

also for a direction to respondents to demolish all the illegal constructions unauthorizedly put up by them, contending inter alia, that by virtue of a notification issued by the Government of Uttar Pradesh on 8.05.1990 the state has declared Okhla Bird Sanctuary as a “protected area” under Section 18 and 26(A) of the Wildlife (Protection) Act, 1972) and the sanctuary consists of large number of water bodies with adjoining land, attracting birds from various parts of the world, especially during the winter period by way of migration. It is the case of the applicant that ignoring the adverse impacts on the sanctuary, the authorities have permitted unscrupulous developers to put up multi-storied buildings around the earmarked area of the sanctuary. Such development around the Sanctuary area has resulted in affecting many critically endangered species and in fact according to the applicant there are two such species which are affected including vulnerable 7 other species of birds. It is his case that around 50 species of birds, migratory in nature come to the sanctuary during the winter season.

2) By virtue of the construction activities which are made in the surrounding areas of the sanctuary, the movement of birds are affected which results in the environmental imbalance. He also relies upon the guidelines issued by the Ministry of Environment and Forest on 9.02.2011 by which the Government has declared “eco-sensitive zone” around the national parks and wildlife sanctuaries. According to him when the Government of India has taken a stand that eco-sensitive zone is to be maintained beyond the “protected area” which is to the extent of 10 Km, it is the duty of the respondents as well as the various project proponents who are involved in the construction activities to follow the same. The eco-sensitive zone acts as an outer barrier to protect the movement of Birds. He would also bring to the notice of the Tribunal about the observations made by the Hon’ble Apex Court in Goa Foundation case in a

Public Interest Litigation filed in WP. No. 460 of 2004 wherein the Hon'ble Apex Court has directed the Government of India to convene a meeting of State Governments and decide about the "eco-sensitive area" and till such decision is taken and notified, the radius of 10 Km shall be treated as "eco sensitive area".

3) The applicant, relying upon the electronic and print media has understood that without prior clearance from the authorities like National Board for Wildlife, about 53 builders and developers are carrying on their construction activities within 10 Km radius of the Okhla Bird Sanctuary. It is his grievance that in spite of such construction activities having been carried on without proper approval from the appropriate authorities, the Governmental agencies are not taking any action. They cannot raise any such constructions which is against law and the same has to be put an end to. He would also state that permission of such activities near the sanctuary will be in violation of the consistent orders passed by the Hon'ble Supreme Court in various cases and it would also affect the natural environment of the area. By invoking the jurisdiction of this Tribunal under Section 14 of the National Green Tribunal Act, the application has been filed. The applicant has also raised the various legal grounds stating that the permission given to the builders to put up the construction affecting the natural environment will be in violation of the Fundamental Duty imposed under the Constitution of India more particularly under Article 51 A(g). That apart it is also the ground taken by the applicant that such activity is against the National Forest Policy and Conservation Strategy, 2002, wherein the Government of India has given its opinion that 10 Km radius must be treated as eco sensitive zone beyond the protected area as per the provisions of the Wild Life Protection Act. His contention is also on the ground that under Section 5C(1) of the Wild Life Protection Act, 1972, it is the duty of the National Board for Wildlife to

promote considerable development of wildlife and forest which includes the protection of the area surrounding the sanctuaries. He has also relied upon various international Conventions in this regard to substantiate his contention that such unauthorized construction should not be permitted.

- 4) The Respondent No. 3 who is the Department of Forest, in the reply, while denying the averments made by the applicant, has raised a preliminary objection that the meeting of the Wildlife Board held on 21.1.2002 has adopted Wildlife Conservation Strategy of 2002, wherein it has categorically stated that lands falling within the 10 km radius of the boundaries of the National Park/Wildlife Sanctuaries should be notified as under Eco Fragile Zone under Section 3(v) Environmental Protection Act. It is also stated that Addl. Director General of Forest (Wildlife) in the letter dated 06.02.2002 has requested all the States to list the areas which fall within 10 Km radius of the boundaries of the National Park/Wildlife Sanctuaries as Eco Fragile Zone. He also relied upon a letter sent from the MoEF on the same date to all the State Governments in that regard. Therefore, the Respondent No. 3 has taken a stand that in so far as the Respondent No. 3 is concerned, by way of the policy of the Government, when adequate steps have been taken, it is not for the applicant to find fault with the Respondent No. 3. The Respondent No. 3 has further referred to a letter issued by the Ministry of Environment and Forest dated 9.02.2011 by which a guideline for declaration of eco sensitive zone has been made out by the Government of India and it is the duty of the State Governments to take appropriate steps. It is stated by the Respondent No. 3 that the District Level Committee under the Chairmanship of District Magistrate, Gautambudh Nagar recommended that 1 km around the Okhla Bird Sanctuary should be declared as Eco Sensitive Zone and has identified the different activities that fall under the protected, regulated and permitted categories. This decision has

