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

M.A. NO. 182 OF 2014 & M.A. NO. 239 OF 2014

IN APPEAL NO. 14 OF 2014

AND

M.A. NO. 277 OF 2014 IN ORIGINAL APPLICATION NO. 74 OF 2014

ORIGINAL APPLICATION NO. 74 OF 2014

In the matter of:

1. Wilfred J.
   S/o John Netto
   R/o Valiyathopu Thekkekara,
   Kochuthura, Puthiyathura P.O.,
   Trivandrum, Kerala – 695226.

2. Marydasan V.,
   S/o Varghese F.
   Ebin House, Adimalathura,
   Chowara P.O., Trivandrum, '
   Kerala – 695501.

.....Applicants

Versus

1. Ministry of Environment & Forests,'
   Through the Principal Secretary,
   Paryavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi-110003.

2. State of Kerala,
   Kerala Coastal Zone Management Authority,
   Through its Secretary,
   Sasthra Bhavan, Pattom Palace P.O,
   Thiruvananthapuram – 695 004.

3. Vizhinjam International Seaport Ltd.,
(A Govt. of Kerala Undertaking)
Through – Managing Director and CEO,
Vipanchika Tower,
1st Floor, near Govt. Guest House, Tycaud P.O.
Thiruvananthapuram – 695 014

4. National Coastal Zone Management Authority,
Through its Chairman,
C/o Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003.

.....Respondents

Counsel for Applicants :

Mr. Raj Panjwani, Sr. Advocate and Mr. Aagney Sail, Advocate.

Counsel for Respondents :
Mr. Vivek Chib, Mr. Joby Vargheese and Mr. Asif Ahmad, Advocates, for Respondent No.1.
Mr. Vikas Singh, Sr. Advocate, with Mr. Hemant Sahai, Advocate, Ms. Mazag Andrabi, Advocate, Mr. Suni Kapur, Advocate for Respondent No. 3.

APPEAL NO. 14 OF 2014

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Counsel for Appellants :

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Counsel for Respondents :

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Mr. Vikas Singh, Sr. Advocate, with Mr. Hemant Sahai, Advocate, Ms. Mazag Andrabi, Advocate, Mr. Suni Kapur, Advocate for Respondent No. 3.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr.D.K. Agrawal (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)
Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated: July 17, 2014

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common judgment we will dispose of the above Original Application No. 74 and Appeal No. 14, both of 2014 as they arise between the same parties and relate to one and the same project on identical facts.

FACTS AND LIMITATIONS

2. The appellants (applicants in Application No. 74 of 2014 hereafter commonly referred as 'appellants') are persons interested in the protection of environment and ecology. They are persons aggrieved and affected due to the Vizhinjam Port Project (for short 'the project'). The Appellants are fishermen belonging to families that traditionally do fishing in the project area and are representatives of the larger community of fisher folk who inhabit that area. By the project, not only the ecology and environment of that area would be affected but there would also be adverse impact on their livelihood. The Appellants are also the registered members of the Fish Workers Welfare Board formed by the Government of Kerala to give assistance to the people in the fishing occupation. This is the benchmark to determine that Appellants are sea going fishermen.

3. Vizhinjam International Seaport Limited (Respondent No. 3, hereafter 'the Project Proponent') formulated a project for development of Vizhinjam International Deepwater Multipurpose Seaport at Vizhinjam in Thiruvananthapuram (Trivandrum) district, in the State of Kerala. This Project involves the

construction of quays, terminal area and port building and is expected to be completed in three phases. The first phase is proposed to be built on 66 hectares of land to be reclaimed from the sea. The material required for phase I reclamation is proposed to be obtained from dredging activity in the sea. This phase requires 7 million metric tonnes of stone, aggregates, sand and soil for construction of a breakwater stretching almost 3.180 kms into the sea. This material is sought to be sourced from blasting quarries in Trivandrum and in neighbouring district of Kanyakumari in Tamil Nadu State, possibly falling in Western Ghats region.

4. The project proponent was appointed by the State of Kerala as nodal agency to develop this International Container Transhipment Terminal (deepwater port) at Vizhinjam. The Project Proponent submitted an Application in the prescribed format for obtaining the Environmental Clearance on 28th August, 2010. On the basis of Application submitted, the Terms of Reference (for short 'TOR') were prepared and considered by the Expert Appraisal Committee (for short 'the EAC') in its 95th Meeting held from 18th to 20th January, 2011 and 100th Meeting held from 11-12th May, 2011 and 101st Meeting held on 31st May, 2011. Agreeing with the Applicant, despite having serious reservations, about the selection of the project site, the higher erosion shore line of the site and the impact of other nearby ports on the project, the EAC recommended a project-specific (non-site

specific) TOR, with the direction that after site selection based on site selection criteria, it shall issue additional site-specific TOR. The non-site specific TOR of the said project were finalised by the Ministry of Environment and Forest (for short 'MoEF') vide its letter dated 10th June, 2011.

5. Thereafter, the Government of Kerala undertook the site selection exercise and concluded that the area South of Vizhinjam harbor is best suited for the project. This finding with relevant extracts of the study were communicated to the concerned officials in the MoEF vide their letter dated 14th June, 2011. EAC in its 102nd meeting held from 23rd-24th June, 2011 agreed on the Vizhinjam site and finalised the additional TOR. The additional TOR (site-specific) were finalised for the said project by MoEF on 1st July, 2011. On the basis of the TOR issued by the EAC, the Project Proponent commenced preparation of Comprehensive Environmental Impact Assessment (hereafter 'EIA'). A draft Comprehensive EIA Report was submitted by the Consultants to the Project Proponent on 25th May, 2013 in furtherance of which a public hearing was conducted on 29th June, 2013 and the final EIA Report was submitted to EAC for securing Environmental Clearance. It is the case of the Applicant that various organisations and individuals who had participated in public hearing had voiced their opposition to various lacunae in the EIA Report and raised doubts about the viability of the project. They approached the EAC requesting that they be heard but EAC

refused to grant them a hearing. Hence, they were compelled to send their objections by email and in writing to the EAC, but even those objections were not considered while granting Environmental Clearance to the Project Proponent. Finally, the EAC considered the final EIA Report in its 126th Meeting held from 19th-21st September, 2013 and 128th Meeting held from 20th-23rd November, 2013. At the meeting held in November, 2013, the EAC recommended the Project for Environmental Clearance. The Environmental Clearance was granted for Stage I to the Vizhinjam project by MoEF vide its letter dated 3rd January, 2014.

6. Amongst other, an issue raised in opposition to the project at the public hearing and otherwise, was that the project site was located in Coastal Regulation Zone-I (for short 'the CRZ-I') area, owing to its natural beauty as per the Coastal Zone Management Plan (for short 'the CZMP'), Kerala, prepared in December, 1995. Even this issue was not addressed by the EAC. The National Coastal Management Authority (for short 'NCZMA') had recommended in its 21st and 22nd Meeting held on 19th April, 2011 and 30th May, 2011 respectively, that MoEF may not like to encourage the reclassification of CRZ areas, which were approved in September, 1996, as they were in danger of regularization of violations through such reclassifications; and hence, the CZMP as approved in 1996 may be frozen and the coastal States should initiate the exercise of preparation of CZMP as per the Coastal Regulation Zone Notification, 2011 (hereafter 'the Notification of

2011'). Vide CRZ Notification of 1991, the State Governments and Union Territories were directed to prepare the CZMP with High Tide Line, 500 metres regulation line, other boundaries and different categories of coastal areas for the approval of MoEF. The State of Kerala prepared the said Plan which identified Vizhinjam area as follows:

> "This complex coast consisting of rocky areas (Mulloor, in the south and Vizhinjam-Kovalam sector), laterite cliffs (between Mullor and Vizhinjam), pocket beaches (at Vizhinjam-Kovalam), barrier beaches (Panathura) and an open coast (Poonthura-Beemapalli) has a total length of about 905 km. Karamana river, which debouches at Panathura-Pachallur area, has a 3km backwater system and a dynamic inlet. Vizhinjam has a fishing harbour with a wave energy plant and Kovalam is an international tourist destination. The Vizhinjam-Kovalam sector is of outstanding natural beauty (CRZ-I), but the area is not demarcated. The laterite cliff area which also comes under this category is subject to slumping at High Water and this can be accelerated by a rise in sea level. Hence, a 50m zone is identified as CRZ-I. Rest of the area (Mullor to Pachlloor) since comes under the rural sector is CRZ-III. North of Pachallur is the Trivandrum Corporation area, which is CRZ-II. The Parvathi Puthen Ar canal and the Karamana river up to about 1.5 km from HTL is subject to tidal influx and hence their flanks has to be regulated."

7. Aggrieved from the Order No. F. No. 11-122/0211-IA-111 of MoEF, dated 3rd January, 2014, granting Environmental and CRZ Clearance to the project for development, the Appellants have challenged the impugned Order on various grounds:

a. The project is sought to be established on the coastal area of outstanding natural beauty which is designated as CRZ-I, which is impermissible.

b. The issues raised at the public hearing, have not been considered by the concerned authorities.

c. The deletion of the area from the classification of CRZ-I areas, is arbitrary and shall irreparably damage these pristine coasts.

d. The Central Government is obliged to protect and improve the environment in terms of Section 3 of the Environment Protection Act, 1986 (for short 'Act of 1986').

e. The principle of Intergenerational Equity, as enshrined in the 1975 Charter of Economic Rights and Duties of State is directly violated in the present case.

8. The Appellants have filed the present Appeal in terms of the provisions of Section 16 of the NGT Act. Under Section 16 of the NGT Act, an appeal has to be filed within thirty days from the date on which the order or decision or direction or determination is communicated to the appellant. However, in terms of the proviso to Section 16, the Tribunal can entertain an appeal beyond the period of thirty days, for a further period not exceeding sixty days, if the appellant is able to show 'sufficient cause' for delay in filing the appeal within the said period of 30 days.

9. The present appeal has been filed after a delay of 58 days for which condonation has been prayed for vide M.A. No. 182 of 2014.

10. It is stated in this Application for condonation of delay that the appellants are not literate in English and are ignorant of internet, computer etc., to be able to read or download Environmental Clearance from internet. The Order dated 3rd January, 2014 granting Environmental and CRZ Clearance to the Project Proponent was not published in the local newspapers in contravention of the Condition No. 15 of the Environment Clearance. The appellants came to know of the impugned Order in the first week of February, 2014 from their village men and went to take the legal advice at Trivandrum where they were informed that in terms of Condition No. 17 of the Environment Clearance, the appeal should be filed within 30 days, which had already lapsed. However, on seeking proper information later, the appellants were told that they can file the appeal within 90 days in terms of Section 16 of the NGT Act. Having come to know the same in March, 2014, the appellants filed the present appeal on 1st April, 2014. There is delay of 58 days in filing the present appeal. The appellants termed it as 'sufficient cause' justifying condonation of delay of 58 days.

11. No reply to this application has been filed and, in fact, the Learned Counsel appearing for the Project Proponent did not seriously oppose the condonation of delay. In terms of Condition No. 15 of the Environmental Clearance, the Order granting Environment and CRZ Clearance ought to have been published in atleast two local newspapers having wide circulation in that area. Furthermore, in terms of the Environment Clearance Regulations,

2006 (for short 'the Regulations of 2006'), Rule 10 such Order has to be published as well as put in the public domain to ensure that persons, particularly of that area are able to exercise their rights in terms of the Regulations of 2006 and the provisions of the Act of 1986. Reference can be made to the judgments of this Tribunal in the case of *Savemon Region Federation v. Union of India,* 2013 Vol-1, All India NGT Reporter Page 1 and *Ms Medha Patekar v. Ministry of Environment and Forest,* 2013 All India NGT Reporter, Page 174, Delhi, wherein it was held that Courts should not adopt an injustice oriented approach, while determining period of limitation. In the case of *Savemon Region* (supra), the Tribunal held as under:

> "42. Since the present case relates to a Category 'A' project, we are primarily concerned with Regulation 10 (i)(a) of the Environment Clearance Regulations, 2006. The most noticeable expression used in this regulation is that it 'shall be mandatory' for the Project Proponent to make public the Environmental Clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it in at least two local newspapers of the district or State where the project is located, and in addition, this shall also be displayed on the Project Proponent's website permanently. The use of the words 'shall' and 'mandatory' in Regulation 10 of 2006 Regulations clearly exhibits the intent of the Legislature not to make the compliance to these provisions ''directory'. There is no legislative indication or reason for construing the word 'shall' as 'may'. Settled canon of statutory interpretation contemplates that it is necessary to lay emphasis on the language used by the framers of the regulations. Once a provision has no element of ambiguity and the provision its being mandatory is clearly discernible from the plain language thereof, it would be impermissible to hold, even impliedly, that the provision is directory in its content and application. It would be required of the concerned stakeholders to comply with such provisions stricto sensu. The principle of substantial compliance would have no application to this provision and on its

plain reading the provision is mandatory and must be complied with as provided. The Project Proponent is legally obliged under this provision to make public the Environmental Clearance granted for the project with the environmental conditions and safeguards at their cost by promptly advertising it in at least two newspapers of the district or in the state where the project is located. In addition, the order shall also be displayed on its website permanently.

43. Still in addition thereto, the Project Proponent also has an obligation to submit the copies of the Environmental Clearance to the Heads of local bodies, Panchayats and Municipal bodies in addition to the relevant offices who in turn have to display the same for 30 days from the date of receipt thereof.

44. An obligation is also cast upon the MoEF or the State/Union Territory Level Environmental Impact Assessment Authority, as the case maybe, to place the Environmental Clearance in the public domain on Government portal. On the analysis of Regulation 10 and its sub-regulations, it is clear that the obligation to communicate the Environmental Clearance in the prescribed manner lies both upon the MoEF/State Government/State Environmental Impact Assessment Authority, on the one hand and the Project Proponent, on the other. This mandatory legal obligation is intended to safeguard the public interest, on the one hand and protection of the environment, on the other. That is why the legislature has given the right to 'any person' to prefer an appeal against such order irrespective of his locus standi or his interest in the *lis*.

45. This brings us to an ancillary question as to what is required to be published/advertised in the two newspapers of the district or the State where the project is located. The answer is provided in the Regulation itself which states that it is mandatory to make public the Environmental Clearance granted for the project along with the environmental conditions and safeguards. In other words, mere publication of information about the order granting Environmental Clearance would not be construed as compliance with this provision stricto sensu. The conditions for granting of Environmental Clearance with definite safeguards have to be published in the newspaper. The purpose behind publishing a notice with the contents of the order is only that 'any person' would be able to make up his mind whether he needs to question the correctness or legality of such order."

12. The Project Proponent has placed no documents on record to show that there was compliance of condition No. 15 of the Order granting Environmental Clearance and or the Regulations of 2006. Publication of the environmental conditions and safeguards as stated in the Order of Environmental Clearance was not published in the two legal newspapers. Such non-compliance came to the notice of the appellant at much subsequent date. The appellant is expected the delay on the ground that they are not literate in English and are ignorant of internet and computer, as a result of which they were unable to download the Environmental Clearance Order. Immediately upon having come to know of the impugned order they sought legal advice and later filed the appeal resulting in delay. The explanation given appellant on affidavit for condonation of delay appears to be bona fide and we have no reason to disbelieve the same. The Project Proponent having failed to comply with the requirements of law cannot be permitted to take advantage of its own wrong. Thus, in terms of the proviso to Section 16, we are of the considered view that the Applicant was prevented by a sufficient cause from filing the appeal within the initial period of 30 days and the delay of 58 days in filing the appeal requires to be condoned. Therefore, we allow Miscellaneous Application No. 182 of 2014 and condone the delay of 58 days in filing the present appeal without any Order as to cost.

APPLICATION NO. 74 of 2014:

13. As already noticed, the appellants have also filed another Application No. 74 of 2014 under Section 14 of the NGT Act

relatable to the same project with particular emphasis on areas of outstanding natural beauty in the Western Ghats. The application has been filed with the following prayers:-

> (a) "Direct that the coastal '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' along the coast line of India be protected as CRZ-1`areas or otherwise, notwithstanding their non-inclusion in the CRZ Notification, 2011.
>
> (b) Direct that coastal areas, throughout the country, including the Vizhinjam coast, which have been declared as areas of outstanding natural beauty or declared as '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' under the CRZ Notification, 1991, be preserved and no activity which would damage such areas be undertaken."

14. The factual matrix as projected by the applicant leading to the above prayers is that the applicants being persons interested in protection of environment, ecology of the coastal area of Mulloor and being personally affected, are persons aggrieved and entitled to invoke the provisions of Section 14 of the NGT Act. According to the Applicants, they intend to protect and safeguard 'coastal 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', which categories were deleted

from the classification of CRZ-I areas in Para 7(i) CRZ-I of the Notification of 2011. These areas have been categorised/classified as CRZ-I areas from time to time. The Notification of 2011 deletes these areas, which were categorised as 'areas of outstanding natural beauty' and the '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' under the Notification of 1991. According to the applicants, the project in question which has been granted Environmental and CRZ Clearance vide Order dated 3rd January, 2014 by MoEF is sought to be established on 'coastal areas of outstanding natural beauty'. In the Notification of 1991, the Vizhinjam-Kovalam sector was declared to be an 'area of outstanding natural beauty' in part of CRZ-I, but the area has not been demarcated. The facts in regard to grant of Environmental and CRZ Clearance and the grounds stated in Appeal 14 of 2014 have been reiterated in this Application. The applicants submit that they have instituted the Application under Section 14 of the NGT Act to protect and preserve 'coastal areas of outstanding natural beauty' and areas which are '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 and other Authorities' which have been deleted from the classification of CRZ-I vide Notification of 2011. Applicants also submit that such non-inclusion of the areas of outstanding natural beauty is arbitrary and violative of

Article 14 of the Constitution. The Coastal Zone Management Plan (for short 'CZMP') has been prepared contrary to the guidelines of preparation of such CZMPs, as neither objections were invited nor public hearing was held in accordance with the guidelines. The applicants also rely upon the observations of the Supreme Court of India in the case of *Indian Council for Enviro-Legal Action v. Union of India,* (1996) 5 SCC 281, to contend that the economic development should not be allowed to take place at the cost of ecology or by causing wide-spread environmental destruction and violation. At the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand.

