

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

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**ORIGINAL APPLICATION NO. 137 OF 2014**

**IN THE MATTER OF:**

Vikrant Kumar Tongad  
A-93, Sector – 36,  
Greater Noida – 201 308  
Distt. Gautam Budh Nagar,  
Uttar Pradesh

..... Applicant

Versus

सत्यमेव जयते

1. Delhi Tourism and Transportation Corporation  
Through its Chairman  
18-A, DDA SCO Complex  
Defence Colony  
New Delhi – 110 024
2. National Capital Territory of Delhi  
Through The Chief Secretary  
Delhi Secretariat  
IP Estate  
New Delhi – 110 002
3. Union of India  
Through its Secretary  
Ministry of Environment and Forest  
Paryavaran Bhawan  
CGO Complex, Lodhi Road,  
New Delhi-110 003
4. Delhi Pollution Control Committee  
Through its Member Secretary  
4<sup>th</sup> Floor, ISBT Building,  
Kashmere Gate  
New Delhi – 110 006

.....Respondents

**Counsel for Applicant:**

Mr. Rahul Choudhary, Advocate for the Applicant.

**Counsel for Respondents:**

Mr. S.D. Upadhyay, Senior Advocate along with Mr. H. Peechara,  
Advocate for Respondent No. 1

Mr. Balendu Shekhar, Advocate for Respondents No. 2 & 4

Mr. Vivek Chib, Advocate for Respondent No. 3  
Mr. Avijit Bhushan, Advocate for UPSIDC

## **JUDGMENT**

### **PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. M.S. Nambiar (Judicial Member)**

**Hon'ble Dr. D.K. Agrawal (Expert Member)**

**Hon'ble Prof. A.R. Yousuf (Expert Member)**

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**Reserved on 19<sup>th</sup> January, 2015  
Pronounced on 12<sup>th</sup> February, 2015**

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

### **JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

Following precise question of law falls for consideration of the Tribunal in the present application:

‘Whether, constructing a ‘bridge’ across Yamuna is a ‘project’ or ‘activity’ that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/or 8(b) of the Schedule to the Environment Clearance Regulations, 2006 (for short ‘Regulations of 2006’)?’

2. The necessary facts giving rise to the present application are that, the applicant, who claims to be a public spirited person, working in the field of environmental conservation, particularly devoted to conservation of wetlands and ground water, has filed the present application, challenging construction of a ‘Signature Bridge’ across River Yamuna at Wazirabad, Delhi. The challenge is primarily on the ground that the said construction has commenced and is being carried on without obtaining prior Environmental

Clearance from the Regulatory Authority in terms of the provisions of the Regulations of 2006. Delhi Tourism and Transport Development Corporation (DTTDC) (Respondent No. 1) has commenced the project of construction of 'Signature Bridge' across River Yamuna at Wazirabad, Delhi, which is an un-symmetric cable-stayed bridge, with a main span of 251 meters and total length of 675 meters. The composite deck of the bridge carrying eight lanes (four on each side), is about 35 meters wide and is supported by lateral cables spaced at 13.5 meters intervals. The height of steel tower is approximately 150 meters. The total area of Signature Bridge Project is 1,55,260 sq. mtrs.

3. It is stated by the applicant that the Master Plan of NCT of Delhi, designates floodplains of River Yamuna in Zone 'O', expanding to an area of 9700 hectares or 97 sq. kms. The area bears special characteristics in terms of being an eco-sensitive area, consisting of natural features with large stretches of land between water course and existing bunds on the sides of River Yamuna. It is also averred that the whole expanse of these stretches are not to be used for development, therefore, need not be taken up under Section 8 (Zonal Development Plan) of Delhi Development Authority Act, 1957. As per the estimates, around 1600 hectares of land is under water (river extent) and 8100 hectares is dry land (flood plains). The reach from Wazirabad barrage to Okhla barrage is 4700 hectares. According to the applicant, the construction of the bridge is likely to impact River Yamuna and river hydrology adversely. The applicant relies upon a report prepared by Environics Trust, New