been taken according to the Respondent No. 3, as per the directions given by Hon'ble Apex Court in the Goa Foundation case. It is also stated by the Respondent No. 3 that the inter departmental consultation by the Government of India is in progress and after obtaining permission from the Cabinet a draft notification will be sent to the Government of India for final notification by the Government of India, for the proposed distance of 1 km around the Okhla Bird Sanctuary as eco sensitive zone.

5) The Respondent No.6 i.e. NOIDA in the affidavit has stated that based on the information supplied to it, it is true that the projects which are undertaken by various persons are falling within the radius of 10 kms and the said respondent has noted that the applicant has identified 55 projects within the radius. It is stated by the Respondent No. 6 that out of the 55 projects, 6 are the projects which are outside the 10 km radius and thereby reducing the list of projects which are undertaken within the 10 km radius to 49 in numbers. Out of the said 49 projects, it is stated that in respect of the 7 projects no construction has been commenced and the layout and building plans are yet to be sanctioned by the authorities. It is stated by the NOIDA that in respect of 15 projects out of the 49, construction has been completed and completion certificates have been issued. Further, out of the remaining 27 projects the environment clearance has been received in respect of 25 numbers. It is stated that 2 projects are of the built-up area of 6,000 sq. meters and 8,000 sq. meters respectively and, therefore, they do not require environment clearance.

6) The Respondent No. 8, Senior Superintendent of Police has stated that as long as the Police Department has not received any complaint about breach of peace and maintenance of law and order, it is not for the Police Department to interfere and it is for other departments of the State Government as well as the Union of India to take

decision regarding the fixation of Eco Sensitive Zone around the Okhla Bird Sanctuary. The Irrigation Department of the Government of Uttar Pradesh namely, the Respondent No. 4, while agreeing with the reply filed by NOIDA, has submitted that by putting up of construction within the restricted areas there is no interference in irrigation activities and ,therefore, Irrigation Department has nothing to do with the management of Okhla Bird Sanctuary.

- 7) The National Board for Wild Life namely the Respondent No. 5, in the affidavit, while confirming to the Wild Life Conservation Strategy of 2002, taken by the Government of India as a policy wherein the land falling within 10 km radius of the National Parks and Sanctuaries were directed to be notified as eco fragile zone, it is stated that the National Board for Wildlife in the meeting held on 17.03.2005 under the Chairmanship of the Hon'ble Prime Minister, has considered the proposal and decided that the delineation of eco sensitive zones would have to be site specific and would be regulatory rather than prohibitory of specific activities. The Board has also taken a decision that the State Government will have to be consulted in this regard and only after obtaining concurrence, a final decision can be taken up. The Board also has referred to the Judgment of the Hon'ble Supreme Court in Goa Foundation Case wherein a direction has been given to the MoEF to give final opportunity to all States and Union Territories to respond to its letter dated 27.05.2005 and thereafter to take a decision based on the proposals obtained from the State Governments. The said letter has also indicated the direction of the Hon'ble Supreme Court that the MoEF should refer such proposals to the Standing Committee of the National Board for Wildlife under Section 5(b) and 5(c)(iii) of the Wildlife (Protection Act), in respect of the cases where the environment clearance has already been granted, for the activities within 10 km zone.

8) It is in order to comply with the said order of the Hon'ble Supreme Court, it is stated that the Ministry has issued a public notice in the National and regional Newspapers published on 01.01.2009 bringing to the notice of all concerned that the project proponents which are within 10 km radius of the boundaries of wildlife sanctuary and national parks shall seek clearance from the Standing Committee of National Board for Wildlife by 31.01.2009. It is stated that such advertisement has appeared in 24 National and regional Newspapers all over the country. In the circular issued by the MoEF dated 27.02.2007, it was indicated that all the developmental projects falling within 10 km of wildlife sanctuary and national parks shall be accorded environmental clearance subject to the project proponent taking clearance from the Standing Committee of National Board for Wildlife under Wildlife (Protection) 1972. It is stated that the above said condition was later incorporated as one of the conditions in the environmental clearance issued by MoEF. It is stated by the Board that because, the process is on, the eco sensitive zone has not yet been notified by the Government around Okhla Bird Sanctuary. It is also stated that no proposal has been received in the MoEF from the State Government of Uttar Pradesh, Government of Delhi and Haryana.