15. The applicants have also contended that non-inclusion of 'areas of outstanding natural beauty' and 'areas likely to be inundated due to rise in sea level consequent upon global warming' etc. should not have been deleted from the Notification of 2011 and such deletion is violative of the 'doctrine of Public Trust'. Non-inclusion would not only adversely affect the coastal areas in the State of Kerala but is likely to affect 6000 kms long coastal line of the country. The coastal areas are under direct threat of being damaged and destroyed permanently with CRZ-I area protection being taken away, thus, also violating the 'Precautionary Principle'. Such areas need to be protected even if they do not form part of the Notification of 2011. By defaulting in

protecting such areas, which should have been part of the Notification of 2011 or otherwise, the Central Government has omitted to discharge its obligation with respect to preservation and protection of 'coastal areas of outstanding natural beauty'. Intergenerational Equity is an integral element of ecological sustainable development and has been incorporated into international law as well. Applying that principle, it is the duty of all concerned with the present to ensure that the next generation is not exposed to undue hardship or ecological or environmental degradation.

16. On the other hand, the Respondents, particularly the Project Proponent contended that the present Application is barred by time. It was contended that the Order granting Environmental and CRZ Clearance was passed by the authorities on 3rd January, 2014 and that the Petition could be filed within the period of six months from the date on which the cause of action for such dispute first arose. It is alleged further that such Application could be entertained by the Tribunal within a further period not exceeding 60 days if the applicant was able to show 'sufficient cause' for filing the Application beyond the period of six months. The present Application has been filed beyond that period, hence it is barred by time and not maintainable before the Tribunal.

17. We are not able to find any merit in the contention of the Respondent. Firstly, in this petition, the applicants are not challenging the Environmental Clearance granted to the Project Proponent vide Order dated 3rd January, 2014. Even if it is so

assumed, the present Application has been filed within six months from the date of that Order as the Application was filed on 3rd April, 2014. Secondly, in the present Application, the applicant is claiming a general relief, praying before the Tribunal that the 'areas of outstanding natural beauty' and the 'areas likely to be inundated due to rise in sea level consequent upon global warming' should be protected, even if such areas do not form part of the Notification issued by the Union or the State Government as CRZ-I. According to the Applicant, the Notification of 2011 excluded these areas and hence the need to protect such areas is a continuing cause of action, which would thus save the right of the applicants to bring this Application within the stipulated period. May be the cause of action for quashing of the Notification and further for inclusion of these areas in the Notification arose in the year 2011 when the said Notification was issued, but a relief claiming for protection and preservation of such excluded areas and issues relating to the environment and ecology thereof, would squarely be a substantial question of environment, falling within the purview of the provisions of the Act of 1986. *De hors* the contents of the Notification of 2011, the cause of action for such dispute though first arose in the year 2011, but protection of the excluded areas being an environmental dispute would give rise to subsisting cause of action or a continuing cause of action and therefore, amenable to the jurisdiction of the Tribunal under Section 14 of the NGT Act. In fact, as already noticed, the various paragraphs and the prayers made in the Application clearly

demonstrate that in this Application, the applicant is hardly raising a direct challenge to the Notification of 2011.

18. The prayer of the Applicant also relates to the coastal CRZ-I areas beyond Kerala. It is stated to be around 6000 kms along the coastal line in different States of the country. We may notice that the applicant also filed Miscellaneous Application No. 277 of 2014 for amendment praying that the Coastal Zone Management Authority of 8 coastal States and 4 Union Territories be impleaded as Respondents in the Application No. 74 of 2014 as that would help in completely and fully adjudicating the environmental issues in such areas over the entire coast line. This Application is pending before the Tribunal. The cumulative effect of the above discussion is that the present Application cannot be dismissed as being barred by limitation.

19. Having stated the facts of both the cases that we are dealing with in the present judgment and having answered the question of limitation, we would now notice the preliminary objections that have been raised on behalf of the Respondents, particularly the Project Proponent, as well as their objections to the transfer of Application 17 of 2014 from the Southern Zonal Bench of NGT to the Principal Bench at New Delhi. The preliminary and other objections raised by the Respondents can precisely be stated as under:

A. The NGT being a creation of a statute is not vested with the powers of judicial review so as to examine the constitutional

validity/vires or legality of a legislation - whether subordinate or delegated (in the present case, the CRZ Notification, 2011). Exercise of such jurisdiction would tantamount to enlarging its own jurisdiction by the Tribunal.

B. The Principal Bench of National Green Tribunal does not have any territorial jurisdiction to entertain and decide these cases as the cause of action has arisen at Kerala and the coastal zone that is the subject matter of the Petition is in Kerala.

C. The Chairperson of the National Green Tribunal, unlike some of the other statutes, is not vested with the power to transfer cases to its Principal or Regional Benches from other Benches.

D. The Original Application No. 74 of 2014 is a device to indirectly and effectively seek insertion of certain words into the CRZ Notification, 2011, which is impermissible.

<u>Discussion on issue (A)</u> i.e. "The NGT being a creation of a statute is not vested with the powers of judicial review so as to examine the constitutional validity/vires or legality of a legislation - whether subordinate or delegated (in the present case, the CRZ Notification, 2011). Exercise of such jurisdiction would tantamount to enlarging its own jurisdiction by the Tribunal":

20. In order to effectively and meaningfully deliberate upon this issue, the first and the foremost concern would be the legislative scheme under the NGT Act. The rapid expansion in industrial infrastructure and transportation sector and increasing urbanisation in the recent years have given rise to new pressures

on the natural resources and particularly on the environment. The risks to human health and environment arising out of hazardous activities have also become a matter of concern. With these considerations in mind and the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, as well as United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992, to which both Conferences India is a party, the legislature enacted the NGT Act, to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance, for the establishment of this Tribunal for effective and expeditious disposal of cases arising from such accidents and to ensure that people receive the relief in the field of environment in accordance with the provisions of the Act. The legislature also felt that there was commensurate increase in environment related litigation pending in various Courts and authorities. In paragraph 5 of the Statement of Objects and Reasons of the NGT Act, it is stated that taking into account the large number of environmental cases pending in higher courts and the involvement of multi disciplinary issues in such cases, the Law Commission was required to consider the need for constitution of the specialised environmental courts. It was felt to enact a law to provide for establishment of National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal

right related to environment. All this led to introduction of NGT Bill, 2009 which was then passed and made the NGT Act. The essence of the Statement of Objects and Reasons of the Act found their trace in the Preamble of the statute. Besides reiterating that, this Tribunal was being established for effective and expeditious disposals of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and with a view to give relief and compensation for damages to persons, property and for matters connected therewith or incidental thereto, it was also due to the fact that in the Conferences afore-stated, all States were required to provide for effective access to judicial and administrative proceedings, including redressal and remedy and to develop national laws in relation to liability and compensation for the victims of pollution and other environmental damage. The States were also required to take appropriate steps for the protection and improvement of human environment. This is the essence of the Statement of Objects and Reasons and the Preamble that precedes the NGT Act.

21. Various provisions of the NGT Act have to be read and construed cumulatively to achieve objectivity in examining dimensions of the jurisdiction of the Tribunal and to interpret the relevant provisions for securing the fields in which this Tribunal can effectively settle disputes or issues relating to environmental

jurisprudence within the framework of the NGT Act. Section 2(c) of the NGT Act defines environment as follows:-

> "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."

22. Section 2(m) provides insight into what is 'substantial question relating to environment'-

> "substantial question relating to environment" shall include an instance where,-
>
> (i) there is a direct violation of a specific statutory environmental obligation by a person by which,-
>
> A. the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
>
> B. the gravity of damage to the environment or property is substantial; or
>
> C. the damage to public health is broadly measurable;
>
> (ii) the environmental consequences relate to a specific activity or a point source of pollution."

23. Section 2(f) of the NGT Act defines hazardous substance as follows:

> "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991."

24. Section 2(2) further provides that the words and expressions used in the NGT Act but not defined herein and defined in the seven enactments specified in Schedule I to the NGT Act and

other Acts relating to environment shall have the meaning, respectively, assigned to them in those Acts.

25. From the above stated definitions, it is clear that the legislature in its wisdom has used expressions of wide connotation. It necessarily implies that the legislature intended that this Tribunal should exercise wide jurisdiction over all matters relating to environment. The Tribunal is vested with three kinds of jurisdiction within the framework of the NGT Act. Firstly, Section 14 gives original jurisdiction to the Tribunal. It is provided that the Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such questions arise out of implementation of the enactments specified in Schedule I to the NGT Act. In terms of Section 14 (2), this Tribunal shall hear the disputes arising from the questions in sub-section (1) and settle such disputes and pass orders thereon.

26. The Second type of jurisdiction that the legislature has conferred upon this Tribunal is appellate jurisdiction. Section 16 contemplates that any person aggrieved by the orders passed by the authorities or bodies under clause (a) to (j) of Section 16, may file an appeal to this Tribunal. There is nothing in Section 16 of the NGT Act that specifically or even by necessary implication provides that the appellate jurisdiction of the Tribunal is circumscribed by any limitation. The Tribunal shall be the Appellate Authority competent to decide questions of law and fact both. It may be noticed that the procedure laid down by the Code

of Civil Procedure, 1908 (for short 'CPC'), does not apply to the proceedings before the Tribunal *stricto sensu* and the Tribunal is to be guided by the principles of natural justice. It is further stipulated under Section 19(4) of the NGT Act that the Tribunal is vested with the same powers as are vested in a civil court under CPC and would have specifically the powers enumerated under clause (a) to (k) of sub-section (4) of Section 19. Under the provisions of CPC, particularly Order XLI, the Appellate Court, particularly, the First Appellate Court is a Court of both fact and law. It is a settled principle of law and in fact has been consistently adopted by the Higher Courts. Thus, the questions of law or fact arising before the Tribunal in the Appeals preferred by the aggrieved persons can be examined by the Tribunal.

27. In the case of *Santosh Hazari v. Purshottam Tiwari,* [2001] 251 ITR 84 (SC), the Hon'ble Supreme Court stated the principle that the Appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on question of fact and law. Similar view was also expressed by the Hon'ble Supreme Court of India in the case of *Madhukar and Ors. v. Sangram and Ors.,* AIR 2001 SC 2171. The scope of power of the NGT, particularly in reference to its appellate jurisdiction under Section 16 of the Act can also be explained with reference to the provisions of Order XLI Rule 1 read with Rule 33 of the same Order, which empowers the Appellate Court to pass or make such further or other orders as

may be required. Thus, the jurisdiction of the Appellate Court is very wide and extensive. The power is of wide and over-riding nature and can be exercised *ex debito justitiae,* i.e. in the interest of justice.

28. The third kind of special jurisdiction that is vested in the Tribunal emerges from the provisions of Section 15 of the NGT Act. This Section empowers the Tribunal to order relief and compensation to victims of pollution and other environmental damage arising under the enactments specified in the Schedule I, for restitution of property damaged and for restitution of the environment in such area/areas, as the Tribunal may think fit. The liability that would accrue upon a person from the orders of the Tribunal in exercise of its powers under Section 15 of the NGT Act would be in addition to the liability that may accrue or had accrued under the Public Liability Insurance Act, 1991.

29. All civil cases where substantial question relating to environment arises with reference to implementation of the Scheduled Acts are to be decided by the Tribunal. Jurisdiction of the civil courts has been excluded under Section 29 of the NGT Act. In terms of Section 29 (1), from the date of establishment of Tribunal under the NGT Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its Appellate jurisdiction, while under sub-section (2), no civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of

property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of the action taken shall be granted by the civil court.

30. Another very important provision is Section 33 which gives over-riding effect to the provisions of the NGT Act. The provisions of the NGT Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the NGT Act. Also the appeals against the orders of the Tribunal lie to the Supreme Court of India under Section 22 of the NGT Act.

31. The cumulative reading of the above provisions outlines the legislative scheme, scope and ambit of jurisdiction of this Tribunal and the reliefs that can be granted by the Tribunal in exercise of its jurisdiction under the NGT Act. As already discussed, different jurisdictions are vested in this Tribunal with wide dimensions and amplitude.

32. Next, we are expected to deal with the question as to the impact of the provisions relating to the jurisdiction of the Tribunal under this welfare legislation. From the Statement of Objects and Reasons as well as the Preamble of the NGT Act, it is clear that the framers of the law intended to give a very wide and unrestricted jurisdiction to the Tribunal in the matters of environment. Be it original, appellate or special jurisdiction, the dimensions and areas of exercise of jurisdiction of the Tribunal

are very wide. The various provisions of the NGT Act do not, by use of specific language or by necessary implication mention any restriction on the exercise of jurisdiction by the Tribunal so far it relates to a substantial question of environment and any or all of the Acts specified in Schedule I. Sections 15 and 16 of the Act do not enumerate any restriction as to the scope of jurisdiction that the Tribunal may exercise. There is no indication in the entire NGT Act that the legislature intended to divest the Tribunal of the power of judicial review. It is the settled cannon of statutory interpretation that such exclusion has to be specific or absolutely implied from the language of the provisions governing the jurisdiction of the Tribunal. Another relevant consideration which the Tribunal should keep in mind is in regard to independence of judicial functioning of the Tribunal. In the case of *S.P. Gupta v. Union of India,* (1981) Supp. SCC 87, the Hon'ble Supreme Court stated that the principle of independence of judiciary is not an abstract conception but is a living faith which must derive its inspiration from the Constitutional charter and its nourishment and sustenance from the constitutional values. The principle of independence of judiciary is the basic feature of the Constitution. Any policy or decision of the Government which would undermine or destroy the independence of the judiciary would not only be opposed to public policy but would also impinge upon the basic structure of the Constitution (*Brij Mohan Lal v. Union of India,* (2012) 6 SCC 502).

33. The dictum of the Hon'ble Supreme Court in the case of *Supreme Court Advocates on Record Association v. Union of India,* (1993) 4 SCC 441, that independence of judiciary has always been recognised as a part of basic structure of Constitution, squarely applies to all the Courts and Tribunals performing the function of dispensation of justice. Once the Courts and the Tribunals are free from the influence that could be exercised by executive or otherwise, their functioning would be in consonance with the constitutional scheme and fundamental principles of democracy. Any influence or pressure by any other organ of the State upon the functioning of the Judges would impinge upon the independence of the judiciary.

34. In light of the above, let us examine if the National Green Tribunal, has the complete trappings of Original as well as Appellate Court while dealing with all civil cases, does have complete judicial independence. In terms of Section 5 of the NGT Act, a person is not qualified for appointment as the Chairperson or Judicial Member, unless he is or has been a Judge of the Supreme Court of India or a Chief Justice of a High Court, or is or has been a Judge of the High Court for being eligible to be appointed as Judicial Member. The process of selection is provided under the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Enquiry) Rules, 2010 (for short 'the Rules'). In terms of Rule 5 of the said

Rules, the Government has to invite applications, screen and shortlist the same and the shortlisted candidates have to appear before the Selection Committee to be interviewed in terms of Rule 5 (5). The Selection Committee, particularly for selection of Judicial Members is to be chaired by a sitting Judge of the Supreme Court of India, along with the Chairperson of the Tribunal (who is or has been a judge of the Supreme Court) and other Members as nominated under Rule 3 of the said Rules. The Chairperson, Judicial Members and Expert Members can be removed on the grounds stated under clauses (a) to (e) of sub-section (1) of Section 10 of the NGT Act by the Central Government, but only after a regular enquiry is conducted by a Judge of the Supreme Court, after receiving the preliminary finding of a Committee constituted by the Government in terms of Rule 21 of the Rules. The misbehaviour or incapacity of the Chairperson or Judicial or Expert Member has to be in relation to his tenure as such. It has to be in relation to performing the functions of the office in respect of the post that the Chairperson or the Judicial Member or the Expert Member holds. After the enquiry by the Judge of the Supreme Court of India in accordance with these provisions, a Judge has to be nominated by the Chief Justice of India to conduct an enquiry. Findings and the report of the enquiry have to be submitted to the President along with reasons upon which an appropriate action in accordance with law can be taken.

35. The expression 'all civil cases' appearing in Section 14 falling under the Original jurisdiction of the Tribunal has to be construed liberally as contemplated under the provisions of the Section. This expression has to be given a wider meaning and connotation and cannot be restricted to the civil cases under the CPC. From the very language, it is abundantly clear that the Act is contemplating appeals in civil cases provided not only by CPC but also by other laws in force immediately before the NGT Act came into force. The expression 'civil cases' in contemplation of the Act is, thus, not limited to the cases governed by the CPC but extends to cases, which are civil in nature, which raise a substantial question of environment and arise from the Schedule Acts. As already noticed, the three different kinds of jurisdiction that the Tribunal exercises are free from any influences or control of the Government or other organs of the State. However, appeals from the Tribunal would lie to the Supreme Court of India in terms of Section 22 of the Act and Article 226 or 32 of the Constitution, as the case may be. There is nothing in the provisions of the NGT Act that directly or even by necessary implication is indicative of any external control over the National Green Tribunal in discharge of its judicial functions. MoEF is merely an administrative Ministry for the National Green Tribunal to provide for means and finances. Once budget is provided, the Ministry cannot have any interference in the functioning of the National Green Tribunal. Entire process of appointment and even removal is under the effective control of the Supreme Court of India, as neither

appointments nor removal can be effected without the participation and approval of a sitting judge of the Supreme Court of India. The administration is merely an executing agency within the framework of the Act. The Act is comprehensive enough to provide a complete mechanism for approaching the National Green Tribunal, adjudication of disputes in accordance with law and the appeals that would be preferred against the orders of the Tribunal. Furthermore, it also provides limitation and complete procedural law that would be governing the process of adjudication before the Tribunal. The legislature under the Act has therefore, provided effective and efficient alternative institutional mechanism in relation to environmental cases. In the case of *R.K. Jain v. Union of India,* 1993 (4) SCC 119, the Supreme Court discussed the concept of alternative institutional mechanism in adjudicatory process and held as under:

> "So long as a the (sic) alternative institutional mechanism or authority set up by an Act is not less effective than the High court, it is consistent with constitutional scheme. The faith of the people is the bed-rock on which the edifice of judicial review and efficacy of the adjudication are founded. The alternative arrangement must, therefore, be effective and efficient. For inspiring confidence and trust in the litigant public they must have an assurance that the person deciding their causes is totally and completely free from the influence or pressure from the Govt. To maintain independence and imperativity it is necessary that the personnel should have at least modicum of legal training, learning and experience."

