitation being beyond the period of limitation provided under Section 14 of the NGT Act, 2010. Admittedly, the NOC was granted by the CGWA on 17<sup>th</sup> June, 2011 and the EC was granted on 17<sup>th</sup> October, 2012. According to the Respondent no. 5 the applicants derived knowledge of grant of NOC dated 17<sup>th</sup> June, 2011 by CGWA for drawl of ground water during the course of public hearing while getting reply to the question nos. 2 and 4 and presence of applicant nos. 17 and 15 at the public hearing was duly recorded thus the respondent no. 5 submits a cause of action first arose for initiating the present application on 13<sup>th</sup> October, 2011 when the applicant derived knowledge of grant of NOC and period of six months expired on 12<sup>th</sup> April, 2012 and period of 60 days which could be condoned thereafter also expired on 11<sup>th</sup> June, 2012 and therefore, the present application is time barred.

**16.** According to respondent No.5, the applicant Nos.1, 7 and 15 before this Tribunal were present during the public hearing conducted in the course of the process for grant of environmental clearance and the fact of grant of NOC was made known to them in reply to question Nos.2 and 4 put-forth during the said hearing. The applicants have countered this submission with the contention that

under Section 14 of the NGT Act, 2010 the period of limitation commences from the date on which the cause of action for the dispute first arose and one of the dispute in the instant case is the threat to the environment posed by the abstraction of water of respondent No.5 distillery; and until and unless the environmental clearance had been granted to respondent No.5 in respect of its distillery, there was no question of abstraction of water notwithstanding the NOC by CGWA. The applicants further contend that the threat only fructified and therefore, the cause of action for the first time arose when the environmental clearance was granted and placed in the public domain since it is only then that the respondent No.5 could proceed with the project of construction and operation of the distillery and consequential abstraction of ground water. The applicants added that the NOC was only paper permission and no abstraction of water could be undertaken merely on the basis of the NOC. In other words, had the environmental clearance not been granted, there would be no threat of abstraction of water and no cause of action arose for the present dispute. To compound this contention further the applicants contended that it is not the case of respondent No.5 that the copy of NOC was placed in the public domain; rather it is admitted by respondent No.5 that the copy of the NOC was first provided to the Applicant along with counter affidavit of Respondent No.5 filed before the Hon'ble High Court in April, 2013 (page-308 of compilation No.2). Only limited and incomplete knowledge of NOC during the public hearing according to the applicant cannot give rise to the cause of action.



**17.** These submissions called for closer analysis of the application which in totality affords a view to ascertain as to when the first cause of action arose for the applicants to approach this Tribunal. Essentially the applicants are seeking relocation of the distillery unit to an alternate location on the grounds focused on challenging the environmental clearance granted in the present case but the challenge to it has been given up consciously to circumvent the hurdle of limitation. As regards the threat perception arising out of the abstraction of ground water, which now the applicants contend to have arisen only when the particulars of the NOC were made available to them on April, 2013 with the counter affidavit filed by respondent No.5 in the Hon'ble High Court, the reading of the paragraph Nos.2 to 7 is material.

**18.** It is evident from these paragraphs, particularly para no. 2, that being aggrieved by the very proposal to set up the industry in question, the Maha-Panchayat was organised wherein villagers of 11 adjacent villages attended with a fear in their hearts for the quality of crops and their personal safety and had signed protest letter dated 31<sup>st</sup> October, 2011 objecting to the construction of the plant. Paragraph No.1 of the letter dated 31<sup>st</sup> October, 2011 at Annexure A-1 (page 61 to 77) annexed to the application to which the Applicant No.1 Randhir Singh Sarpanch subscribe his hands reveals the level of threat perception in the minds of the Applicants in following terms:

“ Moreover the ground level will further go down due to large scale drawing out of ground water by this plant.....”.