Delhi and Peace Institute Charitable Trust, Delhi, on 'Impact Assessment of Bridges and Barrages on River Yamuna', which was published in the year 2009. The report intended to understand and assess the impacts due to rail/road bridges and barrages on the river's environment and hydrology on the whole. According to the applicant, considering this Report, it was necessary and prudent to conduct Environmental Impact Assessment of the Signature Bridge Project and its impacts on River Yamuna and its hydrology. As per the applicant, the impacts of the activities of the proposed bridge construction can occur during Planning and Designing Stage to Pre-construction Stage, Construction Stage and Operation Stage. The applicant has also stated certain impacts of such constructions, like, diversion of waterways, contamination of soil and impact on aquatic life, including the chances of ground water contamination, which may occur at the Pre-Construction and Construction stage. For these reasons, the applicant claims that it was necessary for the Project Proponent to obtain prior Environmental Clearance before starting the project in terms of the Regulations of 2006.

4. It is the specific case of the applicant, that, such projects are covered under the Regulations of 2006 and particularly under Entry 8(a) and 8(b) of the Schedule to the said Regulations.

5. In reply to these, Respondent No. 1 admits that it has commenced construction of the Signature Bridge over River Yamuna without obtaining any Environmental Clearance from the Regulatory Authority i.e. Ministry of Environment, Forest & Climate

Change (for short 'MoEF') / State Level Environment Impact Assessment Authority (for short 'SEIAA'). According to the Respondent No. 1, since the existing two lanes Bridge at Wazirabad was unable to bear increased volume of road traffic, the Government of NCT of Delhi decided to construct a new eight lane bridge for high moving traffic. Thus, the construction work of the bridge was assigned to Respondent No. 1 by Government of NCT of Delhi in terms of MoU dated 27<sup>th</sup> August, 2004. A traffic study report was conducted by M/s Stup Consultants Pvt. Ltd. on behalf of Respondent No. 1, which recommended that considering the present traffic volume and the future traffic growth, a new link is badly required, as the existing infrastructure was insufficient in all respects. An Environmental Impact Assessment (for short, 'EIA') study was also conducted which summarized that there is likely to be no significant impact on the environment due to the proposed construction of the bridge. According to Respondent No. 1, Delhi Metro Rail Corporation gave 'No Objection' as per letter dated 1<sup>st</sup> December, 2004, similarly, the Ministry of Defense gave 'No Objection' on 23<sup>rd</sup> May, 2006, the Technical Committee of the Delhi Development Authority gave 'No Objection' on 14<sup>th</sup> June, 2006 and the Archeological Survey of India gave 'No Objection' on 7<sup>th</sup> August, 2006. The Yamuna Standing Committee considered the case in its 72<sup>nd</sup> meeting held on 7<sup>th</sup> January, 2007 and desired that the afflux of 18.20 cm should be further reduced by providing an additional water way beneath the approach road on the left bank of the river. Additional studies were carried out to reduce the afflux level as

desired, to a level so as not to inhibit drainage of the city by providing additional openings.

6. When Respondent No. 1 applied to the MoEF for seeking Environmental Clearance for execution of the project, the MoEF, vide its letter dated 14<sup>th</sup> March, 2007 informed Respondent No. 1 that 'Bridges' are not covered under the Regulations of 2006 and as such Environmental Clearance is not required. The letter dated 14<sup>th</sup> March, 2007 reads as under:

“Subject: Regarding Environmental Clearance for Construction of bridge on River Yamuna at Wazirabad Delhi:Your application dated 6.11.2006  
This has reference to your application dated 6.11.2006 for Environmental Clearance for construction of proposed bridge on River Yamuna at Wazirabad, Delhi under New EIA Notification 2006.  
I am directed to inform you that 'Bridges' are not covered under EIA Notification 2006 and as such Environmental Clearance is not required.”

7. In furtherance to the above, Respondent No. 1 did not pursue the matter any further and commenced the construction work which is even being carried on presently. It is also averred by this Respondent that the Central Water and Power Research Station (for short 'CWPRS'), Pune carried out further Hydraulic Studies and recommended the construction with certain technical parameters, which were duly adopted by Respondent No. 1 in order to take all precautionary measures in the interest of environment.