36. Another feature of Judicial Tribunal that has been spelled out by the Supreme Court is stated with some elaboration in the case of *Union of India v Madras Bar Association* (2010) 11 SCC 1,

where the Court stated that the legislature has the competence to make laws and provide which disputes will be decided by the Courts and which disputes will be decided by the Tribunal. It is subject to constitutional limitations, without encroaching upon independence of judiciary and keeping in view the principles of rule of law and separation of power. If the Tribunals are to be vested with judicial powers exercised by Courts, such Tribunals should possess independence, security and capacity associated with Courts. All the three stated features are satisfied in the present case. The scheme of the NGT Act clearly gives the Tribunal complete independence to discharge its judicial functions, have security of tenure and conditions of service and is possessed of complete capacity associated with Courts. A complete mechanism is provided for adjudication process before the Tribunal as well as the method and procedures under which the orders of the Tribunal could be assailed before the higher courts. Thus, this Tribunal has the complete trappings of a civil court and satisfies all the stated features for acting as an independent judicial Tribunal with complete and comprehensive powers.

37. In the above-referred case of *Union of India v. Madras Bar Association*, the Supreme Court while upholding the constitution of National Company Tribunal and transferring of company jurisdiction to it also held that such legislation was neither unconstitutional nor violative of the doctrine of separation of powers and independence of judiciary. The Constitution

contemplates judicial power being exercised by both Courts and Tribunals, except the exercise of powers and jurisdiction vested in superior Courts by the Constitution. The powers and jurisdiction of courts are controlled and regulated by legislative enactments. The legislature has the power to create Tribunals with reference to a specific enactment and confer jurisdiction on them to decide disputes in regard to matters arising from such enactments. Therefore, it cannot be said that the legislature has no power to transfer judicial functions traditionally perform by courts to Tribunals. Judicial functions and judicial powers are one of the essential attributes of sovereign states and of consideration of policy the State transfer its judicial functions and powers mainly to the courts established by the Constitution but that does not affect the competence of the State by appropriate measures to transfer parts of its judicial powers and functions to Tribunals. The fundamental feature common to both the courts and the Tribunals is that, they discharge judicial functions and exercise judicial powers which inherently rest in sovereign State. If the Tribunals are vested with the judicial power here to vested in or exercise by courts such Tribunals should possess the independence security and capacity associated with courts. Once Tribunals are created without impinging upon the above stated doctrines, it being a creation of the statute, would have jurisdiction to try and decide cases as contemplated under that statute.

38. The power of the Parliament to enact a law which is not covered by an entry in List II and III is absolute, while Articles 323-A and 323-B of the Constitution specifically enable the legislatures to enact laws for establishment of tribunals, in relation to the matters specified therein. The power of the Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323-A or 323-B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with the Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323-A or 323-B of the Constitution. In other words, Article 323-A and 323-B do not take away that legislative competence. It is the law enunciated by the Supreme Court of India in the case of *State of Karnataka v. Vishwabharathi Housing Building Coop. Society and Others,* (2003) 2 SCC 412.

39. Having dealt with the constitution of the Tribunal and having established its independence, now let us proceed to examine the scope of power of the Tribunal, with particular reference to examining a subordinate or delegated legislation as being *ultra vires,* unconstitutional or illegal. Judicial review is the power of the court to review statutes or administrative acts or determine their constitutionality or validity according to a written constitution. In a wider sense, judicial review is not only

concerned with the merits of the decision but also the decision making process. It tends to protect individuals against the misuse or abuse of power by a wide range of authorities. Judicial review is a protection to the individual and not a weapon. It is the doctrine under which legislative and/or executive actions are subject to review (and possible invalidation) by the judiciary. A specific court with the power of judicial review may annul the acts of the State, when it finds them incompatible with a higher authority (such as the terms of a written constitution). Judicial review is an example of checks and balances in a modern governmental system, where the judiciary checks the other branches of government. This principle is interpreted differently in different jurisdictions, which also have differing views on the different hierarchy of governmental norms. As a result, the procedure and scope of judicial review may differ from country to country and State to State. Unlike in England, where the judiciary has no power to review the statutes/Acts made by the Parliament, the United States Supreme Court in terms of Article III and Article VI exercises the power of judicial review of the Acts passed by the Congress and has struck down several statutes as unconstitutional. In India, the Supreme Court and the High Courts have frequently exercised the power of judicial review keeping intact the 'doctrine of separation of power'. Challenge to legislation before the Courts in India has primarily been permitted on a very limited ground. The legislation in question should either be unconstitutional, or should lack legislative competence.

Challenge to such legislation as being unreasonable has also been permitted, if it violates or unreasonably restricts the fundamental rights, particularly under Article 14 and 19 adumbrated in our Constitution.

40. The Courts are vested with the power of judicial review in relation to legislative acts and even in relation to judgments of the Courts. The power of judicial review has been exercised by the Courts in India sparingly and within the prescribed constitutional limitations. The Courts have also taken a view that functions of the Tribunal being judicial in nature, the public have a major stake in its functioning, for effective and orderly administration of justice. A Tribunal should have judicial autonomy and its administration relating to dispensation of justice should be free of opinions. (*Ajay Gandhi v. B. Singh, (2004) 2 SCC 120*). The National Green Tribunal has complete control over its functioning and all the administrative powers, including transfer of cases, constitution of benches and other administrative control over the functioning of the Tribunal, are vested in the Chairperson of the NGT under the provisions of the NGT Act.

41. The Principle that the Courts have inherent powers to do justice between the parties is equally applicable to administration of justice by the Tribunals. We may examine certain settled principles in this regard. In the case of *Jet Plywood Pvt. Ltd. v. Madhukar Nowlakha,* AIR 2006 SC 1260, where the Supreme Court held that the Principle is well established when the Code of Civil Procedure is silent regarding a procedural aspect, the

inherent power of the Court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. Provisions of the Code cannot be stated exhaustively as legislature cannot contemplate all possible circumstances. In *Union of India and Anr v. Paras Laminates (P) Ltd,* AIR 1991 SC 696, the Supreme Court stated the other equitable principle as:

> "8. There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised, the powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes, (eleventh edition) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

42. In the case of *The Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 SC 430, It was held that:

> "7. Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction data est, ea quoqe concessa esse vendentur, sine quibus jurisdictio explicari non potuit." An instance is given based on Ex. Parle Martin (1879) 4 Q.B.D. 212, 491 that

"where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced."

43. In the case of *Grindlays Bank Ltd. v Central Government Industrial Tribunal and Ors.* AIR 1981 SC 606, the Supreme Court while dealing with various provisions of the Industrial Disputes Act and examining the powers of the Tribunal held as under:

"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

44. From these stated principles it is clear that the Tribunal has to exercise powers which are necessary to administer the justice in accordance with law. Certainly the Tribunal cannot have contrary to the powers prescribed or the law in force but it certainly would have to expand its powers and determine the various controversies in relation to fact and law arising before it. This Tribunal has the inherent powers not only by implied application of the above enunciated principles of law but the provisions of the NGT Act particularly Section 19 of the NGT Act

which empowers the Tribunal to regulate its own procedure and to be guided by the Principles of natural justice.

45. The ancillary question that falls for consideration of the Tribunal is whether this power of judicial review can be exercised by the Judicial Tribunals and to what extent?

46. In the case of *S.P. Sampath Kumar v. Union of India* (1987) 1 SCC 124, the Apex Court in view of its earlier judgment, considered the essentials of judicial review and its exercise by alternative institutional mechanism. The court took the view that the alternative institutional mechanism or arrangement for judicial review could be framed by the legislature, provided it is not less efficacious than the High Court but the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 32 of the Constitution of India could not be ousted.

47. It needs to be noticed that the Supreme Court vide an interim order passed in *Sampat Kumar's* case (supra) only which is reported as (1985) 4 SCC 458, had directed the Government to amend the existing law and take measures with a view of ensuring the functioning of the Tribunals along with constitutionally sound principles. As a result of compliance to the directions of the Supreme Court, the challenge before the Supreme Court in the main *Sampat Kumar's* case was restricted to the constitutionality of the provisions of the Administrative Tribunal Act, 1985 (for short 'CAT Act'). *Inter alia* the Court called upon to examine the question whether the Tribunal had the jurisdiction to strike down the rule framed by the President of India under the proviso to

Article 309 of the Constitution, being violative of Articles 14 and 61 of the Constitution. The Court took the view that the Tribunal should be a real substitute of the High Court, not only in form but in content, not *de juro* but *de facto* as well. Further, it was held that the Tribunal has the power of judicial review. The Court, while dealing with the provisions of the CAT Act, took the view that the Tribunal is a substitute of civil courts and High Courts and has a very wide jurisdiction including the power of judicial review. Similar view was also expressed by the Court in the case of *J.B. Chopra v. Union of India* AIR 1987 SC 357 where the Court held as under:

> "2. The Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution."

48. The Court in the case of *Union of India v. Parma Nanda,* (1989) 2 SCC 177, thus held as under:

> "15. The expression "all courts" in this connection includes civil courts and High Court but not the Supreme Court. The powers of the Supreme Court for obvious reasons have been expressly kept undisturbed. The Powers of the High Courts under Article 226, insofar as they are exercisable in relation to service matters stand conferred on the Tribunal established under the Act. The powers of other ordinary civil courts in relation to service matters to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred also stand conferred on the Tribunal.
>
> 16. This position becomes further clear by Sections 27, 28 and 29 of the Act. Section 27 provides for finality of the orders of the Tribunal. Section 28 excludes the jurisdiction of courts except the Supreme Court or any

Industrial Tribunal, Labour Court, concerning service matters. Section 29 provides for automatic transfer of all pending proceedings in the High Court under Articles 226 and 227, relating to service matters (except appeals) to the Tribunal for adjudication. Likewise, suits and other proceedings pending before a court or other authority relating to service matters also stand transferred to the Tribunal for determination.

17.The Act thus excludes the jurisdiction, power and authority of all courts except the Supreme Court and confers the same on the Tribunal in relation to recruitment and service matters. Section 3(2) comprehensively defines 'service matters' to mean all matters relating to conditions of service including the disciplinary matters.

18. From an analysis of Sections 14, 15, 16, 27, 28 and 29, it becomes apparent that in the case of proceedings transferred to the Tribunal from a civil court or High Court, the Tribunal has the jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ proceeding could have respectively exercised. In an original proceedings instituted before the Tribunal under Section 19, the Tribunal can exercise any of the powers of a civil court or High Court. The Tribunal thus, could exercise only such powers which the civil court or the High Court could have exercised by way of judicial review. It is neither less nor more. Because, the Tribunal is just a substitute to the civil court and the High Court. That has been put beyond the pale of controversy by this Court while upholding constitutional validity of the Act in S.P. Sampath Kumar v. Union of India."

49. It needs to be noticed at this stage that in the case of *L. Chandra Kumar v. Union of India,* (1997) 3 SCC 261, a division bench of the Supreme Court felt that the decision rendered by the five judge constitution bench of the Supreme Court in *S.P. Sampath Kumar* case (supra) needs to be comprehensively reconsidered. It was also noticed in their order that there were divergent views expressed by benches of the Supreme Court post *Sampath Kumar* case (supra) and thus, the situation warrants a

fresh look by a larger bench over all the issues adjudicated by the Supreme Court in *Sampath Kumar's* case.

50. Vide an interim order dated 31st October, 1985 passed in *Sampath Kumar*, the Court directed to carry out certain measures with a view to ensure better functioning of the Tribunal along constitutionally sound principles. These changes had already been incorporated in the Act before *Sampath Kumar's* case came up for final hearing. Finally, the Supreme Court concluded that though judicial review is a basic feature of the Constitution, the vesting of power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court. In one of the connecting matters that was being heard by the larger bench in *L. Chandra Kumar* (supra), the High Court had taken a view that the Supreme Court and High Courts are the sole repositories of the power of judicial review. It could only be introduced by the Constitutional Courts and no other alternative mechanism. The contention was that the Constitution bench judgment of the Supreme Court in the case of *Sampath Kumar* (supra) defines proposition laid down in *Kesavananda Bharati v. State of Kerala,* (1973) 4 SCC 225.

51. The larger bench in *L. Chandra Kumar* (Supra) had considered not only cases that we have afore-referred, but even post *Sampath Kumar* cases. In these cases, divergent views had been taken by various benches of the Supreme Court, either

following judgment of the Court in *Sampath Kumar* case or taking a view contrary thereto. The Supreme Court noticed the entire law on the subject and noticed with some emphasis that in matters relating to the laws and service matters which affect the functioning of Civil Servants, who are an integral part of a sound governmental system, testing the constitutionality of the provisions would often arrive for the consideration of a Tribunal. Specific arguments were raised before the bench, that Section 5(6) of the CAT Act, in so far as it allows a single member of a Tribunal to test the constitutional validity of a statutory provision, was unconstitutional. Also, in so far as it excludes the jurisdiction of the Supreme Court and the High Courts under Article 32 and 226 of the Constitution respectively, is unconstitutional as it violates the basic structure of the Constitution. The correctness of the decision of the *Sampath Kumar* case (supra) was challenged on various grounds, specifically noticed by the Bench in Para 41 of the judgment in *L. Chandra Kumar* (supra). Various contentions raised were considered by the Bench at great length. It really may not be necessary for us to refer to all the contentions at any greater length. It would be sufficient for us to notice the relevant concluding paragraphs of the judgment that would have a direct bearing on the matter in issue before us:

> "82. There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the Framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other constitutional safeguards were created to assist them in effectively discharging this

onerous burden. The expectation was that this power would be required to be used only occasionally. However, in the five decades that have ensued since Independence, the quantity of litigation before the High Courts has exploded in an unprecedented manner. The decision in Sampath Kumar's case was rendered against such a backdrop. We are conscious of the fact that when a Constitution Bench of this Court in Sampath Kumar's case adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time. Nearly a decade later, we are now in a position to review the theoretical and practical results that have arisen as a consequence of the adoption of such an approach.

83.We must, at this stage, focus upon the factual position which occasioned the adoption of the theory of alternative institutional mechanisms in Sampath Kumar's case. In his leading judgment, R. Misra, J. refers to the fact that since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts. Reference was made to studies conducted towards relieving the High Courts of their increased load. In this regard, the recommendations of the Shah Committee for setting up independent Tribunals as also the suggestion of the Administrative Reforms Commission that Civil Service Tribunals be set up, were noted. Reference was also made to the decision in K.K. Dutta v. Union of India : (1980)IILLJ182SC , where this Court had, while emphasising the need for speedy resolution of service disputes, proposed the establishment of Service Tribunals.

86. After analysing the situation existing in the High Courts at length, the LCI made specific recommendations towards the establishment of specialist Tribunals thereby lending force to the approach adopted in Sampath Kumar's case. The LCI noted the erstwhile international judicial trend which pointed towards generalist courts yielding their place to specialist Tribunals. Describing the pendency in the High Courts as "catastrophic, crisis ridden, almost unmanageable, imposing ..an immeasurable burden on the system", the LCI stated that the prevailing view in Indian Jurisprudence that the jurisdiction enjoyed by the High Court is a holy cow required a review. It, therefore, recommended the trimming of the jurisdiction of the High Courts by setting up specialist courts/Tribunals while simultaneously eliminating the jurisdiction of the High Courts.

91. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

94. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception.

> The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

52. The Supreme Court has, thus, clearly stated the law as to the exercise of power of judicial review by the Tribunals. From an analysis of above paragraphs, it can precisely be stated that the Tribunal can exercise the power of judicial review but not in relation to the law that constituted it. Even this limited power of judicial review is to ensure that the powers of the High Courts and the Supreme Court in terms of article 226 and 32 respectively, are not entirely excluded. The Tribunal functions to supplement and not supplant the powers of the High Courts or the Supreme Court of India. There has to be judicial independence of the Tribunal. It must inspire confidence and public esteem. It should be manned by expert minds and persons of judicial acumen and experts from the relevant field with capacity to decide cases with the judicial Members. With such judicial powers and functions, the Tribunals can also exercise limited power of judicial review, of course it

would not substitute the High Courts and or the Supreme Court. The Tribunal should have effective and efficacious mechanism.