Paragraph No.4 of the application reveals how the local newspaper in the area reported the widespread opposition raised by the villagers against setting up of distillery plant/liquor unit and residents visited the Secretariat to submit their Memorandum to the Respondents. Paragraph No.5 of the application further reveals that the Gram Panchayat of Village Jundla, Katlaheri, Alipur, Veeran, Agodh, Hathlana, Kuchpura, Bansa in District Karnal passed a Resolution on the basis of the fact that this industry would result in widespread wastage of the areas water resources to oppose the setting up of resource guzzling “liquor industry”. Paragraph No.6 of the application makes reference to executive summary to the EIA report vide Annexure-5 (page 89 to 119) to the application. Nowhere there is contention in the application about the EIA report or its executive summary being not made available to the villagers including the Applicants herein. As a corollary thereto, it can safely be read from the application that the applicants were conscious of the Water Management, the industry in question was to undertake for running it, in following terms:-

**“Water Management**

Ground water will be the main source of water supply. The total water requirement is about 3739 KLD for grains/1106 KLD for molasses on the basis of 9.1 water per KL of alcohol and 8.7 KL water per KL of alcohol. The water

requirement has been taken as of alcohol. The ground water shall be pumped into surface storage tank from where it can be then be pumped to various sections. Four tube wells of 50m<sup>3</sup> /hr capacity shall supply the water. Water required in the plant comprises of process water namely in the cooking and fermentation section. De-mineralized. Water is used in boiler for steam generation, indistillation for dilution and in bottling from blending. Soft water is used as make up for cooling towers. Raw water as such is used for bottle washing and for domestic use. Most of the water shall be recycled back particularly from the evaporation section. We have applied to CGWA for extraction of 1520 KLD of water during operational phase.”

Paragraph No.7 of the application refers to the communication dated 26<sup>th</sup> November, 2011 raising objection to the proposal *inter alia* stating that there is an acute shortage of water in the area and by law the farmers are not able to plant paddy before the 15<sup>th</sup> June every year and despite there being such restriction on the farmers to use water for the purpose of agriculture, the plant would be allowed to draw immense amount of water, quantity exceeding three times the amount used by the farmers throughout the year.

**19.** The contents of the application, therefore, provide a clear answer to the question as to when the threat to the environment posed due to the proposed abstraction of the water by respondent No.5 industry was first perceived by the villagers including the applicants in question. Not only the applicants were conscious of the water requirement of the industry in question and the source

they had for meeting such requirement, but the applicants did have threat perception of it well before the public hearing conducted in course of grant of environmental clearance to respondent No.5 industry. By applicants' version the threat only fructified when the environmental clearance was granted and was placed in public domain i.e. on 7<sup>th</sup> November, 2012 before the Writ Petition came to be filed before Hon'ble High Court on 19<sup>th</sup> December, 2012.

**20.** It is true that there is no straightjacket formula as to when the cause of action arose on the facts of the particular dispute and cause of action is to be determined considering overall facts and circumstances. It appears that copy of the NOC granted for abstraction of ground water by CGWA was not placed in public domain and the counter affidavit of respondent No.5 filed before Hon'ble High Court in April, 2013 provided a copy of the NOC to the applicants. Learned Counsel appearing for the applicants submitted that the provisions of Section 16 of the NGT Act, 2010 providing for Appeals against certain specific orders/directions/decisions but which do not envisage Appeal against the NOC granted by CGWA needs to be telescoped while construing as to when the cause of action first accrued in order to advance the remedy rather than limiting it. He added that to say that local farmers ought to have immediately challenged the NOC granted by CGWA even being not told or provided with the copy and the environmental clearance process was yet to culminate in the environmental clearance, without which the industry could not commence operation and abstraction of ground water, would be to construe cause of action

too narrowly and rigidly. He, therefore, submitted that the phrase “on which the order or decision or direction or determination is communicated to him” as used in Section 16 of the NGT Act, 2010 needs to be imported in Section 14 for meaningful interpretation of “the knowledge” of NOC for understanding when the cause of action first arose for initiating proceedings under Section 14 of the NGT Act, 2010 in the present case. Learned Counsel appearing on behalf of the applicants quoted Judgment of this Tribunal delivered in Appeal No.01 of 2013 : Ms. Medha Patkar & Ors Vs. MoEF & Ors.