8. The NCT of Delhi and Delhi Pollution Control Committee (for short 'DPCC'), i.e., Respondent Nos. 2 & 4 respectively, have taken a stand that they are unable to say as to what is the proposed use of construction of this project in future. However, they also stated

that “Bridge” is not covered under the Regulations of 2006. In their reply, they referred to Entry No. 7(f) i.e., ‘Highways’ – (both National Highways or State Highways) but have not made any specific averment as to whether the present project is covered under Entry 7(f) or not. MoEF, though, did not file any separate reply, but, they have taken a stand during the course of the arguments that, “Bridges” is an ‘activity’ or ‘project’ which is not covered under any of the Entries of the Schedule to the Regulations of 2006, and hence, does not require Environmental Clearance.

9. As is evident from the above narrated factual matrix of the case, the entire controversy revolves around the meaning and interpretation of Entries 8 (a) and (b) and/or 7(f) respectively of the Schedule to the Regulations of 2006. Thus, it would be necessary for us to notice the Entries at this stage itself. The said Entries of the Schedule reads as under:

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7		<b>Physical Infrastructure including Environmental Services</b>		
7(f)	Highways	[(i) New National Highways; and ii) Expansion of National Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.]	[(i) All new New State Highway Projects] (ii) State Highway expansion projects in hilly terrain (above 1000m AMSL) and or ecologically sensitive areas].	[General Condition shall apply. Note- Highways include expressways.]
8		<b>Building/Construction projects/Area Development projects and Townships</b>		

8(a)	Building and Construction projects		≥ 20000 sq.mtrs and <1,50,000 sq.mtrs. of built-up area#	[The built-up area for the purpose of this notification is defined as “the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/ construction projects] □
8(b)	Townships and Area Development projects.		Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq .mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

10. The present project, as per the affidavit filed by Respondent No.1 relates to construction of an eight-lane wide bridge across River Yamuna, connecting Eastern and Western parts of Delhi. This was necessitated for the purpose of easing out the traffic congestion. The old bridge over River Yamuna at Wazirabad was to be retained for movement of slow traffic. This was primarily to feed fast developing areas of Yamuna Vihar, Gokul Puri, Nand Nagri and Inter-State Traffic from Ghaziabad, Sahibabad, Loni on Eastern side and Timarpur, Azadpur, Burari, Mukherjee Nagar, Mall Road etc. on the Western side. Development of this ‘Signature Bridge’ was imperative and in the interest of general public, in order to ease the traffic and meet the needs of the residents across.

11. First and foremost, the meaning and scope of the word 'bridge' has to be understood.

A 'bridge' is a building erected across a river, ridge, valley, or other place for common benefit of travellers. It is a structure that spans and provides a passage over a road, railway, river or some other obstacle (Ref: Wharton's Law Lexicon 15<sup>th</sup> Edn., 2012, Collins English Dictionary and Thesaurus 1<sup>st</sup> Edn., 1999).

Law Lexicon, 3<sup>rd</sup> Edition 2012 describes the word 'bridge' as follows:-

"A bridge is a structure of wood, iron, brick, or stone, ordinarily erected over a river, creek, pond or lake; or over a ravine, railroad, canal, or other obstruction in a highway, so as to make a continuous roadway, and afford to travelers a convenient passageway from one bank to the other. While a bridge is a part of the highway which passes over it, no definite rule can be laid down as to where one terminates and the other begins."