53. Another facet of this constitutional aspect is that there cannot be a total exclusion of jurisdiction of the Supreme Court and the High Courts in terms of Articles 32 and 226 of the Constitution of India respectively. The plain consequence of such exclusion would be divesting the High Court of its constitutional powers, which is impermissible, being the basic structure of the Constitution of India. Any such law, even if enacted by the Parliament, would still be unsustainable, being violative of the basic structure. Complete exclusion has to be understood in its correct perspective. If the decisions of the Tribunal, while exercising the power of judicial review can be subjected to the constitutional jurisdiction of the higher courts, in that event also there is no complete exclusion and the functions of the Tribunal would only be supplemental. In the case of *State of West Bengal v. Ashish Kumar Roy and Ors.*, (2005) 10 SCC 110, the Supreme Court was concerned with the provisions of the West Bengal Land Reforms and Tenancy Tribunal Act 1997. The Tribunal had been given the jurisdiction to entertain disputes with regard to the five Specified Acts therein. The issue therein related to certain provisions of that Act being *ultra vires* to the Constitution, as well as declaring the provision directing transfer of cases to the Tribunal as being violative of the basic structure of the Constitution. The Supreme Court while declining to declare the provisions as unconstitutional, took the view that the Tribunal

was performing the functions which may be of a supplementary role and without complete exclusion of the jurisdiction of the High Courts under Article 226 of the Constitution of India. The Court held as under:

> "21. After analysing the constitutional provisions, the Constitutional Bench of this Court pointed out that Article 323-A and clause (3)(d) of Article 323-B, to the extent they exclude totally the jurisdiction of the High Court and the Supreme Court under Articles 226 and 227 and 32 of the Constitution were unconstitutional. The constitutionality of the said provisions was saved by the well-known process of reading down the provisions. This Court held that while the jurisdiction of the High Court under Articles 226/227, and that of the Supreme Court under Article 32, could not be totally excluded, it was yet constitutionally permissible for other courts and tribunals to perform a supplementary role in discharging the powers conferred on the High Court and the Supreme Court by Articles 226/227 and 32 of the Constitution, respectively. Hence, it was held that as long as tribunals constituted perform a supplementary role, without exclusion of the jurisdiction of the High Court under Articles 226 and 227 and of the Supreme Court under Article 32 of the Constitution, the validity of the legislation constituting such tribunals could not be doubted. It was in these circumstances that a direction was given that the tribunals would act as authorities of the first instance, whose decisions could be challenged before the Division Bench of the High Court in its writ jurisdiction. Thus the Constitution Bench of this Court upheld Section 56 of the Administrative Tribunals Act, 1985 as valid and constitutional, interpreted in the manner indicated in its judgment. We are, therefore, unable to accept the contention of the learned counsel for the respondent for we are of the view that the matter is no longer res integra."

54. It is noteworthy that the Supreme Court in its judgment *in L Chandra Kumar's* case (supra) declared dictums of far reaching consequences under our constitutional jurisprudence. In paragraph 35 of the judgment while referring to constitution of Tribunals under Article 323 (b) of the Indian Constitution and

referring to the provisions of the Constitution which empower Parliament or State Legislature to enact laws for adjudication of trial by Tribunals of certain disputes, the Supreme Court said that the Constitutional provisions therefore, vest in Parliament or the State legislature as the case may be with power to divest the traditional Courts of a considerable portion of their judicial work. Further, in paragraph 90 of the judgment while rejecting the contention that the Tribunals should not be allowed to adjudicate upon matters where the vires of the legislation is questioned and that they should restrict themselves to handling matters where constitutional issues are not raised. The Supreme Court said we cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for the litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matter, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. The Supreme Court did not declare in paragraph 98 of judgment that Section 5(6) of CAT Act as unconstitutional but applying the doctrine of harmonious

construction and accepting that cases involving the questions of interpretation of statutory provision or rule in relation to the Constitution arises, the same was directed to be heard by a bench consisting of at least a Judicial Member.

55. The above declaration of law by the highest Court of the land unambiguously support the view that the Tribunal within the framework of the NGT Act would be entitled to exercise power of the judicial review within its prescribed limitations. As already noticed, the questions of interpretation of law, examination of Notifications, their correctness or otherwise is being raised before the Tribunal every day. The questions of law had environmental issues are so closely linked that it would hardly be possible to fully and finally decide the cases by segregating the jurisdiction which is neither the purport of the Act. These questions can squarely be heard and decide by the Tribunal keeping in view the constitution of the Bench which is always presided by judicial Member as per the constitution of the Benches prescribed under the Rules.

56. In light of the unequivocal law stated by the Supreme Court in *L. Chandra Kumar*'s case (supra), and other cases afore-noticed, we may relook the provisions and the legislative scheme of the NGT Act. First and foremost, there is no provision in the NGT Act that completely excludes the jurisdiction of the High Courts and/or that of the Supreme Court under Articles 226 or 227 and 32 of the Constitution of India. In terms of Section 29 of

the NGT Act, it excludes the jurisdiction of the civil courts to entertain any appeal or settle any dispute in relation to the matter specified and the matter which the Tribunal is empowered to determine under its appellate jurisdiction. The civil court's jurisdiction to grant injunction is also excluded in those matters. A statutory appeal against the orders of the NGT lies to the Supreme Court of India in terms of Section 22 of the Act. Both these provisions read co-jointly with other provisions of the Act, clearly state the position that there is no exclusion of constitutional courts by specific words or by necessary implication. Complete procedure for settlement of disputes and hearing of appeals is provided under the provisions of the Act, including how the appeals or proceedings are to be instituted before the Tribunal and the manner in which they would be adjudicated upon. The Tribunal is completely independent in discharge of its judicial functions and no authority of the executive or any other organ of the State has any say or opinion over the functioning of the Tribunal. The Tribunal consists of sitting or former Supreme Court Judge as Chairperson, Chief Justice/Judges of the High Courts as its Judicial Members and experts of outstanding acumen in various fields of environment as Expert Members. Every Bench has to have one Judicial and one Expert Member for hearing the matters. The presiding members of the NGT are not administrative officers but duly represent the State to administer justice and perform judicial functions.

57. There is also no provision in the Act that specifically or even by implication is suggestive of the legislative intent to exclude the power of judicial review of the Tribunal. The power of judicial review in the scheme of the NGT Act would be implicit and essential for expeditious and effective disposal of the cases. The Act itself has been enacted for expeditious and effective disposal of environmental cases and that itself would stand defeated if every question relating to examining the validity and correctness of subordinate or delegated legislation under the Scheduled Acts is to be first examined by a Constitutional Court and then the matter has to be relegated to the Tribunal. The very object and the purpose of the Act would then stand defeated and frustrated.

58. In fact, the jurisdiction of the Tribunal, as stated under Sections 14, 15 and 16 of the Act, not only vests a very wide jurisdiction in the Tribunal, but by necessary implication gives the power of judicial review to the Tribunal. It will be travesty of justice if it was to be held that the Tribunal does not have the power to examine the correctness or otherwise or constitutional validity of a Notification issued under one of the Scheduled Acts to the NGT Act. In the absence of such power, there cannot be an effective and complete decision on the substantial environmental issues that may be raised before the Tribunal, in exercise of the jurisdiction vested in the Tribunal under the provisions of the Act. Besides all this, the Tribunal has the complete trappings of a Court.

59. The courts have drawn a fine distinction between a 'court' and a 'tribunal'. However, this fine distinction is going thinner by the day. The word 'Tribunal' is a word of wide import and the words 'courts and tribunals' embrace within them the exercise of judicial power in all its forms. In the case of *S.D. Joshi and Ors. v. High Court of Judicature at Bombay and Ors.*, (2011) 1 SCC 252, the Supreme Court referred to the judgment of the Constitution Bench of that Court in the case of *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala,* AIR 1961 SC 1669 where the Court discussed the distinction between a 'Court' and a 'Tribunal'. In the said case, the Constitution Bench of the Supreme Court was dealing with the question whether the Central Government while exercising appellate powers under Section 111 of the Companies Act,1956 (before its amendment by Act 65 of 1960) would be a Court or a Tribunal and if it is subject to appellate jurisdiction of the Supreme Court under Article 136 of the Constitution. A direct question arose as to when such authority could be termed as a 'Tribunal' or 'Court'. The Supreme Court followed the test stated in *The King v. London County Council,* [1931] 2 K.B. 215, where L.J Scrutton stated as under:

> "It is not necessary that it should be a court in the sense in which this Court is a court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court; if it is a tribunal which has to decide rights after hearing evidence and opposition, it is amenable to the writ of certiorari."

60. Further, referring to the trappings of a judicial tribunal, the Supreme Court in the case of *Harinagar Sugar Mills Ltd* (supra) observed as under:

> "16. The Attorney-General contended that even if the Central Government was required by the provisions of the Act and the rules to act judicially, the Central Government still not being a tribunal, this Court has no power to entertain an appeal against its order or decision. But the proceedings before the Central Government have all the trappings of a judicial tribunal. Pleadings have to be filed, evidence in support of the case of each party has to be furnished and the disputes have to be decided according to law after considering the representations made by the parties. If it be granted that the Central Government exercises judicial power of the State to adjudicate upon rights of the parties in civil matters when there is a lis between the contesting parties, the conclusion is inevitable that it acts as a tribunal and not as an executive body. We therefore overrule the preliminary objection raised on behalf of the Union of India and by the respondents as to the maintainability of the appeals."

61. The word 'Court' is used to designate those tribunals which are set up in an organized state for the administration of justice. When a *lis* is pending between the parties and is adjudicated upon by the Tribunal, following the procedure in accordance with the rules of law and when it administers justice, the Tribunal dealing with such *lis* will have the trappings of a Court.

62. Finally, the Supreme Court took the view that all Tribunals are not courts though all Courts are tribunals. This view has been reiterated by the Court, more particularly in relation to drawing a distinction between the two terms. A 'Tribunal' may be termed as a 'Court' if it has all the trappings of a court and satisfies the essential parameters**.** Every court may be a tribunal

but every tribunal necessarily may not be a court. There are many tribunals which have trappings of a court.

63. It may not be possible to state precisely the parameters that would determine whether a Tribunal is a court or not. It will largely depend upon the facts, provisions of the relevant Acts and the functions that the said Tribunal is performing. Generally, where a Tribunal determines the issues before it, gives a final decision, has the power to hear witnesses and gives decision affecting rights of the parties, the orders of such Tribunal are appealable. Then such Tribunals could be termed as a 'Court'. There could be specialized Tribunals also which deal with the cases of a particular subject, has the powers of a court and maintains judicial independence; its members are all of judicial acumen and expertise. It again may be a relevant consideration that the Tribunal is a creature of a statute and is vested with the powers to adjudicate and determine the disputes between the parties which fall within the scope and ambit of its jurisdiction, in accordance with the provisions of the Act. The Tribunal is a part of an ordinary hierarchy in the administration of justice and is akin to a Court. The Supreme Court has also held that though the independence of judiciary *stricto sensu* applied to the Court system, by necessary implication, it would also apply to Tribunals whose functioning is quasi-judicial and akin to the Court system and the entire administration of justice has to be so independent and managed by persons of legal acumen, expertise and

experience that persons demanding justice must not only receive justice, but should also have the faith that justice would be done (*Union of India v. Namit Sharma*, AIR 2014 SC 122). The Supreme Court in *S.D. Joshi* case (supra) also accepted the Family Courts as Courts in view of the fact that it had the trappings of a court and satisfied the essential parameters. However, the Judges of the family court independently appointed were considered not to be part of the regular higher judicial services cadre of that State.

64. Under the NGT Act, as already noticed, this Tribunal performs all judicial functions and determines the disputes between the parties in accordance with the provisions of the Act. It evolves its own procedure in consonance with the principles of natural justice and is not strictly bound by the provisions of the CPC. But, at the same time, for discharging its functions under the NGT Act, the Tribunal is vested with the powers as are vested in a civil court under the CPC. Furthermore, all the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code,1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure, 1973 in terms of Sections 19(4) and (5) of the NGT Act. Jurisdiction of the Civil Court is barred under Section 29 of the NGT Act. Thus, in our considered view, the National Green Tribunal has all the trappings of a court and is vested with original, appellate and special

jurisdiction, performing exclusively judicial functions and hence is a Court.

65. Having come to the conclusion that National Green Tribunal has all the trappings of a Court and is, thus, a Court and further that within the framework of the NGT Act, the Tribunal is vested with the power of judicial review, still we will have to deal with the contention raised on behalf of the Respondents, particularly, the Project Proponent, that there is no provision in the NGT Act which empowers it to exercise the power of judicial review and that the Tribunal cannot examine the correctness or constitutional validity of even a subordinate or delegated legislation. In the present case, under the Notification of 2011, the jurisdiction of the Tribunal is a very limited one. Major part of this contention we have already dealt with. Much emphasis have been placed upon the judgments of the Supreme Court in the cases of *PTC India Limited v. CERC*, (2010) 4 SCC 603, *Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India & Ors.*, (2014) 1 Comp LJ 229 SC and *West Bengal Regulatory Commission v. SCESC Limited*, (2002) 8 SCC 715. Let us now examine each of these cases in respect of the law enunciated therein with reference to the facts of each case.

PTC India Limited (supra):

66. In this case, the Central Electricity Regulatory Commission vide its Notification dated 23rd January, 2006 issued Regulations known as the Central Electricity Regulatory Commission (Fixation

of Trading Margin) Regulations, 2006, fixing ceiling of trading margin at 4 paise/kWh for inter-state trading of electricity. The appellant before the Supreme Court had challenged the validity of the Regulations so framed, *inter alia* on the ground that the Commission could cap trading margin by issuing an order under section 79(1)(j) of the Electricity Act, 2003, and not by issuing regulations under Section 178. The Appellate Tribunal rejected appeal on the ground that it did not have jurisdiction under Sections 111 and 121 to examine the validity of the Regulations. The appellants preferred the statutory appeal under Section 125 to the Supreme Court of India which was heard by three judges bench. The Bench felt that the appeal involved important question of law and the matter was referred to the Constitution Bench of the Hon'ble Supreme Court. In the Order of reference, the question formulated was with regard to the power of the Tribunal to decide questions as to the validity of the Regulations framed by the Central Commission. It related to the interpretation of Section 111 and 121 of the 2003 Act. The Constitutional Bench stated that the case involved the doctrine and jurisprudence of delegated legislation and the power of the judicial review by the appellate Tribunal. In the very opening of the judgment, the following questions of law were framed:-

> (a) Whether the Appellate Tribunal under the Electricity Act, 2003 (the 2003 Act) has jurisdiction under Section 111 to examine the validity of the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 framed in exercise of power conferred under Section 178 of the 2003 Act?

(b) Whether Parliament has conferred power of judicial review on the Appellate Tribunal for Electricity under Section 121 of the 2003 Act?
(c) Whether capping of trading margins could be done by CERC (the Central Commission) by making a regulation in that regard under Section 178 of the 2003 Act?

67. The Court referred to the various Sections of the Act as well as the Regulations. It referred to the functions and duties of the authority, constitution of the Central Commission and its functions. It also noticed Section 111 of the 2003 Act, under which appeal laid to the appellate Tribunal. Reference was also made to Sections 177 and 178, under which the authority and Central Commission could make regulation respectively. The Rules and Regulations framed under these Sections were required to be laid before the Parliament in terms of Section 179. Section 181 empowered the State Commission to make regulations in the similar manner.

68. In paragraph 66 of the Judgment, the Court dealt with the provisions of Section 111 of the 2003 Act. Referring to the language of Section 111, which empowers the appellate authority to hear an appeal against the order made by the appropriate Commission, the Court came to the conclusion that on general application, the provisions indicate the width of powers conferred on CERC. The Regulations framed were thus in the nature of subordinate legislation and which could be made in exercise of its powers to make regulations and not by passing an order under Section 79(1)(j) of the 2003 Act. The Bench then concluded that

the word 'order' under section 111 of the 2003 Act cannot include regulations framed under Section 178 of the 2003 Act.

69. Further, the Court while referring to the ambit of powers of the Tribunal in terms of Section 121 of the Act stated that the expression 'issue such orders, instructions or directions as may deem fit' in Section 121, does not confer power of judicial review to the Tribunal. Referring to the case of *Raman and Raman Ltd. v. the State of Madras and Ors*, AIR 1959 SC 694, the Court stated that the authority was vested with the power to issue directions which was administrative in character.

70. We may notice that language of Section 121 clearly states that after hearing the appropriate Commission, the appellate authority can issue orders, instructions or directions but only for the purposes of appropriate Commission to perform its statutory functions. On the plain construction of the language of the Section, it is clear that the power of judicial review was neither vested nor can be impliedly construed, as it would fall much beyond the language of the Section.

71. We may also notice that the power to make regulations under Section 178 of the Act cannot be subjected to challenge within the scope of Section 111 and Section 121 of the Act. Furthermore, to put the matters beyond ambiguity and to ensure that the law is clearly stated in the judgment in relation to these regulations, the Constitution Bench of the Supreme Court held

that the Tribunal is not vested with the power of judicial review in relation to regulations framed under Section 178 of the Act. It was clearly noticed that the judgment would have no applicability as a principle of law and was confined to the facts of that case. Paragraph 94 of the judgment reads as follows:-

> "Our summary of findings and answer to the reference are with reference to the provisions of the Electricity Act, 2003. They shall not be construed as a general principle of law to be applied to Appellate Tribunals vis-a-vis Regulatory Commissions under other enactments. In particular, we make it clear that the decision may not be taken as expression of any view in regard to the powers of the securities Appellate Tribunal vis-a-vis Securities and Exchange Board of India under the Securities and Exchange Board of India Act, 1992 or with reference to the Telecom Disputes Settlement and Appellate Tribunal vis-a-vis Telecom Regulatory Authority of India under the Telecom Regulatory Authority of India Act, 1997."

72. It may also be noticed that the Judgment of the Constitution Bench (Seven Judges) in *L. Chandra Kumar* (supra) was not brought to the notice of the Constitution Bench in this case (PTC case).

73. In light of the above, we find that the Respondents cannot derive any benefit on the parity of law and facts of the above case and particularly the provisions of the Act of that case.

Bharat Sanchar Nigam Limited (supra):

74. In this case also, a two judge bench made a reference of the questions formulated in Para 1 of the judgment to a larger bench. The larger bench while commencing the hearing of the case before

it, at the request of the learned counsel appearing for the parties, framed the following preliminary issue:

> "Whether in exercise of the power vested in it under section 14 (b) of the Act, TDSAT has the jurisdiction to entertain challenge to the regulations framed by that authority under Section 36 of the Act."