**21.** It is correct that as observed in the Medha Patkar case (supra) the ‘Communication’ is an expression of definite connotation and meaning and it requires the authority passing the order to put the same in the public domain by using proper means of communication and such communication will be complete when the order is received by him (aggrieved person) in one form or the other to enable him to appropriately challenge the correctness of the order passed. ‘Communication’ would, thus, contemplate complete knowledge of the ingredients and grounds required under law for enabling that person to challenge the order. However, it needs to be noted that this interpretation was in context with the Section 16 of the NGT Act, 2010 wherein a mechanism has been provided for any aggrieved person to question the order or decision or direction by any authority specified therein. A case under Section 14 is not an Appeal. It is a distinct category of remedy available to the wide category of entities under Section 18 of the NGT Act, 2010 to raise a dispute as to a substantial question relating to environment

(including enforcement of any legal right relating to environment) and such question arises out of the implementation of the enactment specified in Schedule-I. Advisedly, therefore, the legislature did not make use of the aforesaid phrase in relation to the accrual of cause of action in Section 14 sub-section (3) of the NGT Act, 2010. 'Cause of action' is made relatable to the factual situation of the environment and other facts which existed to actuate a person to knock the doors of the Tribunal to seek a resolution to the dispute arising out of such question. A question in the present case evidently arises out of the threat to the environment and not out of any order or decision or direction made by any specified authority under Section 16 of the NGT Act.

**22.** In the instant case the applicants, villagers from the said villages, were conscious of the environment particularly availability of the water and the threat the industry posed by laying claim to the source of water available. The grant of NOC by CGWA and gathering of its knowledge in the public hearing is merely a fact further actuating the villagers including their applicants to seek remedy available in law. To telescope the provision of Section 16 in interpreting the provisions of Section 14 would therefore, amount to offence to the legal provisions so explicitly plain and unambiguous. With respect, therefore, we reject the submission made on behalf of the applicants and are persuaded to accept the contention of the respondent No.5 that under Section 14(3) of the NGT Act, 2010 the limitation begins to run from the date on which cause of action first arose meaning 'factual situation the existence of which entitles one

person to obtain from the court a remedy against another person” – Kunjan Nair Sivaraman Nair Vs. Narayan Nair & Ors (2004) 3 SCC 277. Thus, the period of limitation in relation to the NOC dated 17<sup>th</sup> June, 2011 expires on 13<sup>th</sup> April, 2012 i.e. 6 months from the date of public hearing held on 13<sup>th</sup> October, 2011 i.e. even before the Writ Petition was preferred before the Hon’ble High Court on 19<sup>th</sup> December, 2012. The period of sixty (60) days during which the delay can be condoned thereafter also expires on 11<sup>th</sup> June, 2012 before the filing of the Writ Petition.

**23.** Without prejudice to the contentions raised, the applicants submitted that the instant case is within limitation prescribed under Section 14 of the NGT Act, 2010 if the period spent before the Punjab and Haryana High Court in writ proceeding is excluded from the period of limitation in terms of Section 14 of the Limitation Act, 1963. According to learned Counsel for the applicants, with the grant of environmental clearance the threat to the environment fructified and the period of limitation get triggered the moment it was put on website on 7<sup>th</sup> November, 2012; and the period spent in prosecuting the proceedings in Writ Petition before the Hon’ble High Court between 19<sup>th</sup> December, 2012 (date of filing) till its disposal as being withdrawn on 4<sup>th</sup> July, 2013 needs to be excluded for the purpose of computing the period of limitation in terms of Section 14 of the Limitation Act, 1963. Learned Counsel appearing on behalf of respondent No.5 contended that Section 14 of the Limitation Act cannot be pressed into service in an application under Section 14 and 15 of the NGT Act, 2010 as the National Green Tribunal is not

a 'Court' Citing Catena of case laws P.Sarthy's case (2000) 5 SCC 355, Mukri Gopalan case (1995) 5 SCC 5, Popular Construction case (2001) 8 SCC 470, Consolidated Engineering case (2008) 7 SCC 169, with reference to the provisions of Section 14 and 29(2) of the Limitation Act, 1963. Learned Counsel appearing on behalf of the applicants deduced the following propositions and urged us to discharge our role as Environmental 'Court' and exclude the period spent in prosecuting the Writ Petition before the Hon'ble High Court in computing the period of limitation:

*"49. It follows from the above that:*

- Whether an authority is a "Court" within the meaning of the Limitation Act is not determined by nomenclature but by the powers, functions and character of that authority;*
- If an authority has the trappings of a Court and its decision has finality, it will be a "Court" for the application of the Limitation Act, even it is not a "civil court" constituted or action under the CPC;*
- Section 29(2) applies automatically and telescopes the provisions of the Limitation Act into any special law once the twin conditions contained therein are satisfied, in so far as there is no exclusion, express or by necessary implication contained in the special law;*
- In the absence of an express exclusion in terms under the special law, the language will have to be considered along with the scheme, object and purpose. The language alone however mandatory or imperative would not be decisive'*