9) Based on the above said pleadings, the learned Counsel appearing for the applicant as well as respondents have made their submissions. The main contention raised by the applicant who is stated to be interested in the environmental protection of the country, especially in so far as it relates to Okhla Bird Sanctuary, is that permitting of such building constructions beyond the protected area and within the eco sensitive zone will really affect not only the free movement of birds but also it will be against the eco-sensitive zone concept. It is incumbent on the State Governments, that when the Government of India has taken a policy decision and the Hon'ble

Supreme Court has also stated in accordance with the policy that 10 Km radius shall be eco fragile zone, the State Governments ought to have followed the same. He also contended that in the event of the State Government deciding otherwise as directed by the Hon'ble Apex Court the same should be considered by the Government of India. The State Government and the Union of India have not taken any decision in this regard and according to him the slackening attitude of both the State & Central Governments show that the Governments have least interest in the environmental protection especially relating to the Okhla Bird Sanctuary. The learned Counsel appearing for the applicant has also brought to the notice of this Tribunal about various observations made by the Hon'ble Supreme Court on various occasions, heavily coming down against the conduct of the State Government in not taking appropriate steps.

10) On the other hand, it is contended by the learned Counsel for the State Government that the State has already taken a decision based on the direction issued by the Ministry of Environment and Forest restricting 1 Km radius as eco sensitive and now the Government has come to a conclusion that it would be sufficient, if 100 meters radius is fixed as the eco sensitive zone and according to the learned Counsel appearing for the State, such proposal has been sent to MoEF and MoEF has not responded so far, and therefore, there is no fault on the part of the State Government.

11) On the other hand the learned Counsel appearing for the MoEF would submit that while it is true that the Govt. of Uttar Pradesh has sent such proposal restricting the eco sensitive zone to 100 meters radius from that of Okhla Bird Sanctuary, the MoEF has raised certain queries to the State Government which relates to the boundaries to be fixed etc. and the Uttar Pradesh Government has not so far responded to it. The learned Counsel would also submit that immediately after the State Government makes its

response to the queries made by the MoEF, MoEF would take appropriate decision after consultation with the State Government and thereafter the Government may issue notification fixing the eco sensitive zone.

12) Mr. Raj Panjwani the learned Senior Counsel, would submit that the matter relating to fixation of Eco Sensitive Zone in respect of the sanctuaries and wildlife and the National Parks are pending in the Hon'ble Apex Court, and pending the same, it is not known as to whether the State Government can go on with its proposal. He would also submit that the Central Empowered Committee (CEC) constituted by the Hon'ble Supreme Court has made various suggestions and the suggestions are actually being considered in the Hon'ble Apex Court and till the Hon'ble Apex Court takes a decision the Government shall not be permitted to go ahead.

13) We have heard the rival submissions by all the learned Counsel at length, after the matter was adjourned on various dates and many interlocutory applications were filed by various project proponents.

(i). In the first instance, we have passed an order not permitting any construction activity within 10 Km radius from the protected area of the Okhla Bird Sanctuary. Thereafter, the said order came to be modified to the effect, that in so far as it relates to the projects of construction which are already completed, the construction shall be subject to the final order passed by the Tribunal and the authority shall not give any completion certificate to such constructed buildings.

(ii). In respect of the buildings which are half way through, we permitted the construction to go on without prejudice and subject to final order which will be passed by the Tribunal.

(iii). In so far as it relates to the new projects, we made it clear that no permission shall be granted by any public authority till final orders are passed by this Tribunal and the interim orders stand as on date at that stage.

14) On hearing the learned Counsel and going through

the pleadings the short question which arise for consideration in this case is as to whether the Central Government should be permitted to notify the Eco Sensitive Zone in respect of Okhla Bird Sanctuary as it proposes to decide after considering the proposal of the Uttar Pradesh Government.