12. Besides the above specific meaning that has been given to the expression 'bridge', even in common parlance, it is understood to be a structure that connects any two ends, for various activities like travelling, crossing a river, joining National or State Highways or roads and is intended to provide for natural or artificial link for commutation. A bridge can hardly be termed as a stand-alone project as it would normally be part of a major or a smaller development or allied activity. A bridge therefore, cannot be taken as an abstract term. It would, without exception, always be a part of a project, i.e., construction of a highway or even an ordinary road and/or to cross a river, canal, drain or even a rail road. To put it simply, the bridge would be a segment or part of a bigger project,

activity or development. It can hardly be a final product in itself. Like even in the present case, it is meant to connect the Wazirabad Barrage and Okhla Barrage, to ease out traffic pressure and provide fast movement of traffic across River Yamuna, though the existing bridge would still be in existence. Thus, it would be a step in the final process and will not be equitable to a final product. A bridge cannot be made to stand on its own without connecting it with the roads on both ends. It is an integral part of an activity of development or area development that has to be seen wholly and from a holistic point of view.

13. Regulations of 2006 have been issued by the Central Government in exercise of its statutory powers conferred under sub-section (1) and clause (v) of sub Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986') read with clause (d) of sub-rule 3 of Rule 5 of the Environmental (Protection) Rules, 1986 (for short 'Rules of 1986') in supersession of the previously issued notifications. This notification not only has the force of law, but is a paramount piece of legislation for controlling and preventing environmental pollution and degradation.

14. Clause 2 of Regulations of 2006 declares and prescribes that a 'project' or 'activity' shall require prior Environmental Clearance from the concerned Regulatory Authority under Category 'A' and 'B' as the case may be. This would equally apply to all new projects or activities, as well as expansion and modernization of existing

projects or activities. Clause 2 also has an inbuilt restriction or limitation. It makes it obligatory upon the project proponent of any 'project' or 'activity' to take such Environmental Clearance before any construction work or preparation of land by the project management (except for securing the land), has started on the 'project' or 'activity'. In other words, obtaining of prior Environmental Clearance is a condition precedent before taking any steps in relation to the project or activity in terms of Clause 2. Schedule to the Regulations of 2006, then elaborates the projects and activities which would be covered under the said Clause 2. The heading of the Schedule also states 'List of Projects or Activities Requiring Prior Environmental Clearance'.

15. The significant expressions used by the framers in Clause 2 are 'projects and activities'. Obviously, when these two expressions have been used, they are neither interchangeable nor can be treated as synonymous. They have to have a distinct and different meaning with reference to the circumstances of a given project or activity. 'Project' even in common parlance is understood to mean, aim a planned undertaking; an individual or collaborative enterprise that is carefully planned to achieve a particular aim; a proposed or planned undertaking; any work taken up under a scheme for the purpose of providing employment etc. (Ref: The Law Lexicon 3<sup>rd</sup> Edn., 2012, Oxford Dictionary of English 3<sup>rd</sup> Edn. 2010, Wharton's Law Lexicon 15<sup>th</sup> Edn., 2012). The word 'Activity' could mean the combination of operations undertaken by the corporate body, whether or not they amount to a business, trade or profession in

the ordinary sense. It could also mean the collective acts of one person or two or more people engaged in a common enterprise. It could even mean a condition in which things are happening or being done; busy or vigorous action or movement; a thing that a person or group does or has done (Ref: The Law Lexicon 3<sup>rd</sup> Edn., 2012, Black's Law Dictionary 9<sup>th</sup> Edn., 2009, Oxford Dictionary of English 3<sup>rd</sup> Edn., 2010). 'Project' is a term of wider connotation than an 'activity'. Normally every 'activity' would be part of a 'project' but not always. Both these expressions cannot be defined or explained in rigid and inelastic terms. But, the fact of the matter is that these expressions have to be given a wider meaning and a liberal construction with reference to the facts of a given case, involving a 'project' or an 'activity'.

16. Entry 7(f) of the Schedule to the Regulations of 2006 deals with projects and activities of 'Highways'. It includes New National Highways, all new State Highway Projects and expansion thereof. Subject to the qualifications stated in that Entry, the Highways would include 'Expressways'.