- *It does not invariably follow from an exclusion, express or by necessary implication, of one of the provisions of the Limitation Act, that all the provisions stand excluded;*
- *Section 14 of the Limitation Act gives statutory effect to an equitable consideration and ought to be applied liberally and to the fullest extent. Its exclusion should not be easily inferred especially considering the distinction between section 5, which relates to extension of limitation, and section 14, which relates to computation of limitation;*
- *even though the Arbitration Act in section 34 contains language which is similar and equally peremptory as the language of section 14 of the NGT Act, the Supreme Court has negated the purported exclusion of section 14 of the Limitation Act therefrom while affirming the exclusion of section 5, not on the basis of application of section 43 of the Arbitration Act which was held not to apply section 34, but on the basis that there is no express exclusion;”*

**24.** After considering the law on the subject, the Larger Bench of this Tribunal headed by Hon’ble Chairperson Justice Swatanter Kumar while disposing Appeal No.61 of 2013: Mr. Aman Sethi Vs. State of Rajasthan & six Ors. on 7<sup>th</sup> May, 2015 dealt with the identical issue: “Whether Section 14(2) of Act of 1963 is applicable to the provisions of the NGT Act and the appellant would be entitled to claim exclusion of the period alleged to have been bonafidely spent before another court or forum?” The issue was answered in negative in following terms:

*“Exclusion of time for pursuing a remedy bonafidely before a court or a forum can be claimed by an applicant only the provisions of Act of 1963 applied to the proceedings before a statutory tribunal in terms of the statute that governs it. If the provisions of the Act of 1963 are excluded expressly or by necessary implications in terms of Section 29(2) of the Act of 1963 and it provides for a special period of limitation and /or the period which can be condoned, then recourse to Act of 1963 would be impermissible, as held above.”*

**25.** Learned Counsel appearing on behalf of the applicants realising strength of his submissions made in respect of the application of Section 14 of the Limitation Act, 1963 urged the court to look into M.P. Steel Corporation case (2015) 7 SCC 58; M.P. Steel Corporation Vs. Commissioner of Central Excise to advance the argument that even if provision of Section 14 of the Limitation Act, 1963 are not applicable to the Tribunal, the principles underlying it for advancing the course of justice would certainly apply to exclude time taken in prosecuting the proceedings before the Hon’ble High Court.

**26.** Perusal of the Judgment delivered in M.P. Steel Corporation case (supra) reveals that the Hon’ble Apex Court considered the Judgments including the Judgments delivered in Consolidated Engineering case, Mukri Gopalan case, Parson Tools and Plants case, P. Sarthy case which learned Counsel appearing on behalf of the applicants cited to advance the legal proposition. The Hon’ble Apex Court considered the said Judgments from the perspective learned Counsel appearing on behalf of the applicant exhorted us to

examine. We may, therefore, not detain ourselves in debate over it once again. The Hon'ble Apex Court gave a categorical finding that the provisions of the Limitation Act, 1963 including Section 14 would not apply to the proceedings before Quasi-Judicial Tribunal/Forums and held that the Principles thereof would be applicable for the purpose of condonation of delay in filing Appeal in following words:

*“38. We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in Bhudan Singh V. Nabi Bux that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde, J. as follows:*

- *“9. Before considering the meaning of the word ‘held’ in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on ‘Statutory Constructions’ that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently were the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the lawmakers.*

*In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.”*

The Hon'ble Apex Court at para 43 of its Judgment in M.P. Steel Corporation's Case (Supra) thus concluded:

“We conclude, therefore, that the Principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bonafide and with due diligence pursued, which ultimately end without a decision on the merits of the case.”

**27.** This Tribunal in Dileep Namdeo's Case did consider the relevant observations made by the Hon'ble Apex Court in Consolidated Engineering Enterprise's Case analysing the provision of Section 14 of the Limitation Act, 1963 and culled out the following conditions required to co-exist for attracting the rigour of Section 14 of the Limitation Act, 1963:

- Both the prior and subsequent proceedings are civil proceedings prosecuted by the same Party;
- The prior proceeding had been prosecuted with due diligence and in good faith;
- The failure of prior proceeding was due to default of Jurisdiction or other cause of like nature;
- The earlier proceeding and the latter proceedings must relate to the same matter and issue and;
- Both the proceedings are in a Court.