75. The appeals before the Supreme Court were filed by Bharat Sanchar Nigam Limited (BSNL), Cellular Operators Association of India (COAI) and Ors., against the order dated 28th May, 2010 passed by the Telecom Disputes Settlement Appellate Tribunal (for short 'TDSAT'), whereby, the appeal preferred by BSNL against the Telecommunication Interconnection (Port Charges) Amendment Regulation (1 of 2007) was allowed and the Authority was directed to give fresh look at the Regulations and the BSNL was directed not to claim any amount from the operator during the interregnum, i.e., from the date of coming into force of the Regulations and the date of the Order. Port charges were prescribed under Schedule 3 of the Telecommunication Interconnection (Charges and Revenue Sharing) Regulations, 1999, which came into force on 28th May, 1999. By virtue of clause 8, the Regulations were given overriding effect qua the interconnection agreements. Upon challenge, the High Court held the Regulations framed under Section 36 of the Act could not be given overriding effect. The port charges were specified in the Schedule to the amended Regulations, which were challenged and were allowed by the TDSAT.

76. From the above noticed facts, it is clear that the Court was only dealing with the provisions of the Telecom Regulatory Authority of India Act, 1997 (for short 'TRAI') and was concerned with the question whether the Authority was vested with the power of judicial review keeping in view the various provisions of the Act. After noticing the sections particularly Sections 14, 14(a) and 14(b) of the Act, the Court came to the conclusion that the Appellate Tribunal was not vested with the power of judicial review, to examine the validity or constitutionality of the regulations framed under Section 36 of the Act. In Para 52 of the judgment, the Supreme Court stated that while entertaining appeals under Section 18 of the Act, the High Court itself was not vested with the power of judicial review in terms of Section 14. The amendment made in the year 2000 intended to vest the original jurisdiction of the Authority in TDSAT**.** The appellate jurisdiction exercisable by the High Court was also vested with the TDSAT vide Section 14(b) but that did not include decision made by the Authority. The Bench held:-

> "Since High Court while hearing appeal did not have power of judicial review of subordinate legislation, the transferee adjudicatory forum, i.e., TDSAT cannot exercise power under section 14(b)"

77. In this judgment, heavy reliance was placed by the Bench upon the judgment of the Court in the case of *PTC India Ltd.* (supra) and the Court in this case also held that the expression 'direction, decision or order' would not include regulations framed under Section 36 of the Act. The Supreme Court in this case

distinguished the judgment of the larger bench in *L. Chandra Kumar* (supra) on the ground that language of Section 14 of the CAT Act was very wide. The judgment in that case and in the case of *Union of India v. Madras Bar Association,* (supra), did not have a bearing on the decision of the question formulated by the Bench and it held that TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by the Authority under Section 36 of the Act. It requires to be noticed at this stage that the Authority as well as the Appellate Tribunal are creations of the same statute and examination of the regulation under the Act which created them could hardly be examined by the said Appellate Authority. Furthermore, the language of section 14 which establishes the Appellate Tribunal restricts the jurisdiction in specific terms. The jurisdiction of the Appellate Tribunal is only to settle dispute between parties stated in the provision of this Act. The power is restricted by the very section that creates the appellate Tribunal. Furthermore, under Section 14(a), the power of the Appellate Tribunal to decide application for disputes and appeals preferred is to be in terms of Section 14(a) sub-section(1) and the 'direction, decision or order' of the Authority would not include the regulations framed under the provisions of the same Act. In light of these clearly stated provisions, it is apparently clear that this judgment would have no application to the facts of the present case and the statutory provisions are not *pari materia* to the provisions of the NGT Act. More importantly, the Tribunal is not examining the constitutionality, legality or validity of any of

the provisions framed under the NGT Act or an action purported to be have been taken under the provisions of that Act which has created this Tribunal.

West Bengal Electricity Regulation Commission (supra):

78. In this case, the Supreme Court was concerned with examining the correctness of the judgment of the High Court, which in an appeal before it had allowed appeals of the companies, re-determined the West Bengal Electricity Regulatory Commission by an Order dated 7th November, 2001 and determined the tariff for the sale of electricity by the Calcutta Electricity Supply Company Ltd. for the years 2000-2001 and 2001-2002. Being aggrieved by this fixation of tariff, the Company preferred an appeal before the High Court of Calcutta under Section 27 of the Electricity Regulatory Commissions Act, 1998. Upon publication of the tariff so formulated, the Supreme Court was concerned with the question whether the consumers had the legal right or not to be heard in the proceedings before the Commission under Section 29(2) of the 1998 Act, as also in an appeal under Section 27 of the said Act. The High Court had taken a negative view on the above question. Other question raised was whether the High Court can exercise powers under Articles 226 and 227 of the Constitution of India while hearing an appeal under Section 27of the Act. The Supreme Court concluded that the High Court while exercising its statutory appellate power

under Section 27 of the Act could not have gone into the validity of the regulations which are part of the statute itself.

79. The Learned Counsel appearing for the Respondents laid emphasis upon the findings recorded in paragraph 45 of the judgment which reads as under:

> "This Court in the case of K.S. Venkataraman & Co. v. State of Madras (1966 2 SCR 229) after discussing the judgment of the Calcutta High Court in the cases of (i) Raleigh Investment Co. Ltd. v. The Governor General in Council (1944 1 Cal. 34), (ii) United Motors (India) Ltd. v. The State of Bombay (1952 55 BLR 246) and (iii) M.S.M.M. Meyappa Chettiar v. Income-tax Officer, Karaikudi (1964 54 ITR 151) held:
>
> > "There is, therefore, weighty authority for the proposition that a tribunal, which is a creature of a statute, cannot question the vires of the provisions under which it functions." [Emphasis applied]

80. The contention of the Respondents before us is that the language of Para 45 above would have to be construed as that the Tribunal cannot question the vires of the provisions of any Act with which it is dealing, in exercise of the jurisdiction vested in it under the provisions of the NGT Act. We are afraid that this argument is misconceived. The legal proposition stated in Para 45 above is undisputable. In fact, we have referred to some of the judgments above stating the same proposition. The law is that the National Green Tribunal cannot decide questions relating to the vires of the NGT Act under which it is created, but this cannot be extended to the examination relating to the vires, validity or legality of the Notifications or actions taken in furtherance to the Scheduled Acts under the NGT Act over which this Tribunal

exercises exclusive jurisdiction. Referring to the case in hand, the Tribunal is not examining any provision of the NGT Act or any Notification issued in exercise of delegated or subordinate legislation under the NGT Act. The CRZ Notifications are issued under the provisions of the Environment (Protection) Act, 1986 and the Rules framed thereunder, which is not the Act under which the Tribunal has either been created or been functioning.

81. As the judgments afore-discussed by us are directly relatable to the specific provisions of the relevant Acts in those cases, for a better analysis and understanding of the principal issue arising in this case before the Tribunal, a comparative reference to the extracts of some of the relevant provisions of those acts on the one hand and the NGT Act on the other hand.

	NGT	**CAT**	**TDSAT**	**ARMED FORCES TRIBUNAL (AFT)**
Jurisdiction	**Section 14: Tribunal to settle disputes.** (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the	**Section 14: Jurisdiction, powers and authority of the Central Administrative Tribunal.** (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day	**Section 14: Establishment of Appellate Tribunal.** (1)The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to – (a) adjudicate any dispute - (i) between a	**Section 14: Jurisdiction, powers and authority in service matters.** (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day

	implementation of the enactments specified in Schedule I. **Section 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.	by all courts (except the Supreme Court in relation to- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian; (b) all service matters concerning- (i) a member of any All-India Service; or (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or (iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the	licensor and a licensee; (ii) between two or more service providers; (iii) between a service provider and a group of consumers: PROVIDED that nothing in this clause shall apply in respect of matters relating to - (A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 ; (B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer	by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters. (4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit in respect of the following matters, namely – (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public

	(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. **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;	Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government; (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment. [Explanation - for the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.] (3) Save as otherwise	Protection Act, 1986 ; (C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 ; (b) hear and dispose of appeal against any direction, decision or order of the authority under this Act.	record or document or copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents; (f) reviewing its decisions; (g) dismissing an application for default or deciding it exparte; (h) setting aside any order of dismissal of any application for default or any order passed by it exparte; and (i) any other matter which may be prescribed by the Central Government. (5) The Tribunal shall decide both questions of law and facts that may be raised before it. **Section 15: Jurisdiction powers and authority in matters of appeal against court martial.** (1) Save as otherwise expressly provided in this Act, the

	(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; (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; (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; (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; (f) an order or decision, made,	expressly provided in this Act, the Central Administrative tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [***] in relation to- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and (b) all service matters concerning a person [other than a person referred to in clause (a) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in		Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto.

	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; (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; (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; (i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental	connection with such affairs.		

	clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 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, 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.			

	NGT	CAT	TDSAT	AFT
Procedure and powers of Tribunal.	**19: Procedure and powers of Tribunal.** (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. (2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure. (3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. (4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of any person and examining	**Section 22: Procedure and powers of Tribunal.** (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private. (3) A Tribunal shall have, for the purposes of 2[discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of any person and	**Section 16: Procedure and powers of Appellate Tribunal.** (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. (2) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-	**23: Procedure and powers of the Tribunal.** (1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and any rules made thereunder, the Tribunal shall have the power to lay down and regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in camera.

	him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents; (f) reviewing its decision; (g) dismissing an application for default or deciding it ex parte; (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act; (j) pass an order requiring any person to cease and desist from committing or	examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence of affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office; (e) issuing commissions for the examination of witnesses or documents; (f) reviewing its decisions; (g) dismissing a representation for default or deciding it ex pane; (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parts; and (i) any other matter which may be prescribed by the Central Government.	(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 , requisitioning any public record or document or a copy of such record or document, from any office; (e) issuing commissions for the examination of witnesses or documents; (f) reviewing ins decisions; (g) dismissing an application for default or deciding it, ex parte; (h) setting aside any order of dismissal of any application for default or any order passed by it, exparte; and (i) any other matter which may be prescribed. (3) Every proceeding before the Appellate Tribunal shall be deemed to	

	causing any violation of any enactment specified in Schedule I; (k) any other matter which may be prescribed. (5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. **Section 25: Execution of award or order or decision of Tribunal.** (1) An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court. (2) Notwithstanding anything contained in		be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, 1860 (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).	

	sub-section (1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.			
	NGT	**CAT**	**TDSAT**	**AFT**
Appeal from the Tribunal.	**22: Appeal to Supreme Court.** Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908: Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.		**Section 18: Appeal to Supreme Court.** (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, riot being an interlocutory order, of the appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code. (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties. (3) Every appeal under this section	**Section 30: Appeal to Supreme Court.** (1) Subject to the provisions of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19): Provided that such appeal is preferred within a period of ninety days of the said decision or order: Provided further that there shall be no appeal against an interlocutory order of the Tribunal. (2) An appeal shall lie to the Supreme Court as of right from any order or decision of the

			shall be preferred within a period of ninety days from the date of the decision or order appealed against: PROVIDED that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.	Tribunal in the exercise of its jurisdiction to punish for contempt: Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days from the date of the order appealed against. **Section 31: Leave to appeal.** (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court. (2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty

				days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal. **Section 32: Condonation**. The Supreme Court may, upon an application made at any time by the appellant, extend the time within which an appeal may be preferred by him to that Court under section 30 or sub-section (2) of section 31.
	NGT	**CAT**	**TDSAT**	**AFT**
Exclusion of jurisdiction of Courts	**Section 29: Bar of jurisdiction.** (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal, is empowered to determine	**Section 27: execution of orders of a Tribunal.** Subject to the other provisions of this Act and the rules,1[the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court)	**15: Civil court not to have jurisdiction.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and	**33: Exclusion of jurisdiction of civil courts.** On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation-to service matters under this Act, no

	under its appellate jurisdiction. (2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court.	and such order] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) or section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed. **28: Exclusion of jurisdiction of courts except the Supreme Court.** On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, [no court except – (a) the Supreme Court ; (b) any industrial Tribunal, Labour Court or other authority constituted	no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act Summary: No civil court to have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered to determine and no injunction shall be granted by any court or other authority in respect of any action taken by the Tribunal [s. 15].	Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters. Summary: No civil court to have, or be entitled to exercise, such jurisdiction, power or authority in relation to service matters falling under the Act [s. 33]. **34: Transfer of pending cases.** (1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand

		under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters. Summary: No court except the Supreme Court, any industrial Tribunal, Labour court or other authority constitutes under the Industrial Disputes Act, 1947, to have jurisdiction, power or authority [s. 28].		transferred on that date to such Tribunal. (2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),— (a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal; (b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same' manner as in the case of an application made under sub-section (2) of section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit. **35: Provision for filing of**

				certain appeals. Where any decree or order has been made or passed by any court (other than a High Court) or any other authority in any suit or proceeding before the establishment of the Tribunal, being a suit or proceeding the cause of action whereon it is based, is such that it would have been, if it had arisen after such establishment, within the jurisdiction of the Tribunal, and no appeal has been preferred 'against such decree or order before such establishment or if preferred, the same is pending for disposal before any court including High Court and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie to the Tribunal, within ninety days from the

				date on which the Tribunal is established, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.
	NGT	**CAT**	**TDSAT**	**AFT**
Act to have overriding effect.	**Section 33: Act to have overriding effect.** The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	**Section 33: Act to have overriding effect.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.		**Section 39: Act to have overriding effect.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained, in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

	NGT	**CAT**	**TDSAT**	**AFT**
Power of Chairperson to transfer cases.	**Rule 3(2), 3(3) of the National Green Tribunal (Practice and Procedure) Rules, 2011 r/w Section 4 (4) (d) of the NGT Act, 2010.** **Rule 3:** Distribution of business amongst the different ordinary place or places of Sittings of Tribunal. (2) The Chairperson shall have the power to decide the distribution of the business of the Tribunal amongst the members of the Tribunal sitting at	**Section 5: Composition of Tribunals and Benches thereof.** (6) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as [a Bench] consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as	**Section 14-I: Distribution of business amongst Benches.** Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench. **Section 14J:**	**Section 20: Distribution of business among the Benches.** The Chairperson may make provisions as to the distribution of the business of the Tribunal among its Benches. **Section 27: Power of Chairperson to transfer cases from one Bench to another.** On the application of any of the parties and after notice to the parties concerned,

	different places by order and specify the matters which may be dealt with by each such sitting in accordance with the provisions of clause (d) of sub-section (4) of section 4 of the Act. (3) If any question arises as to whether any matter falls within the purview of the business allocated to a place of sitting, the decision of the Chairperson shall be final. **Section 4(4)(d):** The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including :– (d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.	the Chairman may by general or special order specify: Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of [two Members], the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit. **18: Distribution of business amongst the Benches.** (2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon shall be final. Explanation: For the removal or doubts, it is hereby declared that the expression "matters" includes applications under section 19. **25. Power of Chairman to transfer cases from one Bench to another –** On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without	**Power of Chairperson to transfer cases.** On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.	and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench for disposal, to, any other Bench.

		such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.		
	NGT	**CAT**	**TDSAT**	**AFT**
Transfer of pending cases.		**Section 29: Transfer of pending cases.** (1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. (2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation 2 [or society], being a suit or proceeding the cause of action whereon it is based is such that it would	**Section 14M: Transfer of pending cases.** All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal: PROVIDED that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in that Chapter, till the establishment of the Appellate Tribunal under this Act: PROVIDED FURTHER that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate	**Section 34: Transfer of pending cases.** (1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal. (2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),— (a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

		have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. Explanation.-For the purposes of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation 1 [or society], means the date with effect from which the provisions of subsection (3) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation [or society]. (3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative	Tribunal immediately on its establishment under section 14.	(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same' manner as in the case of an application made under sub-section (2) of section 14, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

		Tribunal. Explanation.-For the purposes of this sub-section, "State Tribunal" means a Tribunal established under sub-section (2) of section 4. (4) Where any suit, appeal or other proceeding stands transferred from any court or other authority to a Tribunal under sub-section (1) or sub-section (2),- (a) the court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and (b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit. (5) Where any case stand transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred. (6) Every case		

		pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred on such commencement to such court. (7) Where any case stands transferred to a court under sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.		

82. A comparative study of the various provisions under the afore referred Acts, in fact, gives a much wider power to the Chairperson of National Green Tribunal in relation to the transfer of cases. Rule 3 of The National Green Tribunal (Practices and Procedure) Rules, 2011 (for short 'Rules of 2011') states that the decision of the Chairperson as regards whether the matter falls within the purview of the business allocated to a place of the sitting or not, would be final. Such a provision is conspicuous by its very absence in the most of the other Acts relating to different Tribunals. The provisions relating to the powers of Chairperson for allocation of

business, transfer of cases and constitution of benches have to be construed in light of the settled principles. These aspects are the prerogative of the head of the Tribunal and even judicial discipline and proprietary, being two significant facets of administration of justice, have to be the precepts for such interpretation. Such interpretation should be given that would adhere to these principles and not be in opposition thereto. At this stage, we may notice that in the absence of any specific provision in relation to the power of the Chief Justice of a High Court to transfer cases from one bench to another and in relation to marking of cases, roaster of the benches and matters relating thereto are the exclusive prerogative of the Chief Justice. In the case of *Kishore Samrite v. State of U.P,* (2013) 2 SCC 398*,* the Supreme Court held as under:

> "25. The roaster and placing of cases before different Benches of the High Court is unquestionably the prerogative of the Chief Justice of that Court. In the High Courts, which have Principal and other Benches, there is a practice and as per rules, if framed, that the senior most Judge at the Benches, other than the Principal Bench, is normally permitted to exercise powers of the Chief Justice, as may be delegated to the senior most Judge. In absence of the Chief Justice, the senior most Judge would pass directions in regard to the roaster of the Judges and listing of cases. Primarily, it is exclusive prerogative of the Chief Justice and does not admit any ambiguity or doubt in this regard.
>
> 29. Judicial discipline and propriety are the two significant facets of administration of justice. Every court is obliged to adhere to these principles to

ensure hierarchical discipline on the one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial action but normally it may cast a shadow of improper exercise of judicial discretion. When extraordinary jurisdiction, like the writ jurisdiction, is very vast in its scope and magnitude, there it imposes a greater obligation upon the courts to observe due caution while exercising such powers. This is to ensure that the principles of natural justice are not violated and there is no occasion of impertinent exercise of judicial discretion."