17. Entry 8(a) relates to Building and Construction projects of  $\geq 20,000$  sq. mtrs. and  $< 1,50,000$  sq. mtrs. of built up area. Entry 8(b) relates to projects of Township and Area Development, covering an area which is  $\geq 50$  hectares and/or built up area which is  $\geq 1,50,000$  sq. mtrs. Such projects or activities under Entries 8(a) and 8(b) would be required to take Environmental Clearance and all such projects of Township and Area Development under Entry 8(b) satisfying the threshold area would be treated and appraised as

category 'B1' Projects. Entries 8(a) and 8(b) are under Entry 8 which carries a heading 'Building / Construction projects / Area Development projects and Townships'. The legislature has worded heading of Entry 8 in very wide and expressive terms. Use of expression with such wide magnitude clearly indicates the legislative intent that they should be construed liberally. These expressions in fact, and as above referred, are incapable of being construed strictly. Entry 8(b) talks both of Township and Area Development projects. These expressions relate to same or identical 'project' or 'activity'. Besides developing township, development of the areas is also contemplated as an activity for a bigger project. If these projects of Township and Area Development are covering an area  $\geq$  50 hectares and/or the built up area in excess of 1,50,000 sq. mtrs., the project/activity would require prior Environmental Clearance.

18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of *The Authorised Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors.*, (1979) 3 SCC 466, the Court held that:

"1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage

to 'destination social justice' should be helped, and not hampered, by judicial interpretation.”

In the case of *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, (1985) 4 SCC 71, the Court held that:

“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes.”

In the case of *Securities and Exchange Board of India v. Ajay Agarwal*, (2010) 3 SCC 765, the Court held that:

“41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.”

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these

Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., *salus populi est suprema lex*. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

20. In the case of *Regional Provident Fund Commissioner v. Shibu Metal Works*, AIR 1965 SC 1076, the Hon'ble Supreme Court was concerned with the question as to the true content of the entry "Electrical, Mechanical or general engineering products" included in Schedule 1 of the Employees' Provident Fund Act, 1952. The Hon'ble Supreme Court while dealing with this question and the principles that should be applied to find the true content of such entry held as under:

“13. Reverting then to the question of construing the relevant entry in Sch. I, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction.”

21. The Hon'ble Supreme Court while giving a wider meaning to the Entry, held that the manufacture of brass utensils can easily be regarded as an activity, the object of which is the manufacture of general engineering products. This was the balanced and proper interpretation which was neither narrow nor broad, but was one that fitted into the scheme of the Schedule and the Object of the Employees' Provident Fund Act, 1952.

22. As we have already noticed that the Regulations of 2006 have been enacted in furtherance to the powers of delegated legislation vested in the Central Government in terms of the provisions of the Act and Rules of 1986. The Act of 1986 was enacted while noticing the decline in environmental quality as evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and

threats to life support systems. It also noticed the inadequate linkages in handling matters of industrial and environmental safety. The purpose was to provide for greater environmental safety. The Act of 1986 was intended to take appropriate steps for the protection and improvement of environment. Environment not only includes water, air and land, but, also the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. Section 3 of the Act of 1986 *inter alia*, but, specifically empowers the Central Government to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment. Clause (ii) and (iii) of Sub-Section 2 of Section 3, requires the Central Government to *inter alia*, but, specifically take measures as contemplated under sub-section 1 of Section 3, in relation to planning and execution of a nation-wide programme for prevention, control and abatement of environmental pollution, as well as for laying down standards for the quality of environment in its various aspects. Rule 5 of the Rules of 1986 further empowers the Central Government to place prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas with reference to the environmental pollution. The object and purpose of the Act is to ensure prevention and control of environmental pollution, its abatement and particularly, degradation thereof.

23. Rivers are a very significant aspect of environment and ecology. The authorities concerned are not only expected to take

steps for preventing pollution of water *per se* but, are also required to ensure that its biodiversity, ecology and floodplain is not unduly intruded or exploited to the disadvantage of the environment. That is the precise reason that the Act of 1986 not only refers to the pollution of air, water and land but even admits to protect its interrelationship with human beings and even other living creatures including plants etc. The legislature has left nothing to the imagination and has worded the Entry 8(b) very widely so as to cover within its ambit every facet of environment as contemplated under Section 2(a) of the Act of 1986. The aim and object of the Act of 1986 is to protect the environment, which certainly includes rivers.