Not only, therefore, while applying the Principle of Section 14 one has to verify the co-existence of the aforesaid conditions necessary for attracting the rigour of said provision but also to ensure that such Principle is applied for advancing cause of justice.

**28.** Before applying such Principle to do justice or advance cause of justice in a given case, one needs to understand what "Justice" means in context with Equity. P. Ramanatha Aiyar's "The Law Lexicon" 3rd Edition, 2012 would enrich our understanding of Justice in context with Equity in following words:-

**"Justice : Equity** *Justice is a written or prescribed law, to which one is bound to conform and make it the rule of ones's decision : equity is a law in our hearts; it conforms to no rule but to circumstances, and decides by the consciousness of right and wrong. The proper object of justice is to secure property; the proper object of equity is to secure the rights of humanity. Justice is exclusive, it assigns to everyone his own; it preserves the subsisting inequality between men; equity is communicative; it seeks to equalise the condition of men by a fair distribution. Justice forbids us doing wrong to any one; and requires us to repair the wrongs we have done to others; equity forbids us doing to others what we would not have them do to us; it requires us to do to other what in similar circumstances we would expect from them. The obligations to justice are imperative; the observance of its laws is enforced by the civil power, and the breach of them is exposed to punishment; the obligations to equity are altogether moral; we are impelled to it by the dictates of conscience; we cannot violate it without exposing ourselves to the Divine displeasure. Justice is inflexible, it follows one invariable rule, which can seldom be deviated from consistently with the general good; equity, on the other hand, varies with the circumstances of the case, and is guided by discretion; justice may, therefore, sometimes run counter to equity, when the interests of the individual must be sacrificed to those of the community; and equity sometimes tempers the rigour of justice by admitting of reasonable deviations from the literal interpretations of its laws."*

**29.** In simple terms, to do justice means to give unto one what is due to him by Law. Justice follows an invariable rule and the obligations to justice are imperative. While applying the Principle of Section 14 of the Limitation Act, therefore, one has to be circumspect and answer the questions as to whether the exclusion of time taken in prosecuting proceedings was intended by the legislature in making the specific provision prescribing the limitation and for condonation of delay in Section 16(2) of the NGT Act, 2010 and whether the previous proceedings were prosecuted/pursued with due diligence before any wrong forum in good faith or not.

**30.** While considering the element of due diligence and caution for attracting the provisions of Section 14 of the Limitation Act, 1963, The Hon'ble Apex Court in Consolidated Engineering Enterprise Case observed thus:

*“35. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this Judgment have to co-exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essentially pre-requisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, or inaction. However there can be no hard and fast rule as to what amounts to good faith.*

*It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. Merely filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.”*

**31.** In the instant case, the present application cannot be considered as an application under Section 15 of the NGT Act, 2010 as observed hereinabove. It is to be construed as an application under Section 14 of the NGT Act, 2010 and also not as an Appeal under Section 16 of the NGT Act. As noted hereinabove, the threat perception which ought to have triggered the dispute became manifest when the grant of NOC by CGWA became known to the applicants. Yet the applicants choose to prefer a Writ Petition to the Hon'ble High Court when the remedy to seek redressal of its grievances was available under the National Green Tribunal Act, 2010 which coming into force on 18<sup>th</sup> October, 2010. It cannot be said that the Hon'ble High Court of Punjab & Haryana had no jurisdiction to entertain Writ Petition under Article 226 of the Constitution. The exclusion of period may be required to be considered only when period is sought to be excluded because the earlier litigation was pending before the court having no jurisdiction. In given facts and circumstances, therefore, there is no co-existence of the five conditions enumerated in Consolidated Engineering Enterprises case (Supra) necessary to attract provisions of Section-14 of the Limitation Act and it is difficult to

say that the previous proceedings were prosecuted with due diligence before a wrong forum in good faith.

**32.** As noticed by the Hon'ble Apex Court in M.P. Steel Corporation's Case (Supra) at Para 38, it is proper to assume that the law makers enact laws which the society considers as honest, fair and equitable with the object to advance public welfare. What legislature, therefore, actually intended in enacting Section 14 of the NGT Act, 2010 is worthy of consideration as entire legislative process is/has to be influenced by consideration of Justice and reason. Such consideration would be a pointer to where the justice lies.