83. Having due regard to the stated principles in light of the facts before us, we have no hesitation in coming to the conclusion that the Chairperson of the National Green Tribunal, in terms of the provisions of the NGT Act, Rules of 2011 and the general practice in relation to such matters, is vested with the power to transfer cases from one bench to another, from one ordinary place of sitting to other place of sitting or even to a place other than that.

84. The National Green Tribunal is vested with the wide jurisdiction which includes the powers of civil court, complete judicial independence, restriction-free procedure, authority and the determinative process, the power to pass final orders; which could be appealed only in accordance with the provisions of the Act, jurisdiction to hear all civil cases relating to environment and further the scheme of the Act sufficiently provides for exercise of

power of judicial review in relation to the specified subjects by the Tribunal.

85. The Courts and Tribunals that are engaged in judicial functions dispensing justice to the public at large are expected to have powers which are necessary to perform its basic functions. As already noticed, unless there is a specific exclusion, such normal powers stated to be inherent in its functioning. The Supreme Court in the case of *Grindlays Bank Ltd vs Central Government Industrial Tribunal And Ors. AIR 1981 SC 606* while dealing with the powers of the Tribunal in relation to setting aside *ex parte* award in absence of any such power and the award which has become enforceable as a result of its being published rejecting the contention that the Tribunal had become *functus officio*, Court held as under:

> "We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

86. From the above, it is clear that ancillary or incidentally powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties should be

considered to be endowed. If the power of judicial review in its limited scope is not expected to be endowed upon the Tribunal then majority of the cases wherein Orders, Circulars, Notifications issued in exercise of subordinate legislation are challenged could not be fully and completely decided by the Tribunal, though they exclusively fall in the domain of the Tribunal.

87. Another very important aspect that cannot be overlooked by the Tribunal is that Article 226 of the Constitution of India is a discretionary jurisdiction to be exercised by the High Courts. It does not give an absolute right to a person. For variety of reasons, the High Court may decline to entertain a petition in exercise of its powers under Article 226 of the Constitution, while the NGT Act gives a statutory right to an applicant, aggrieved person or any person to approach the Tribunal in all matters relating to Acts specified in Schedule I of the NGT Act. It is not a discretionary jurisdiction like under Article 226 of the Constitution of India.

88. On a comparative analysis of various provisions of the different Acts afore-stated, it is evident that power, jurisdiction, judicial independence, exclusion of jurisdiction and other determinative factors prescribed under the NGT Act are of wide connotation and are free of restrictions. Sections 14, 15 and 16 read co-jointly give three different jurisdictions to the Tribunal over all disputes and appeals relating to various fields of environment. The jurisdiction is exercisable in relation to the

matters arising from any or all of the Scheduled Acts. Examined objectively, the provisions of the NGT Act are more akin to the provisions of the CAT Act, in contradistinction to the provisions of the TDSAT. The various features and aspects of the NGT Act that we have discussed above would bring the case before the Tribunal within the ambit of *L. Chandra Kumar* case (supra), as opposed to the case being covered by *BSNL* case (supra). We have already dealt above, in some elaboration, the aspect as to how the cases relied upon by the respondents do not apply to the facts of the present case, keeping in view the provisions and the legislative scheme of the referred Acts and various judicial pronouncements. At the cost of repetition, we may record here that the language of the various provisions of the NGT Act by necessary implication gives power of judicial review to the Tribunal. There is no specific or even by necessary implication exclusion of such power indicated in any of the provisions. Furthermore, in the scheme of various environmental acts and if the object and purpose of such acts are to be achieved then the power of judicial review would have to be read into the provisions of the NGT Act. If the notifications issued under any of the Scheduled Acts, by virtue of the powers vested by subordinate or delegated legislation, are *ultra vires* the Act itself or are unconstitutional as they violate Articles 14 or 19 of the Constitution of India, then it has to be construed that the Tribunal is vested with the power of examining such notifications so as to completely and comprehensively decide the disputes, applications, appeals before it. Of course, the

powers of the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution of India have not been excluded under the provisions of the NGT Act, thus ensuring that the Tribunal performs supplemental functions and does not supplant the Higher Courts.

89. The Supreme Court in the case of *K.S. Venkatraman and Co. v. State of Madras,* (1966) 2 SCR 229, has stated the proposition that an authority or Tribunal constituted under an Act cannot, unless expressly so authorised, question the validity of the Act or any provisions thereof under which it is constituted. This is a sound principle and has been followed consistently. To put it in other words, a Tribunal or an authority constituted under an Act can even examine the validity of the provisions of the Act which created it, provided it is so expressly authorized by the Act itself. This Tribunal is not travelling into that realm of law, but is concerned with the validity of the notifications issued under the Acts other than the Act that created the National Green Tribunal. For this proposition, we have referred to various judgments above.

Subordinate or Delegated Legislation and Executive Order:

90. During the course of arguments, an attempt has been made to raise an issue as to whether issuance of CRZ Notifications is an act of subordinate legislation or is an executive act. This distinction has to be clearly understood in terms of law to enable the Tribunal to examine the merit or otherwise of this contention and the consequences thereof. In our Constitution 'doctrine of

separation of power' clearly demarcates the areas of operation of respective organs of the State. Article 13(3) of the Constitution defines 'law' which includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law. The Indian Constitution does not contain any express or implied prohibition against delegation of legislative powers. Delegated legislation is not a new phenomenon. Ever since statutes came to be enacted by the Parliament, the concept of delegated legislation also came into existence. In exercise of such delegated power, the concern authority framed rules or regulations. The exigencies of the modern state, specially, the social and economic reforms have given rise to making of delegated legislation on a large scale. Salmond (Salmond jurisprudence 12th edition page 116) defines "delegated legislation" as "that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority". One of the reasons for delegating the power to legislate to the Government is that the areas for which powers are given to make delegated legislation may be so complex that it may not be possible and even may be difficult to set up all the permutations in the statute. The statute may not be so comprehensively drafted so as to provide for all and every situation, thus, to make a law efficacious, practical and effective, normally, the tool of delegated legislation is called in aid. Legislature is to make or enact laws. 'Legislative Act', as defined in *The Law Lexicon, 3rd ed. 2012*, is an

Act which prescribes what the law shall be in future cases arising under it; an act of legislative department of the Government, by which the law to be applied in future cases under particular states of fact is established in the form of statute, ordinance, or other written form. The expression 'executive action' as appearing in Article 166(1) of the Constitution is comprehensive enough and apt to include even orders which emerge after, and embody the results of a judicial or quasi-judicial disposal by Government. (*Pioneer Motors Ltd. v. O.M.A Majeed*, AIR 1957 Mad 48, 51)**.**

91. *The Oxford Dictionary of English, 3rd Edition,* 2010 describes 'executive order' as a rule or order issued by the President to an executive branch of the government and having the force of law. The Hon'ble Supreme Court in the case of *U.O.I v. Cynamide India Ltd. and Anr. etc.,* (1987) 2 SCC 720, stated the distinction between the executive order and power of legislation as follows:

> "7. The distinction between the two has usually been expressed as 'one between the general and the particular'.'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said "Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "adjudication, on the other hand, applies to specific individuals or situations". But, this is only a bread distinction, not necessarily always true. Administration

> and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts."

92. An act of issuing a Notification is a part of a legislative action. The Notification issued by the Government or any competent authority in exercise of its delegated powers can be judicially noticed. The Supreme Court in the case of *State v. Gopal Singh* on 21 September, 1956 CriLJ 621 held that "such a notification is a part of the law itself and, therefore, judicial notice of the notification can be taken." In exercise of the power of subordinate legislation when a regulation is made and is validly approved by the legislation, if so required. It becomes a part of the Act and should be read as such (*Uttar Pradesh Power Corporation Ltd v. NTPC,* (2009) 6 SCC 235). The executive order may not be a law but a legislative order is part of the law (*Edward Mills Co. Ltd. v. State of Ajmer',* (S) 1955 1 SCR 735)

93. The Supreme Court while dealing with the cases involving challenge to such Orders and Notifications, stated the precepts that should guide the courts where the question is whether the impugned action is legislative or executive and the scope of its challenge was discussed in the case of *Bombay Dyeing and Mfg.*

Co. Ltd. vs. Bombay Environmental Action Group and Ors., (2006) 3 SCC 434:

> "197. A matter involving environmental challenges may have to be considered by a superior court depending upon the fact as to whether the impugned action is a legislative action or an executive action. In case of an executive action, the court can look into and consider several factors, namely,
>
> (i) Whether the discretion conferred upon the statutory authority had been property exercised;
>
> (ii) Whether exercise of such discretion is in consonance with the provisions of the Act;
>
> (iii) Whether while taking such action, the executive government had taken into consideration the purport and object of the Act;
>
> (iv) Whether the same subserved other relevant factors which would affect the public in large;
>
> (v) Whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and
>
> (vi) Whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.
>
> 198. It would, however, unless an appropriate case is made out, be difficult to apply the aforementioned principles in the case of a legislative act. It is no doubt true that Articles 14, 21, 48A of the Constitution of India must be applied both in relation to an executive action as also in relation to a legislation, however, although the facet of reasonableness is a constitutional principle and adherence thereto being a constitutional duty may apply, the degree and the extent to which such application would be made indisputably would be different. Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the court in case of judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation.
>
> 199. It may, however, be a different thing to contend that the legislation had been enacted without constitutional principles in mind. The real question is whether the constitutional mandates had been complied with in making such legislation.

> 209. So far as the argument based on violation of Article 48A of the Constitution is concerned, the provisions thereof are required to be construed as a part of the principle contained in Article 14 of the Constitution of India. A statute may not be ultra vires Article 48A itself if it is not otherwise offensive of Articles 14 and 21 of the Constitution of India. What, however, cannot be done for striking down legislation can certainly be done for striking down executive action."

94. From the afore-stated principles, there is clear distinction between a legislative order/notification and an executive order and the consequences thereof in law. Even a delegated or subordinate legislation can be challenged on some of the similar grounds upon which the principal legislation itself can be challenged. In the case of *Mahalakshmi Sugar Mills Co. Ltd. and Anr. v. Union of India (UOI) and Ors.,* (2009) 16 SCC, 569, the Supreme Court held that validity of delegated (subordinate) legislation can be challenged on all those grounds on which the validity of a legislation can be challenged. The grounds are as follows: it is *ultra vires* the Constitution; it is *ultra vires* of the parent Act; It is contrary to the statutory provisions other than those contained in the parent legislation; The law making power has been exercised unreasonably or in bad faith or goes against the legislative policy and does not fulfil the object and purpose of the parent Act. Thus, the power of judicial review would extend both to legislative as well as acts of delegated or subordinate legislation. The correctness and legality of an executive order can be challenged besides these grounds, on arbitrariness, culpable

exercise of power and the order being beyond the competence of the authority passing the order etc.

95. Reverting to the present case the CRZ Notification dated 19th February, 1991, which has been amended on 3rd of October, 2001, was issued in exercise of the powers conferred under Section 3(1) and Section (2) (v) of the Act of 1986 and Rule 5(3) (d) of the Rules of 1986, in declaring coastal stretches as coastal regulation zone and for regulating activities in the coastal regulation zone. The legislature has delegated legislative power to the Central Government to take all measures as it deems necessary or expedient for the purposes of protecting and improving quality of the environment and preventing controlling and abating environmental pollution. This is a very wide power, which has been vested in the Central Government by delegated legislation under these provisions. In the exercise of its powers and with the object of satisfying the stated purpose, the Notification of 2011 has been issued under the power of delegated/subordinate legislation. Thus, there cannot be any doubt that the Notification of 2011 in the case before us, is a piece of delegated legislation and its legality, correctness or otherwise can be questioned only on the limited grounds afore-stated.

96. To bring out this distinction illustratively and more clearly, we may refer to the power of the MoEF (Central Government) to issue Environmental Clearance in terms of the provisions of the

Act of 1986 read with the Regulations of 2006. The order granting or refusing Environmental Clearance to a Project Proponent, is not an act of subordinate or delegated legislation but clearly is an executive act. The Central Government in exercise of its executive powers, passes an order whether or not a given project should be granted Environmental Clearance for commencing its operation. In passing such orders, the Central Government does not act in furtherance to the powers vested in it by virtue of delegated legislation. It is merely an executive act relatable to the statutory powers vested in the Central Government. The CRZ Notification issued by the Central Government is therefore an act of delegated legislation while passing of an order of Environmental Clearance is an executive order. This view finds support from the judgment of the Delhi High Court in the case of *Utkarsh Mandal vs. Union of India,* Writ Petition (civil) no. 9340/2009 which held that "grant of environmental clearance is an executive order which involves application of mind by the executive."

<u>Discussion on preliminary issues B and C</u>:

"B. In the facts and circumstances of the case in hand, part of cause of action has risen at New Delhi and within the area that falls under territorial jurisdiction of the Principal Bench of NGT. Thus, this bench has the territorial jurisdiction to entertain and decide the present cases.

C. On the cumulative reading and true construction of Section 4 (4) of the NGT Act and Rules 3 to 6 and Rule 11 of Rules of 2011, the Chairperson of NGT has the power and authority to transfer cases from one ordinary place of sitting to other place of sitting or even to place other than that. The Chairperson of NGT has the power to decide the distribution of business of the Tribunal among the members of the Tribunal, including adoption of circuit procedure in accordance with the Rules. An applicant shall ordinarily file

an application or appeal at ordinary place of sitting of a Bench within whose jurisdiction the cause of action, wholly or in part, has arisen; in terms of Rule 11 which has an inbuilt element of exception."

97. It will be appropriate for the Tribunal to examine issues (b) and (c) together as there is commonality in the provisions referred and arguments advanced by the Learned Counsel appearing for the parties. We have already reproduced Sections 14, 15 and 16 relating to Original, Appellate and special jurisdiction vested with the Tribunal. Section 14 in particular vests with the Tribunal a very wide jurisdiction which is to be exercised subject to provisions of the NGT Act. Section 18 describes the manner and methodology as to how an Application in either of the Sections 14, 15 and 16 has to be filed before the Tribunal. Section 18(2) gives the *locus standi* to the person who can file an application for grant of compensation or settlement of dispute before the Tribunal. Clauses (a) to (f) of sub-section 2 of Section 18 describe elaborately such persons. The application so filed before the Tribunal under the Act shall be dealt with as expeditiously as possible to dispose of appeals and applications within the period of six months from the date of filing. Sub-Sections (1) and (3) of Section 19 provide that the Tribunal shall not be bound by procedure laid down in the CPC and it shall have power to regulate its own procedure. It shall not be bound by the rules of evidence contained in Indian Evidence Act, 1872 and the Tribunal shall have the same powers as are vested in a civil court under the CPC while trying a suit in respect of the various matters. Let

us now examine the significance of cause of action in terms of environmental jurisprudence.

98. The expression 'cause of action' has been used in the provisions of the NGT Act and the Rules framed there under, only at two different places - one under Section 14(3) of the NGT Act and the other under Rule 11 of the Rules of 2011. The earlier relates to prescription of period of limitation of six months while the latter relates to the places of filing of an application before the Tribunal which would be its ordinary place of sitting falling within the jurisdiction. 'Cause of action' has been used in different context and would operate entirely in different fields, as discussed above. The bare reading of Rule 11 which we have reproduced hereafter shows that ordinarily an application or an appeal could be filed with the Registrar of the Tribunal at its ordinary place of sitting falling within the jurisdiction, the cause of action, wholly or in part, has arisen. In other words, right to institute a petition is relatable to the cause of action having been arisen wholly or in part. Part of cause of action provides a right to an applicant or appellant to institute the appeal or application as the case may be, normally at the bench which has territorial jurisdiction over the place whether cause of action wholly or in part has arisen.

99. Article 226 (2) of the Constitution of India uses language identical to Rule 11 of the Rules of 2011. There, it is also said that the power could be exercised by any High Courts exercising jurisdiction in relation to the territories within which the 'cause of action, wholly or in part, arises for the exercise of such power'.

100. The bare reading of these provisions clearly indicates that in a given case, only one High Court or bench of the Tribunal may have territorial jurisdiction to entertain and to decide the petition, while in some other case two High Courts or Benches may have concurrent jurisdiction to entertain a petition/appeal, as the cause of action may have arisen in part in the territorial jurisdiction of either of the benches. The concept of territorial jurisdiction has to be clearly understood as opposed to pecuniary jurisdiction. The earlier concept may provide alternative jurisdiction at two or even more places/ Benches, while the latter would be only in regard to competence of the court to try such matters with reference to its pecuniary jurisdiction.

101. In the case of *Nasiruddin v. S.T.A. Tribunal,* [1976]1SCR505, the Supreme Court while dealing with the expression 'cause of action' wholly or in part, held as under:

> "37. The expression "cause of action" with regard to a civil matter means that it should be left to the

litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas of Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad".

102. The Supreme Court in the case of *Alchemist Ltd. v. State Bank of Sikkim,* (2007) 2 SCC 335, held as follows:

> "28.From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

103. In the case of *Union of India v. Adani Exports Limited and Anr.*, the Supreme Court had taken a view stating that mere existence of office of a company would not *ipso facto* give cause of action to the Court within whose jurisdiction such an office is located. The cause of action must be relatable to

the facts as they exist on the date of the institution of the suit.

104. This obviously means that situs per say may not vest jurisdiction in a court unless other facts show that even infraction of cause of action has arisen within that jurisdiction.