15) Before going into the said rival submission, it is pertinent to refer to some of the developments took place in these years regarding the declaration of Eco Sensitive Zone. It is true that as early as in 1990, the Government of Uttar Pradesh, in so far as it relates to the Okhla Bird Sanctuary, has by way of a notification declared the area as a “protected area” and subsequently notice given to various parties and after sufficient time given to public and on following the various procedures required by the Wild Life Protection Act, ultimately issued a final notification. These notifications, as well as declaration are covered under Section 18 as well as 26(A) of the Wildlife Protection Act even though the Wildlife Protection Act has come into operation little later than the time when the protected area was declared by the Uttar Pradesh Government in 1990. We have no doubt to come to a conclusion that such declaration should be covered as a “protected area” under Section 18 as well as 26(A) of the Act. Therefore, it goes without saying that the Okhla Bird Sanctuary has been a declared bird sanctuary from 1990 onwards in accordance with law.

16) The only other question which is to be decided is about the Eco Fragile Zone. It is true that the Government of India in its Eleventh meeting of the National Board for Wildlife held on 21.02.2002 has formulated “Wildlife Conservation Strategy 2002” adopting the principle that lands falling within 10 Km of boundaries of national parks and sanctuaries should be notified as eco fragile zones under section 3(2)(v) of the Environment (Protection) Act 1986 and Rule 5 (viii) and (x) of the Environment (Protection) Rules. This was the first step taken by the Union of

India by way of policy in so far as it relates to fixing of Eco Fragile Zone. It is no doubt true that under Environment protection Act and Rule, it is within the power of Union of India to take such a decision. After the said decision was taken, the Additional Director General of Forest in his letter dated 06.02.2002 has requested all Chief Wildlife Wardens for listing out the areas relating to various sanctuaries and National Parks. It is also relevant to note that subsequently, on 17.03.2005, the National Board for Wildlife in its second meeting has decided that the delineation of eco sensitive zone would have to be site specific and regulatory in nature rather than prohibitory in respect of specific activities, and the same was communicated to all States. Therefore, it is clear that the Government of India in its wisdom has not only taken a decision that in so far as Okhla Bird Sanctuary is concerned, it is a protected area, as a sanctuary under the Wild Life Protection Act but also in respect of eco sensitive zone, the Government has not only proposed the 10 Km radius as a boundary for the purpose of creating eco sensitive zone but also indicated that fixing of the boundary of eco sensitive zone is site specific and it is regulatory in nature and not prohibiting any activities.

16) Eco Sensitive Zones around the National Parks and Sanctuaries act as a “shock absorber” and a transition zone from area of high protection to the area involving less protection. The distribution of area of eco sensitive zone and the extent of regulation may not be uniform all around. In any event, as we are informed that the matter is pending adjudication of the Hon’ble Apex Court, the same shall prevail as and when the zone is formulated.

17) In the Public Interest Litigation filed in the Hon’ble Supreme Court, in Goa Foundation Case in WP No. 460/2004, the issue came up for discussion about the declaration of eco sensitive zone. By its order dated 04.12.2006, the Hon’ble Apex Court has directed the MoEF to give final opportunity to all States and Union

territories to respond to its letter dated 27.05.2005 and the State Governments to send their proposal within 4 weeks to the Ministry of Environment and Forest. It was also directed that cases where environmental clearance was granted in respect of activities which are within 10 Km radius shall be referred to the Standing Committee of National Board for Wild Life. It is relevant in this regard to take note of another judgement of the Hon'ble Apex Court referred "*In RE: in construction of park at NOIDA near Okhla Bird Sanctuary. Anand Arya and Anothers V. U.O.I. and Ors., T.N Godavarman Thirumulpad Vs. and U.O.I. Ors. (2011) SCC 744*". A reference to the said judgement which is fairly long after going through the entire aspect relating to the sanctuaries and national parks in the country shows that the Hon'ble Supreme Court has specifically considered the Okhla Bird Sanctuary. On a reference to the various observations made, it is very clear, that the Hon'ble Supreme Court has heavily come down against the conduct of the Uttar Pradesh Government in not even responding to the letters of the Ministry of Environment and Forest, requesting to send proposal for notifying eco sensitive zone. The Hon'ble Supreme Court has stipulated that 10 Km radius of national Park and Sanctuary should be made as a eco sensitive zone and later, a recommendation of the CEC has been placed suggesting 500 meter around national park and sanctuary and at that stage the matter is still pending in the Supreme Court, and a final decision would be taken which would have binding effect.