**33.** NGT Act, 2010 has been enacted to provide a forum for **effective and expeditious disposal of cases** relating to Environmental Protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment. Chapter III of the National Green Tribunal Act, 2010 deals with jurisdiction, powers and proceedings of the Tribunal. Section 14, 15 and 16 therein provide for remedies available for:

- (i) Settlement of disputes,
- (ii) Compensation and restitution and
- (iii) Appeals against the orders, decision or directions issued by various regulatory authorities respectively.

A glance at these provisions clearly reveals that the discretion conferred upon the Tribunal to condone the delay in initiating an



action under the said provisions within a stipulated period of time is restricted by use of the phrase "not exceeding 60 days". At the same time, it is significant to note that the provisions of Section 14, 15, 16 and 18 therein permit "any person aggrieved" to move an application or appeal to the Tribunal. Section 18 of the NGT Act require such application or appeal as the case may be, to be dealt with by the Tribunal as expeditiously as possible with endeavour made to dispose of such application or the appeal finally within 6 months from the date of filing of the application or the appeal after providing to the parties an opportunity to be heard. The NGT Act, 2010 by virtue of Section 19 therein has rendered the Tribunal free from the bondage of the procedure laid down by the Code of Civil Procedure, Act, 1908 and Rules of Evidence contained in the Evidence Act, 1872. This has been particularly done to achieve the dispensation of the environmental justice expeditiously, preferably within the time frame stipulated by law.

**34.** Alike the Provisions in NGT Act, 2010 the NGT (practice and procedure) Rules, 2011 framed thereunder for regulating practice and procedure of the Tribunal, stipulate time frame for:

- i) Rectification of defects-Rule 10(3);
- ii) Filing of replies and other documents-Rule 16(1);
- iii) For hearing and final decision-Rule 18(3);
- iv) Moving an application for restoration of application or appeal dismissed for default- Rule 20(2);

- v) For setting aside the order passed ex-parte in an application or appeal- Rule 21(2); and
- vi) For preferring an application for Review- Rule 22(1).

Pertinently, Rule 13 of the NGT (Practice and Procedure) Rule, 2011 also requires every applicant or the appellant to adhere to certain discipline in setting forth their case concisely under distinct heads in Form-1 and Form-2 prescribed thereunder. This has been particularly done to save on time and consequently to curb delay in dispensing environmental justice.

**35.** Perusal of EC Regulations, 2006, which prescribes procedure for grant of EC, reveals that the course of appraisal of every proposal for grant of EC by the Expert Appraisal Committee is well formulated to bring all material aspects of the project under Appraisal before the Expert Appraisal Committee and time frame is provided for concluding such process.

**36.** Time is thus material dimension of the environmental justice, particularly process of grant of EC subject to certain safeguards under the Environment (Protection) Act, 1986. Both stipulation of time frame and the safeguards point out how delicate balance between necessary development and environment is attained without sacrificing inter-generational equity and without any unwarranted loss of time in decision making in course of dispensing environmental justice, particularly in granting ECs. Furthermore, Environment Clearance Regulation, 2006 provides for cancellation of prior Environment Clearance already granted upon revelation of

deliberate concealment and submission of false or misleading information or data. Material for the process of grant of EC-vide para 8(vi) of Environment Clearance Regulation, 2006. Evidently, the dispensation of environmental justice and particularly, the decision to grant EC is based on an informed decision taken upon professedly true and correct facts and provides for environmental safeguards. Law makers, therefore, expected such decision/s to remain free from indefinite threat of challenge and consequent debate, particularly, from wide spectrum of aggrieved persons after lapse of a fixed period of time in the interest of environmental justice and sustainable development and incorporated the restrictive phrase 'not exceeding sixty days' in Section 14, 15 and 16 of NGT Act, 2010.

**37.** All this has found utterance in the proviso to the Section 14(3) of NGT Act, 2010 in following terms:

*“(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 legislature thus intended by coining the phrase “not exceeding 60 days” that justice in dealing with such application would lie if

the applications are not entertained beyond the period as prescribed in the said Section.