105. In the case of *Rajiv Modi vs. Sanjay Jain & Ors,* (2009) 13 SCC 241, the Supreme Court stated the law in that regard as follows:

> "12. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression "cause of action". The Court has laid down that the cause of action is a fundamental element to confer the jurisdiction upon any Court and which has to be proved by the plaintiff to support his right to a judgment of the court. It is relevant to take note of what was stated by this court in state of Bombay v. Narottamdas Jethabhai, 1951 SCR 51. In this case, it is observed, that the jurisdiction of the courts depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters.
>
> 29. In view of the above principles, the Court on the basis of the averments made in the complaint, if it is prima facia of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact".

106. In a peculiar case relating to the territorial jurisdiction, which had arisen from the Bihar Reorganization Act, 2000, relating to reorganization of Bihar but while construing the provisions of the Act, the court was concerned as to which of the High Courts, i.e. Bihar or Jharkhand will have territorial jurisdiction over the matter. The Notification had been issued under the Bihar Finance Act, 1981 prior to reorganization, though its impact was upon the petitioner located in Jharkhand. Dealing with the expression 'cause of action' wholly or in part under Article 226 (2), the Supreme Court in the case of *Commissioner of Commercial Taxes Ranchi and Anr. v Swarn Rekha Cokes and Coals (P) LTD., (2004) 6 SCC 689,* held as under:

> "25.We shall first deal with the submission urged on behalf of the appellant in Civil Appeal No.7798 of 2002 that the High Court of Judicature at Patna had no jurisdiction to entertain the writ petition and issue a writ o mandamus to the State of Jharkhand. We have earlier noticed that though the State of Jharkhand was not a party in the writ petition filed before the High Court of Patna, after a leaned Single Judge of the High Court allowed the writ petition and granted the relief prayed for, the Commissioner of Commercial Taxes, Ranchi, Jharkhand State preferred a letters patent appeal impugning the judgment and orders of the learned Single Judge. In the letters patent appeal, no objection was taken to the jurisdiction of the Patna High Court to entertain the writ petition. Moreover, as submitted by Mr. Parasaran, it cannot be said that the entire cause of action was in the State of Jharkhand because the notification of the State of Bihar issued under

Section 7(3) (b) of the Bihar Finance Act, 1981 formed the basis on which the respondents founded their claim. This, therefore, necessarily formed a part of the cause of action and the respondents had to satisfy the Court that the aforesaid notification supported their claim for exemption from payment of sales tax on the purchase of raw materials. No doubt, in these circumstances the State of Jharkhand ought to have been made a party-respondent. This however, is of no consequence now in view of the fact that the State of Jharkhand itself sought to prefer an appeal against the order of the leaned Single Judge and in fact preferred a letters patent appeal and contested the claim of the respondents. It did not object to the jurisdiction of the High Court at Patna to entertain the writ petition. Since a part of the cause of action lay in the State of Bihar, it cannot be disputed that the High Court of Patna also had the jurisdiction to entertain the writ petition. The objections that the State of now since the State itself preferred an appeal and contested the case of the writ petitioners. Moreover, this objection as to jurisdiction cannot be raised in Civil Appeal No.2450 of 2003 since in that case the State of Bihar itself had refused to grant the benefit of exemption to the appellant therein. So far as Civil Appeal No.2450 of 2003 since in that case the State of Bihar itself had refused to grant the benefit of exemption to the appellant therein. So far as Civil Appeal No.3765 of 2003 is concerned, the judgment has been rendered by the High Court of Jharkhand at Ranchi. Since common questions arise in all these appeals, we consider it appropriate to decide the questions that arise in all these appeals, we consider it appropriate to decide the questions that arise in all these appeals, particularly, when we find that a part of the cause of action lay in the State of Bihar and consequently, the High Court at Patna had jurisdiction to entertain the writ petition and grant relief. We, therefore, reject the objection raised by the State of Jharkhand

on the ground of lack of jurisdiction of the High Court of Patna to entertain the writ petition."

107. Learned Senior Advocate, Mr. Vikas Singh appearing for the project proponent heavily relied upon the judgment of the Supreme Court in the case of *Kusum Ingots and Alloys Ltd. v. Union of India and Anr.,* (2004) 6 SCC 254, to contend that the issuance of notification by itself would not fall within the ambit of 'cause of action' wholly or partly and as such the Principal Bench does not has any territorial jurisdiction to entertain the application. According to the Learned Counsel, no 'cause of action' has risen at New Delhi despite the fact that the Notification of 2011 issued by MoEF was issued from New Delhi and MoEF itself is located at Delhi.

108. Thus, let us examine the facts and the principles stated by the Supreme Court in the case of *Kusum Ingots and Alloys Ltd., v. Union of India and Anr.,* (2004) 6 SCC 254. The appellant company in that case was a registered company with its registered office at Mumbai. It had obtained a loan from the Bhopal branch of the State Bank of India. The branch issued a notice for repayment of the said loan from Bhopal, purported to be in terms of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002. While questioning the vires of the Act, a writ petition was filed

before the Delhi High Court which came to be dismissed on the ground of lack of territorial jurisdiction, giving rise to the appeal before the Supreme Court. The contention raised was that since the constitutionality of the Parliamentary Act was in question, the Delhi High Court had the requisite jurisdiction to entertain the writ petition. On this premise, in paragraph 10 of the judgment, the Supreme Court noticed:

> Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the court, the court will have jurisdiction in the matter.

In paragraph 21 of the judgment, the court noticed that:

> If passing of a legislation gives rise to cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done, because a cause of action will arise only when the provision of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner.

109. The Court stated the principle that courts would not determine a constitutional question in a vacuum. The court further held that framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.

110. From the analysis of the above paragraphs of the judgment in *Kusum Ingots and Alloys Ltd.* (supra), it is clear that even a small fraction of 'cause of action' that accrues

within the jurisdiction of the court gives territorial jurisdiction to that court. Furthermore, it is not the situs of the office of the maker of a statute, rule, or statutory provision or even the executive order that would confer jurisdiction upon a court. The theory of part of cause of action may not be of help to applicant in such cases. But, where issuances of such provisions, rule, instruction or executive order gives rise to affecting the rights of the people at large or individually or sets into motion the impact of issuance of such notification, then that place would fall within the framework of expression 'cause of action' as arisen wholly or in part. It may be noticed that when an order is passed by a Court or a Tribunal or an executive authority under a provision of a statute or otherwise a part of cause of action arises at that place. Similar reasoning had been adopted by the Supreme Court in *Swarn Rekha Cokes and Coals (P) Ltd.*, (supra).

111. Another test would be whether the facts constitute a material, essential or integral part of 'cause of action' and once such a small fraction of the 'cause of action' arises within the territorial jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit / petition.

112. The Supreme Court in the case of *Oil Natural Gas Commission v. Utpal Kumar Basu and Ors.,* (1994) 4 SCC 711, held that the facts forming an integral part of the cause of action would give jurisdiction to the Court, immaterial facts would not. It may be part of the cause of action, free of ulterior motives that would provide jurisdiction to the Court. In *Rajasthan High Court Advocates Association v. Union of India and Ors.,* AIR 2001 Supreme Court 416, the Supreme Court stated that cause of action in its wider sense means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. It may also be noticed that Courts have also taken the view that merely because some incidental correspondence is exchanged between the parties, having no material or substantial bearing on the integral cause of action, would not vest jurisdiction with a Court.

113. At this stage, itself, it may be useful to notice that even under the un-amended Article 226 of the Constitution of India, the Constitution Bench of the Supreme Court in the case of *Lt. Col. Khajoor Singh v. The Union of India and Anr, AIR 1961 SC 532,* had held that the High Court within whose jurisdiction the person or authority against whom relief is

sought, would have the jurisdiction to entertain and decide a petition under Article 226 of the Constitution.

114. In light of the above legal principles, now let us examine the applicability of *Kusum Ingots and Alloys Ltd. (supra)* to the facts of the present case. Firstly, the facts of *Kusum Ingots and Alloys Ltd.* (supra) are very different and distinguishable. No doubt, the vires of the Act had been challenged before the High Court. But as claimed, the cause of action in favour of the petitioner therein had arisen only and at a place where and when a notice recalling the loan and threat to resort to other civil consequences was issued at Bhopal. The impact or the civil consequences flowing from the said notice were triggered at Bhopal. In absence of service of such notice, no cause of action would have arisen in favour of the applicant. The company was located at Bhopal, though had its registered office at Mumbai and notice of recalling the loan and directing civil consequences to follow was issued at Bhopal and given at Bhopal. It was on this premise that the court took the view that Delhi High Court had no territorial jurisdiction.

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 follows 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.

119. Thus, keeping in mind the purpose of the NGT Act and the Rules of 2011, we are impressed with the contention of the Project Proponent.

120. In view of the fact that all the petitions raised common question of law based on somewhat similar facts, for a complete,

comprehensive and final decision, it will be appropriate to hear all these petitions together and at one place. Furthermore, to avoid the possibility of passing of conflicting orders by different benches, it is not only desirable but imperative that all cases are heard by one and in the same bench. It will meet the ends of justice. The Chairperson has the power to transfer cases from one bench to another bench, ordinary place of sitting to other place of sitting or even to the place other than that.

121. In view of the above detailed discussion, we hold that the Principal Bench of the Tribunal has territorial jurisdiction to entertain and decide these cases as a part of cause of action has arisen in the areas within the territorial jurisdiction of the Principal Bench. As already held, the Chairperson has the power to transfer cases to and before benches and even places other than that.

122. Therefore, we allow Miscellaneous Application No. 239 of 2014 and direct that the Appeal No. 17 of 2014 pending before the Southern Bench shall stand transferred to the Principal Bench at New Delhi and would be heard together with Application No. 74 of 2014. This application stands disposed of accordingly.

123. There are no specific provisions in the NGT Act which deal with the requirements of territorial jurisdiction and cause of action, per se. However, Chapter 2 of the NGT Act deals with establishment of the Tribunal. Section 4 of the NGT Act requires

the government to appoint a Chairperson and ten Judicial and ten Expert members to the NGT. Under sub-Section (4) of Section 4, the Central Government in consultation with the Chairperson of the Tribunal can make rules, regulating generally the practice and procedure of the Tribunal. These rules could relate to the various aspects indicated in clauses (a) to (d) of sub-Section 4 of the NGT Act. The same reads as under:-

> "(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including: -
>
> (a) the rules as to the person who shall be entitled to appear before the Tribunal;
>
> (b) the rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3)], pertaining to the applications and appeals;
>
> (c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:
>
> Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of judicial Members hearing such application or appeal;
>
> (d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting."

124. In exercise of the powers vested in the Central Government under the above provisions, the Central Government made the Rules of 2011. Rule 3 of the Rules empowers the Chairperson to constitute a Bench of two or more members consisting of at least one Judicial Member and one Expert Member. The Chairperson is further vested with the power to decide the distribution of the

business of the Tribunal amongst the members of the Tribunal sitting at different places by order and specify the matters which may be dealt with by each such sitting in accordance with the provisions of clause (d) of sub-Section 4 of Section 4 of the Act. In terms of Rule 3(3), if any question arises as to whether any matter falls within the purview of the business allocated to a place of sitting, the decision of the Chairperson shall be final. Under Rule 4, the Chairperson of the Tribunal by general or special order, decide the cases or class of cases for which circuit procedure may be adopted by the Tribunal. The circuit procedure in terms of Section 4 sub-Section (4), clause (b) of the NGT Act is hearing of a case at a place other than the ordinary place of sitting of the Tribunal falling within the jurisdiction referred to in sub-Section (3) of Section 4 of the NGT Act.

125. Section 4(4)(c) of the NGT Act and its proviso deals with the minimum number of Members who shall hear the cases, applications and appeals and also empowers the Central Government to make rules in that behalf. As per the proviso the number of Judicial Members and the Expert Members in hearing an application or an appeal has to be equal. However, Rule 5 of the Rules of 2011 contemplates that an application or an appeal be heard by a Bench consisting of at least a Judicial or an Expert Member. In terms of Rule 5(2), the Chairperson is empowered to direct hearing of cases or class of cases by a Bench consisting or more than two Members by an order in writing. Rule 6 has been framed in furtherance to Section 4(4)(d) of the NGT Act relating to

transfer of cases from one place of sitting to other place of sitting including the ordinary place of sitting of the Bench. Sitting could also be held at a place other than a place at which it ordinarily sits. Even a Judicial Member of the Tribunal can so direct with the previous approval of the Chairperson.

125. Rule 8 provides for procedure for filing of application or appeals and Rule 9 for its scrutiny by the Registrar and/or the authorized officer. Rule 11 is of significance as it states the place of filing of an application or an appeal. Rule 11 of the Rules of 2011 read as under:

> "**11. Place of filing application or appeal. –** An application or appeal, as the case may be, shall ordinarily be filed by an applicant or appellant, as the case may be, with the Registrar of the Tribunal at its ordinary place of sitting falling within the jurisdiction, the cause of action, wholly or in part, has arisen."

126. The Central Government issued a notification dated 17th August, 2011 specified the places where the Benches of the Nation Green Tribunal would have their ordinary place of sitting. The notification dated 17th August, 2011 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 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 in 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 Chattisgarh.
4.	Southern	Chennai	Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Union Territories of Pondicherry and Lakshadweep.
5.	Eastern	Kolkata	West Bengal, Orissa, Bihar, Jharkhand, 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 petititons 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.

127. One common expression appearing in Section 4; Rule 11 and the Notification is 'ordinary place of sitting'. The Notification dated 17th August, 2011 identifies the ordinary places of sitting of the NGT and the areas indicated over which the respective Benches of the Tribunal shall exercise jurisdiction. This Notification essentially must be read and construed subject to the Rules of 2011 and the provisions of the NGT Act. A notification is law but is subject to the parent Act and even the subordinate

legislation under which it is issued. The powers of the Chairperson to constitute a Bench, the place where the cases or class of cases would be heard cannot be limited by the notification of August, 2011. The provisions of Section 4 and Rules 3, 6 and 11 cannot be frustrated by construing the notification in such strict or narrower manner that it would defeat the very object and purpose of the provisions of the Acts and the Rules framed thereunder. The power of the Chairperson to transfer cases in accordance with the Rules is free of any other restriction. The whole purpose is for better attainment of the ends of justice and for better administration of justice. The framers of the Rules of 2011 have specifically used the words "ordinarily be filed by an applicant or appellant with the Registrar of the Tribunal at its ordinary place of sitting falling within the jurisdiction, the cause of action, wholly or in part, has arisen" under Rule 11. The language of the Rule is not suggestive of application of doctrine of strict or restricted construction. The legislature in its wisdom has used the words which are capable of being given liberal construction on their plain reading. We see no reason as to why we should give them a restricted construction, particularly when this would amount to frustrating the purpose and object of the Act and the Rules thereunder. We are unable to accept the contention on behalf of the respondents that the provisions of other Acts relating to other Tribunals and the language of the NGT Act and the Rules thereunder grant a limited or restricted power to the Chairperson. We have already reproduced supra**,** the

comparative chart of the provisions of the Act even in relation to the power of the Chairperson to transfer cases. Under the NGT Act, power of the Chairperson to constitute Benches, distribution of the business of the Tribunal amongst the members of the Tribunal sitting at different places, transfer cases from one place of sitting to other place of sitting (including the ordinary place of sitting) as well as adoption of circuit benches, is wide enough to transfer cases from one bench to another, from one ordinary place of sitting to another ordinary place of sitting, as well as from one ordinary place of sitting to another place of sitting or even temporarily. If this interpretation is not accepted, then the very purpose of Section 4(4)(b) of the NGT Act and Rules 4 and 6 of the Rules of 2011 would stand defeated. It is a settled rule of interpretation that an interpretation which would further the cause and object of the Act and would render it more practical and effective in the interest of justice administration, should be preferred to the one that would invite results to the contrary. Even upon conjoint reading of the provisions afore-referred, it is not possible for us to come to any other conclusion. The use of the words 'ordinarily' and 'ordinary place of sitting' clearly indicate that the legislature had in its mind that there could be possibility of a case being filed at a place other than the ordinary place of sitting of the Bench. The expression necessarily implies that the cases could be filed at a place other than the ordinary place of sitting.

128. Rule 11 of the Rules of 2011 itself carves out an exception that depending upon the facts and circumstances of the case, it could be filed at another ordinary place of sitting as well. For instance, the Notification of 17th August, 2011 itself says that other Benches which may not have become operative, their cases could be filed at the Principal Bench. If the framers of the Rules of 2011 intended to totally restrict filing of cases at any other place, then it could not have used the expression 'ordinarily'. "Ordinarily" in its common parlance would mean 'usually' or with no special or distinctive features. The Black's Law Dictionary, 9th Edition, explains the word 'ordinary', as occurring in the regular course of events, normally, usually. The expression 'ordinarily' with its connotations should be understood as opposed to 'solely' or 'required' or 'primarily'. The first of these expressions *ex facie* attract the rule of liberal construction, while others have a greater element of being mandatory. It is unreasonable to think that the word 'ordinarily' does not admit of any inbuilt expansion and has to be construed in prohibitory terms. It has to be presumed that the rule framing authority was aware of all the relevant considerations, including the fact that there are alternative words available to the word 'ordinarily'. Once the legislature uses such word, it cannot be said that the word has been used without a purpose and intendment, particularly when the language used is unambiguous, clear and admits no confusion. The expression 'ordinarily' has to be understood keeping in view the scheme of the Act and the Rules framed thereunder and is not to be

understood in isolation. The view finds due support from the judgment of the Supreme Court in the case of *State of Andhra Pradesh v. V. Sarma Rao,* (2007) 2 SCC 159. In this case, the Supreme Court was concerned with the meaning of the expression 'ordinarily' under Section 195(4) of the Code of Criminal Procedure, 1973. In terms of Section 195(4), a Court shall be deemed to be subordinate to the Court to which the appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situated. The Supreme Court held as under: -

> "12. Section 195 of the Criminal Procedure Code does not recognise administrative discipline; it recognises judicial discipline with regard to the right of the higher authority to exercise appellate powers. The expression "ordinarily" may mean "normally", as has been held by this Court in *Kailash Chandra* v. *Union of India* and *Krishan Gopal* v. *Prakashchandra,* but the said expression must be understood in the context in which it has been used. "Ordinarily" may not mean "solely" or "in the name", and thus, if under no circumstance an appeal would lie to the Principal District Judge, the court would not be subordinate to it. When in a common parlance the expression "ordinarily" is used, there may be an option. There may be cases where an exception can be made out. It is never used in reference to a case where there is no exception. It never means "primarily"."