- 18) In the meantime, the Hon'ble Supreme Court has also observed the importance of maintaining not only the sanctuary but also eco sensitive zone in the environmental sense. It has observed that the absence of a statute will not prohibit the court from examining the effects on the environment with particular reference to the Okhla Bird Sanctuary, for the jurisprudential development made by the courts on environment is not merely a statutory issue. It was

observed that environment is one of the facets of Right to Life guaranteed under Article 21. Environment is therefore, a matter directly under the Constitution and if the court perceived any project or activity as are injurious to the environment it would be obliged to stop it, accepting the question of likelihood of any project which would have adverse effect on the Okhla Bird Sanctuary.

19) Therefore, it is clear from the observation made by the Hon'ble Apex Court about the importance of eco sensitive zone, which will be ultimately decided by the Supreme Court. In any event when the governmental authorities decide to perform their governmental function, it is not for this Tribunal to put an embargo on the performance of such function. It is not in dispute that the Government of Uttar Pradesh which has taken different stand at different time has ultimately taken its decision that the eco sensitive zone should be fixed as 100 meter radius as submitted by Ms. Savitri Pandey, the learned Counsel appearing for Uttar Pradesh Government. However, she was unable to explain on what basis 100 Meters radius has been arrived at by the Uttar Pradesh Government. She has stated that such decision has been taken on scientific manner after consulting various authorities and Tribunal cannot find fault with such decision taken by the State Government in its wisdom of taking such decision before issuing notification.

20) Be that as it may, it is seen that all the State Governments were requested to send to the Ministry of Environment and Forest, their proposals and it is brought to the notice of this Tribunal, that the Ministry of Environment and Forest, in fact by its letter dated 18.03.2014 has sent its queries to the State Government of Uttar Pradesh for certain comments in respect of the proposal. The comments which are sought for by the MoEF from the State Government of Uttar Pradesh as seen in the paper produced by learned Counsel for MoEF, are relating to

various issues like site etc.

21) To the above said queries made by the Ministry of Environment and Forest, admittedly the Uttar Pradesh Government has not given its reply. It is also seen from the judgement of the Hon'ble Supreme Court that not only the Government of Uttar Pradesh but also Government of Delhi and Haryana are likely to be affected if the distance is within 10 Km radius of Okhla Bird Sanctuary. As stated above, it is not for this Tribunal to put any embargo on the powers of the State Government if it decides to fix the limit of eco sensitive zone. However, as stated above, such decisions of the Government are subject to the final decision of the Hon'ble Supreme Court. In such view of the matter, we dispose of the application with the following directions:

- (i) The State of Uttar Pradesh shall send its response to the queries raised by MoEF within two (2) weeks from the date of receipt of the copy of the order, to the MoEF.
- (ii) The state of Delhi as well as Haryana who are likely to be affected by fixation of eco sensitive zone shall also send their proposals to the MoEF within four (4) weeks from today.
- (iii) After receipt of the said proposal as well as comments by the respective governments within the time stipulated above, we direct the Secretary, MoEF Government of India to call for the concerned officers of all the State Governments concerned and have interaction and decide finally about the fixation of the eco sensitive zone in respect of Okhla Bird Sanctuary.
- (iv) While such decision is taken, the Secretary, MoEF in the said meeting shall take into consideration about the demarcation of boundaries in fixing the eco sensitive zone apart from the issues as to whether it is site specific etc. While making such decision the Secretary, Ministry of Environment and Forest shall also make necessary consultations with the National Board for Wildlife.
- (v) After such decision is taken in the meeting convened
- (vi) by the MoEF, the concerned State Governments shall grant their consent within two (2) weeks after the

meeting. After such consent obtained, the Ministry of Environment and Forest shall issue necessary notification as per the powers conferred under the Environment Protection Act, 1986, expeditiously.

- (vii) Till such notification is issued, the interim order passed by this Tribunal as modified subsequently shall continue to be in operation.
- (viii) It is needless to state that any decision taken by the Government in notifying the Eco Sensitive Zone shall be subject to the final decision of the Hon'ble Supreme Court in the matter pending before it.

22) The application stands disposed. All the interim applications stand disposed off, as the Main Application No. 158/2013 stands disposed.

....., JM
(Dr. P. Jyothimani)

....., JM
(M.S. Nambiar)

....., EM
(Dr. G.K. Pandey)

....., EM
(Prof. (Dr.) P.C. Mishra)