24. Rivers can be polluted directly or its ecology, biodiversity or flow can be adversely affected by developmental activities, thus, causing environmental hazards. Structures like bridges can cause a series of impacts both in immediate time and extended over a long duration. Impact is not only limited to the specific physical development, but, it also gives rise to several other interlinked elements which can cumulatively impact the environment which replenishes the resources in long run. These environmental hazards may result from flooding, narrowing of embankments and endangering of aquatic life. Any development project or activity upon the floodplain, river bank or across the river is bound to have some impact upon the ecology and biodiversity of the river. It is an established fact that such projects, whether part of a comprehensive developmental activity or independently, would

narrow the water course or environmental flow of the river. Such activity may have adverse impacts on aquatic flora and fauna. In some cases, it may adversely affect the floodplain and may amount to affecting the terrestrial ecology.

25. Thus, the assessment of such impact and degradation of environment resulting therefrom, is essential and is a matter which is of concern for the Expert Bodies appointed under the Act. Furthermore, Environmental Impact Assessment Guidance Manual for Building, Construction, Township and Area Development Project, 2010 provides that environmental facets which are to be considered in relation to township and area development are land, air, noise, water, biological, socio-economic and solid waste management. Thus, it is necessary to ascertain the baseline data of these environmental facets before a project or an activity may be permitted or carried out.

26. The Regulations of 2006 have been promulgated with the aim and object of assessing the impact that a project or an activity would have upon the environment and ecology. The expert body is expected to precisely visualise the extent of environmental degradation resulting from the project before granting approval. Normally, the projects having irretrievable and permanent impacts on nature are not permitted, and where permitted, very stringent, protective and precautionary conditions are imposed. Thus, it is relevant at this stage to understand the concept of EIA as contemplated under the Regulations of 2006 with reference to the

provisions of the Act of 1986 for protection of ecology and biodiversity of the river and riverbed.

27. In order to understand the concept of EIA, one first needs to know what an 'Environmental Impact' is. An 'Environmental Impact' is any impact or effect (positive or negative) that an activity has on an environmental system, environmental quality or natural resources. It is also known as an environmental effect [Oxford Dictionary of Environment and Conservation, First Edn., 2007]. An 'Environmental Effect' is defined as a natural or artificial disturbance of the physical, chemical or biological components that make up environment [Black's Law Dictionary, 9<sup>th</sup> Edn., 2009]. Such activities may take the form of mining, oil and gas exploration, thermal, nuclear and hydraulic power plants, metallurgical industries, chemical fertilizers, storing of hazardous chemicals, industrial estates/parks/complexes/areas, waste treatment plants, etc.

28. EIA was first introduced in the USA in 1969 and has since been widely accepted. It is being adopted in one form or the other in an increasing number of countries as a basis for making informed and rational judgments about what sort of developments are environmentally acceptable. It even includes the concept of 'Strategic Environmental Assessment'. An EIA is defined as a formal statement of the environmental impacts that are likely to arise from major activities such as new legislation or a new policy, programme or project. The results of the assessment are reported in the

'Environment Impact Statement' (EIS) [Oxford Dictionary of Environment and Conservation, First Edn., 2007]. Thus, an EIA in general parlance does not confine itself only to projects but also to legislations and policies.

29. With expansion and modernization of economic and trade activities in India, there was a need felt to understand as well as regulate the potential environmental impacts that such activities may have. Thus, in order to impose certain restrictions and prohibitions on new projects or activities, or on expansion or modernization of existing projects or activities, the Central Government enacted the Environment Clearance Regulations, 2006, on 14<sup>th</sup> September, 2006 under Section 3(1) and 3(2)(v) of the Act of 1986 and Rule 5(2) of Rules of 1986. The objective of the Regulations of 2006 is to set procedures of environmental clearance before establishment of project of identified nature and size. It required the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification to be undertaken in any part in India only after prior Environmental Clearance is granted by the particular authority. These Regulations do not define an EIA or an EIS. However, it requires the Expert Appraisal Committees in case of category 'A' projects and the State Level Expert Appraisal Committees in case of category 'B-1' projects or activities, including applications for expansion and modernization and/or change in product mix of existing projects or activities, to determine detailed and comprehensive ToR addressing all relevant environmental

concerns for the preparation of an EIA. Categorization of projects/activities into category 'A' or 'B' is done on the basis of the potential hazards that it poses to the environment, location, the extent of area involved etc.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied.