129. Still in another case, *Kailash Chandra v. Union of* India, AIR 1961 SC 1346, the Supreme Court was concerned with the following rule:

> "Rule 2046(2): A ministerial servant who is not governed by sub-clause (b) may be required to retire at the age of 55 years but should ordinarily be retained in service if

> he continues to be efficient up to the age of 60 years. He must not be retained after that age except in very special circumstances which must be recorded in writing and with the sanction of the competent authority."

130. Therein, while interpreting the word ‘ordinarily’ appearing in the said Rule, the Supreme Court held as under: -

> “8. Reading these words without the word "ordinarily" we find it unreasonable to think that it indicates any intention to cut down at all the right to require the servant to retire at the age of 55 years or to create in the servant any right to continue beyond the age of 55 years if he continues to be efficient. They are much more appropriate to express the intention that as soon as the age of 55 years is reached the appropriate authority has the right to require the servant to retire but that between the age of 55 and 60 the appropriate authority is given the option to retain the servant but is not bond to do so.
>
> 9. This intention is made even more clear and beyond doubt by the use of the word "ordinarily". "Ordinarily" means "in the large majority of cases but not invariably". This itself emphasises the fact that the appropriate authority is not bound to retain the servant after he attains the age of 55 even if he continues to be efficient. The intention of the second clause therefore clearly is that while under the first clause the appropriate authority has the right to retire the servant who falls within clause (a) as soon as he attains the age of 55, it will, at that stage, consider whether or not to retain him further. This option to retain for the further period of five years can only be exercised if the servant continues to be efficient; but in deciding whether or not to exercise this option the authority has to consider circumstances other than the question of efficiency also; in the absence of special circumstances he "should" retain the servant; but what are special circumstances is left entirely to the authority's decision. Thus, after the age of 55 is reached by the servant the authority has to exercise its discretion whether or not to retain the servant; and there is no right in the servant to be retained, even if he continues to be efficient.”

131. From the discussion of the above two cases, it is clear that the word ‘ordinarily’ means ‘in the large majority of cases’ but not invariably. This itself emphasizes that there is an element of

discretion vested in the Tribunal in relation to the institution of cases. In appropriate cases where the interest of justice may so demand, the cases could be permitted to be instituted in either of the ordinary place of sitting of two Benches, in whose jurisdiction the cause of action has partly arisen.

132. Thus, this expression appearing in Rule 11 cannot be termed as absolute and without any exception, as that is the legislative intent and purpose. It is also a well-known rule of construction that a provision of a statute must be construed so as to give it a sensible meaning. Legislature expects the Courts to observe the maxim *ut res magis valeat quam pareat*. The Supreme Court, in the case of *H.S. Vankani v. State of Gujarat,* (2010) 4 SCC 301, stated that "it is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly."

133. In *Navinchandra Mafatlal v. CIT,* AIR 1955 SC 58, the Supreme Court stated the law that "the cardinal rule of interpretation is that the words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative powers the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.

134. Another aspect under this very submission would be in relation to the interpretation of the words appearing in Rule 11 above "at its ordinary place of sitting falling within the jurisdiction, the cause of action, wholly or in part has arisen."

135. "Cause of Action" means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. In a recent judgment in the case of *Kehar Singh v. State of Haryana, (2013)* All India NGT Reporter 556, this Tribunal explained the meaning and implications of the words "cause of action" as follows –

> "16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to

the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Asson. V. Union of India* [(2001) 2 SCC 294]; *Sri Nasiruddin v. State Transport Appellate Tribunal* and *Ramai v. State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors.* with *Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors.* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors.* [(2004) 3 SCC 277]; *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. [(2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr.*[(2004) 9 SCC 512]; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.* [(2006) 3 SCC 100])"

136. In this very judgment, the Tribunal emphasised that the cause of action must be construed and relate to environmental issues arising from the Scheduled Acts and 'such dispute' appearing in Section 14 of the NGT Act. Besides this, the

Tribunal has to keep in mind that Section 14 of the NGT Act does not, in any manner, restrict the *locus standi* of the person who may file application relating to substantial question of environment, (including enforcement of a legal right in relation to the environment) which arises from the implementation of the specified acts in Schedule I of the NGT Act. Similarly, Section 16 uses the words "any person aggrieved" which again is a very generic term. Under Section 15 of the NGT Act, a person is expected to file an application who claims relief and compensation, restitution of property damaged for restitution of environment for such area or areas. Again restitution of environment may not be person specific but purpose specific. A person aggrieved may not necessarily be a person who has suffered a personal injury. Any person aggrieved can challenge an order granting Environment Clearance even though the applicant might not have suffered personally. Section 14 gives a very wide meaning to the person seeking to invoke jurisdiction of the Tribunal under Section 14. At this stage, we may refer to the judgment of the Tribunal in the case of *Samata v. Union of India,* (2014) 1 All India NGT Reporter (South Zone) where the Court held as under:-

> "29. Both under Section 11 of the NEAA Act,.1997 and Section 18 of the NGT Act, 2010 any person aggrieved by the grant of EC as shown above can maintain an appeal. The 'aggrieved person' as contemplated in the Act came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person.

> The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned, it cannot be stated that the person really aggrieved should alone be permitted to initiate an action. It is not necessary that the person, who initiates action, is a resident of that particular area wherein the proposed industrial site is located. It is true that the appellants have not participated in the proceedings of the public hearing. It is true that it is necessary to scan the credentials of the appellants as to their intention and motive. Even assuming that the appellants have not participated in the proceedings of the public hearing, they would lose their right to challenge the approval or the EC. If the appellants come forward with a case apprehending damage and danger to environment and ecology if the project in question was not properly envisaged and did not satisfy the Principles of Sustainable Development and Precautionary Principles, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment. In the instant case, nothing substantial has been demonstrated in order to doubt the credentials of the appellants. What are all stated by the 3rd respondent is that the appellants are residents of a different area though within the State and they are not aggrieved persons. The first appellant is a registered Non Governmental Organisation working in the field of Environment and the 2nd appellant is a social and environmental group with the objective of working for the welfare of the local communities and creating awareness on environmental issues and have filed the letter of authorisation issued by the respective bodies to initiate proceedings. Hence, they are to be termed as 'aggrieved persons' as envisaged under the above provisions, who can maintain the appeal and thus, this question is answered in favour of the appellants."

137. Applying the rule of liberal construction as to who can approach the Tribunal under the environmental jurisprudence, a Bench of the Delhi High Court in the case of *Prafulla Samantra v.*

Ministry of Environment & Forests & Ors. (2009) ILR 5 Delhi 821 held as under: -

> "The world as we know is gravely imperilled by mankind's collective folly. Unconcern to environment has reached such damaging levels which threatens the very existence of life on this planet. If standing before a special tribunal, created to assess impact of projects and activities that impact, or pose potential threats to the environment or local communities, is construed narrowly, organizations working for the betterment of the environment whether in form of NGOs or otherwise would be effectively kept out of the discourse, that is so crucial an input in such proceedings. Such association of persons, as long as they work in the field of environment, possess a right to oppose and challenge all actions, whether of the State of private parties, that impair or potentially impair the environment. In cases where complaints, appeals, etc. are filed bona fide by public spirited interested persons, environmental activists or other such voluntary organizations working for the betterment of the community as a whole, they are to be construed as 'aggrieved persons' within the meaning of that expression under Section 11(2)(c) of the Environment (Protection) Act, 1986."

138. Upon an analytical examination of the above judicial dictums, it is evidently clear that the expressions used by the framers of law in Sections 2(m), 4 and 14 to 16 of the NGT Act and Rules 3 to 6 and Rule 11 of the Rules of 2011 require liberal and purposive construction. Certainly, not only infraction of a cause of action but part of the cause of substantial cause of action has arisen within the territorial jurisdiction of the Principal Bench. As already noticed, part of the cause of action has also arisen at Kerala and for that matter in all coastal states. Thus, both the Benches, i.e. the Principal Bench and the Southern Bench will have jurisdiction to entertain and decide the appeal/applications. The application at Chennai by a different

party, namely *A. Joseph Vijayan v. Union of India,* Appeal No. 17 of 2014, challenging the grant of Environmental Clearance to the project proponent vide order dated 3rd January, 2014 was filed first. Immediately thereafter, Appeal Nos. 14 of 2014 was filed at the Principal Bench at Delhi as well as a different but a more comprehensive Application No. 74 of 2014 was also filed at the Principal Bench. The parties in the appeals at Chennai and the Principal Bench are different. The cause of action pleaded in Application No. 74 of 2014 at the Principal Bench is entirely different and distinguished than the subject matter of the two appeals, one before the Southern Bench and the other before the Principal Bench at Delhi.

139. Obviously, it would be in the interest of all stakeholders as well as in the interest of administration of justice that these applications/appeals are heard by one and the same Bench and together. To sum up, the Principal Bench has the territorial jurisdiction to entertain and decide the applications before it and the Chairperson has the power to transfer the appeal from Southern Bench to the Principal Bench for its disposal in accordance with law.

Discussion of Objection D:

The Original Application No. 74 of 2014 is a device to indirectly and effectively seek insertion of certain words into the CRZ Notification, 2011, which is impermissible.

140. It is contended by the respondents that the prayer in the Original Application No. 74 of 2014 is a device to indirectly do

what is not directly permissible. Impliedly it seeks to insert into the Notification of 2011, what areas have been excluded, which is impermissible. Thus, petition is not maintainable.

141. To examine the merit or otherwise of this contention, we may recapitulate the prayers made in the above referred cases.

142. In the Appeal no. 14 of 2014, the applicants have challenged and prayed for setting aside the grant of Environmental and CRZ Clearance dated 3rd January, 2014 to the Project Proponent by Government of India, Ministry of Environment and Forests, in relation to the Vizhinjam Port Project, International Deep Water Multi-purpose sea port at Vizhinjam in Thiruvananthapuram (Trivandrum) district of Kerala and no other relief has been prayed though in this application a reference has been made to CRZ Notification of 2011 and its effects. In application 74 of 14, the same applicant has prayed that the coastal 'areas of outstanding natural beauty' and 'areas likely to be inundated due to rise in sea level and consequent upon global warming and such other areas, as may be declared by the Central Government or concerned authorities at the State/Union Territory level from time to time' along the coast line of India, be protected as CRZ-I areas or otherwise, notwithstanding their non-inclusion in the Notification of 2011. It is also prayed that these areas be preserved and no activity which would damage such areas be undertaken. In this application, the applicant has also referred in some detail to the Notification of 1991 as well as of 2011, but has not prayed either

for setting aside of the Notification of 2011 or quashing or even praying for inclusion of the excluded areas back into the said Notification.

143. Learned Counsel appearing for the applicant during the course of submission clearly took a stand that they were not challenging the legality, correctness or validity of the Notification of 2011. *De hors* the Notification, they are praying for protection and preservation of the areas which are of outstanding natural beauty and are likely to be inundated due to rise in sea level consequent upon global warming. According to the applicant, these claimed reliefs are required to be considered independent of the Notification. However, the contention of the Project Proponent is that in the garb of the prayer made in this application, in fact the appellant is challenging exclusion of areas from Notification of 1991 and prays for inclusion of the same areas in the Notification of 2011 which amounts to raising indirect challenge to the said Notification, which is impermissible.

144. We have heard the Learned Counsel appearing for the parties on these preliminary submissions at some length. We must even at the cost of repetition clarify that at this stage, we are not concerned with the merit or demerits of the case but are only dealing with the preliminary submissions made by the Learned Counsel appearing for the Project Proponent as to the maintainability of the present application. We have already held that even if there was a challenge to the validity of the Notification

of 2011, the Tribunal has the jurisdiction to examine the same, of course, within the limitations laid on the grounds of challenge which are available for a delegated or a subordinate legislation. It is contended that for the purpose of arguments on the merits of the case, the applicant does not question the validity of the Notification of 2011. Thus to that extent, objection taken by the Project Proponent cannot be sustained and is inconsequential. What remains is the relief claimed by the applicant that the aforesaid areas must be preserved and protected *de hors* the fact that they do not form part of the Notification of 2011. This is the contention which has to be examined by the Tribunal when the case is heard on merits. At this stage, we are only concerned with the facts that whether a prayer of this kind is contemplated under section 14 read with Section 15 of the NGT Act or not. The moment the area is covered under the Notification of 2011, the restriction contemplated in law in relation to activity, construction and other matters would apply instantaneously. The areas which are not covered under the Notification of 2011 can still be required to be preserved and protected in different ways known under the accepted norms, in so far as it relates to a substantial question relating to environment. The competent authority including the Central Government may be called upon to formulate such guidelines or directions as contemplated under Sections 3 and 5 of the Act of 1986 and the Rules framed thereunder, particularly Rule 5. Thus, it is also possible that after hearing the matter on merits, the Tribunal comes to the

conclusion that these areas need no environmental protection and being not covered by any specific notification, any use of or activity in such areas would be permissible in accordance with law. But this is a question that can be determined only after the matter has been heard fully on merits. The expression 'environment' has been defined under Section 2(a) of the 1986 Act. It is a very wide definition and covers not only water, air and land but even the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Section 2 (b) of the said Act describes 'Environmental pollutant' as any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. In addition thereto, Section 2(c) of the NGT Act similarly defines the expression 'environment', while in Section 2(m) 'substantial question relating to environment' has been explained so as to include a direct violation of specific statutory environmental obligation and the gravity of damage to the environment, which includes the environmental consequences relating to a specific activity or by a point source of pollution.

145. The definition under Section 2(m) is an inclusive definition, thus, has to be construed in a liberal manner and to give it a wider connotation. In the case of *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and Ors.1987 1 SCC 424*, the Supreme Court while dealing with the expression include state that:

> "All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context in the process of enlarging, the definition may even become exhaustive."

146. In Goa Foundation v. Union of India 2013 NGT Reporter, New Delhi 234, a Bench of this Tribunal was concerned with maintainability of application relating to western ghats and the various expressions appearing in the relevant provisions of the NGT Act particularly definition section with regard to application filed under Section 14 and the scope of Tribunal jurisdiction held as under:

> "The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is a substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:
>
> > "'environment' includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."
>
> Section 2(m) defines the term 'substantial question relating to environment' as follows:
>
> "It shall include an instance where, --
>
> (i) there is a direct violation of a specific statutory environmental obligation by a person by which, -
>
> (A) the community at large other than an individual or group of individuals is affected or

likely to be affected by the environmental consequences; or
(B) the gravity of damage to the environment or property is substantial; or
(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution".

23. The legislature, in its wisdom, has defined the word 'environment' in very wide terms. It is inclusive of water, air, land, plants, micro-organisms and the inter-relationship between them, living and non-living creatures and property. Similarly, 'substantial question relating to environment' also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the *de minimis* principle. In *In re Net Books Agreement* [1962] 1 WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will

be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate."

147. Keeping in view these definitions of wide magnitude and connotations, it is obvious that any question relating to environment, falling within the Scheduled Acts would have to be examined by the Tribunal, subject to the provisions of the relevant Acts. In light of this, the Tribunal would have to examine on merits whether the areas in question, even though not covered under the CRZ Notification 2011 require some protection or preservation within the ambit and scope of environmental jurisprudence. Thus, in light of the above, we are unable to hold that the application 74 of 2014 is liable to be dismissed at the very threshold.

148. Ergo and for the reasons afore-stated, we answer the four issues framed by us with reference to the preliminary and other objections raised by the Respondents as follows:

A. NGT has complete and comprehensive trappings of a court and within the framework of the provisions of the NGT Act and the principles afore-stated, the NGT can exercise the limited power of judicial review to examine the constitutional validity/vires of the subordinate/delegated legislation. In the present case the CRZ Notification of 2011,

that has been issued under provisions of the Environment Protection Act, 1986. However, such examination cannot extend to the provisions of the statute of the NGT Act and the Rules framed thereunder, being the statute that created this Tribunal. The NGT Act does not expressly or by necessary implication exclude the powers of the higher judiciary under Articles 226 and/or 32 of the Constitution of India. Further, while exercising the 'limited power of judicial review', the Tribunal would perform the functions which are supplemental to the higher judiciary and not supplant them.

B. In the facts and circumstances of the case in hand, part of cause of action has risen at New Delhi and within the area that falls under territorial jurisdiction of the Principal Bench of NGT. Thus, this bench has the territorial jurisdiction to entertain and decide the present cases.

C. On the cumulative reading and true construction of Section 4 (4) of the NGT Act and Rules 3 to 6 and Rule 11 of Rules of 2011, the Chairperson of NGT has the power and authority to transfer cases from one ordinary place of sitting to other place of sitting or even to place other than that. The Chairperson of NGT has the power to decide the distribution of business of the Tribunal among the members of the Tribunal, including adoption of circuit procedure in accordance with the Rules. An applicant shall ordinarily file an application or appeal at ordinary place of sitting of a Bench within whose jurisdiction the cause of action, wholly or in part, has arisen; in terms of Rule 11 which has an inbuilt element of exception.

D. Original Application No. 74 of 2014 cannot be dismissed as not maintainable on the ground that it attempts to do indirectly which cannot be done directly and which is impermissible.

149. Having answered the formulated questions as above, we direct that the matter be listed for arguments on merits.

Hon'ble Mr. Justice Swatanter Kumar
Chairperson

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

Hon'ble Dr. D.K. Agrawal
Expert Member

Hon'ble Mr. B.S. Sajwan
Expert Member

Hon'ble Dr. R.C. Trivedi
Expert Member

July 17, 2014