**38.** In M.P. Steel Corporation case the Hon'ble Apex Court applied the Principle of Section 14 of the Limitation Act, 1963 to the case under Section 128 of the Customs Act, 1962, in the given facts and circumstances of the said case. Moreover, Section 128 of Customs Act, 1962 reads as under:

*(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a 281 [Commissioner of Customs] may appeal to the 280 [Commissioner (Appeals)] 282 [within sixty days] from the date of the communication to him of such decision or order: 283 [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*

*284 [(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]*

*(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.]*

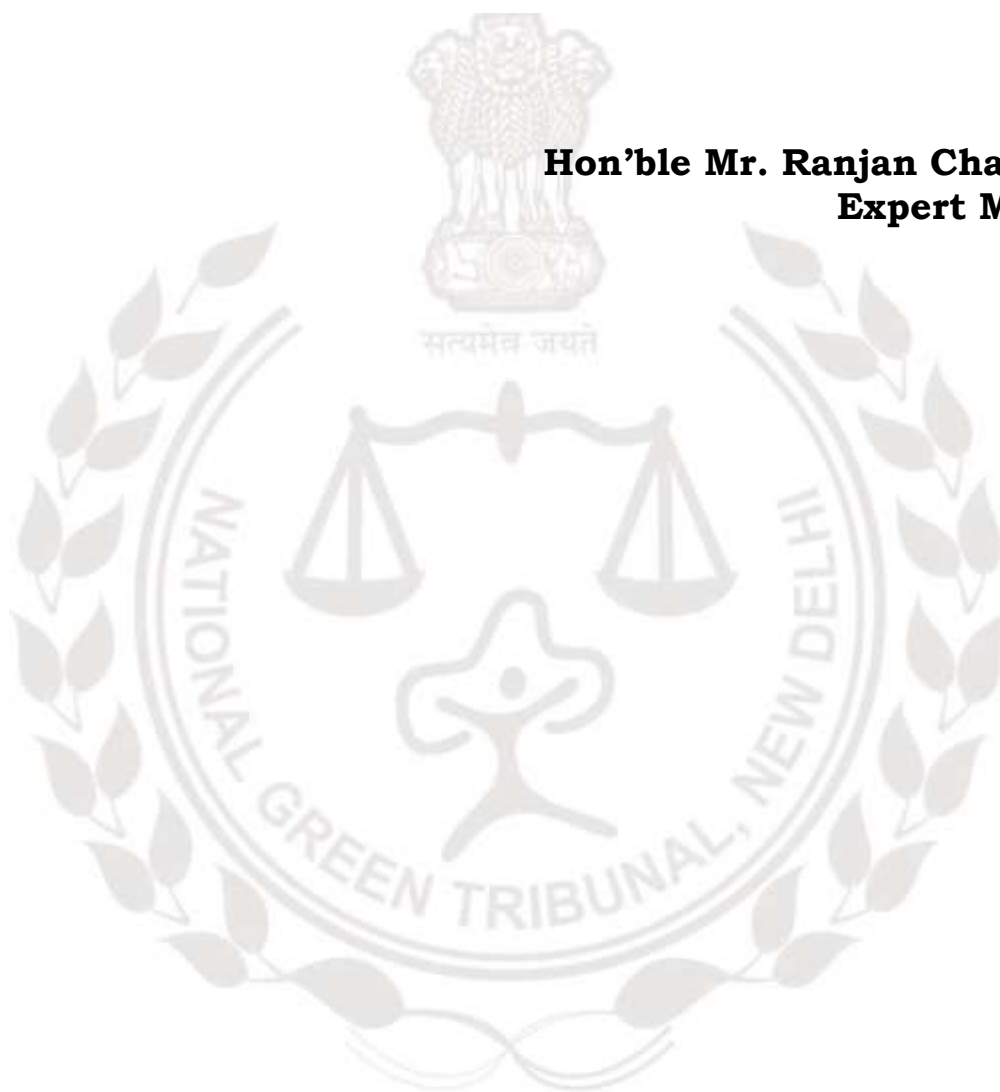
The Provision in Section 128 is unlike the provision in Section 16(h) which uses the restrictive phrase “not exceeding 60 days”.

**39.** In our considered opinion, therefore, the Tribunal cannot out stretch the period of limitation prescribed in Section 14 of the NGT Act, 2010 even by taking aid of the Principles under Section 14 of the Limitation Act, 1963. The case of the applicants as conceived in

the application must therefore, fail. Original Application No.182/2013 is, therefore, dismissed.

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

**Hon'ble Mr. Ranjan Chatterjee**  
**Expert Member**



**NGT**