Article 48A in Part-IV (Directive Principles) of the Indian Constitution enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes a duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" which includes forests, lakes, rivers and wild life, and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf to shed its extravagant, unbridled sovereign power

and to forge in its policy, to maintain ecological balance and hygienic environment. Article 21 protects 'Right to Life' as a fundamental right. Enjoyment of life and its attainment, including the right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also to take adequate measures to promote, protect and improve the environment, both, man-made and natural. Sections 3 and 5 of the Act of 1986, apart from other provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'Environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Act of 1986. *[Noyyal River Ayacutdars Protection Association rep. by its President, P.M. Govindaswamy Pappavalasu v. The Government of Tamil Nadu rep. by its Secretary, Public Works Department and Ors., 2007-1-LW 275, Indian Council for Enviro-Legal Action etc. v. Union of India, (1996) 3 SCC 212].*

The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are

driven primarily by growth of economy at the cost of the river's integrity as an eco-system. [*Manoj Mishra v. Union of India*, Original Application No. 6 of 2012 and Original Application No. 300 of 2013, decided on 13<sup>th</sup> January, 2015]. The powers conferred on the Central Government by virtue of provisions contained in Section 3, 5 and 25 of the Act of 1986 and on the National Green Tribunal by virtue of Sections 14, 15 and 16 read with Section 18 of the National Green Tribunal Act, 2010, are wide enough to provide for protection, preservation and restitution of the environment and ecology of the river bed of River Yamuna.

31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647].

32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat Supreme Wastech Pvt. Ltd. v. State of Haryana and Ors*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with

interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: Wharton's Law Lexicon, 15<sup>th</sup> Edn., 2012, Black's Law Dictionary 9<sup>th</sup> Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately

used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4<sup>th</sup> April, 2011. *Dehors* the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v.*

*Union of India (UOI) & Ors.*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

“66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr. Bhushan may not be true.* For example, a

project which is by its nature and character an "Area Development project" would not become a "Building and Construction project" simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.

67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the "Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

"74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the

sensitive and delicate ecological balance required for the sanctuaries.

But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution”

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to

the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14<sup>th</sup> March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof.

39. In light of the peculiar facts and circumstances of the case and the reasons afore-recorded, we dispose of this application with the following directions:

1. We hold that construction of a 'bridge' or similar activity covering a build up area  $\geq 1,50,000$  sq. mtrs. and/or covering an area of  $\geq 50$  hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.
2. We direct Respondent No. 1 to obtain Environmental Clearance for the project in question. Such application would be submitted within a period of three weeks from the pronouncement of this Judgment.
3. The SEIAA shall consider the said application as Category 'B' project and would dispose it of by passing appropriate orders in accordance with law upon submission of Environmental Impact Assessment Report and in any case not later than six months from today.
4. Though the major part of the project has already been completed, we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.
5. We also direct that the SEIAA may impose conditions containing remedial measures to be taken by the Project Proponent to ensure that there is no environmental degradation.
6. We direct MoEF to comply with the directions issued by the Hon'ble Supreme Court in para 84 of the case of *In Re:*

*Construction of Park at NOIDA Near Okhla Bird Sanctuary v.  
Union of India (UOI) & Ors., (2011) 1 SCC 744.*

40. There shall be no order as to costs.

**Justice Swatanter Kumar  
Chairperson**

**Mr. M.S. Nambiar  
Judicial Member**

**Dr. D.K. Agrawal  
Expert Member**

**Prof. A.R. Yousuf  
Expert Member**

**New Delhi**  
12<sup>th</sup> February, 2015

**NGT**