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

ORIGINAL APPLICATION NOS. 83(T_{HC}) OF 2012

AND

ORIGINAL APPLICATION NO. 77(T_{HC}) OF 2012

IN THE MATTER OF:

Bharti Infratel Ltd.
A company incorporated under
The Companies Act, 1956 through
Its authorised representative
Hemant Ashwani, Head, Legal &
Regulatory Affairs, H-3, 4th Floor,
Metro Tower, Near Vijay Nagar Square,
Scheme No. 54 A.B. Road,
Indore (M.P.)

.....Applicants

Versus

1. State of M.P. & Ors.
   Through the Secretary
   Ministry of Environment
   Vallabh Bhawan
   Bhopal (M.P.)

2. M.P. Pollution Control Board
   Through its Member Secretary
   Office of MP Pollution Control Board
   Bhopal (M.P.)

.....Respondents

AND

APPEAL NO. 55(T_{HC}) OF 2012
(M. A. NOS. 74 OF 2013 & 114 OF 2013)

IN THE MATTER OF:

IDEA Cellular Ltd.
139-140, Electronic Complex
Indore (M.P.)
Through its Power of Attorney Holder

Shri Rajesh Kumar Singh
S/o Shri Late Sughar Singh Bhaduria
R/o 139-140, Electronic Complex
Indore (M.P.)

.....Appellant

Versus

1. State of Madhya Pradesh
   Through the Secretary
   Department of Environment
   Govt. of M.P., Vallabh Bhawan
   Bhopal (M.P.)

2. M.P. Pollution Control Board
   Through its Member Secretary
   Paryavaran Parisar, E-5,
   Arera Colony
   Bhopal (M.P.)

.....Respondents

AND

ORIGINAL APPLICATION NO. 80(T_{HC}) OF 2012

IN THE MATTER OF:

ATC Telecom Infrastructure Pvt. Ltd.
Regd. Office at D-1, 5th Floor, Southern Park,
Saket Place, Saket,
New Delhi-110017

.....Applicant

Versus

1. State of Madhya Pradesh
   Through the Secretary
   Department of Environment
   Govt. of M.P., Vallabh Bhawan
   Bhopal (M.P.)

2. M.P. Pollution Control Board
   Through its Member Secretary
   Paryavaran Parisar, E-5,
   Arera Colony
   Bhopal (M.P.)

.....Respondents

AND

ORIGINAL APPLICATION NO. 129 OF 2013

IN THE MATTER OF:

ATC Telecom Infrastructure Pvt. Ltd.
D-2, 5th Floor, Southern Park
Saket Place,
Saket, New Delhi

.....Applicant

Versus

1. Union of Territory of Chandigarh
   Through its Chief Administrator
   U.T., Chandigarh

2. Chandigarh Pollution Control Committee
   Through its Member Secretary
   Paryavaran Bhawan, Madhya Marg
   Sector-19B, Chandigarh

3. Department of Telecommunications
   Through its Secretary
   Ministry of Communications & IT
   Govt. of India
   Sanchar Bhawan, 20 Ashoka Road
   New Delhi

4. Chandigarh Electricity Department
   Through its Secretary Engineering
   Engineering Department & Municipal Corporation
   Elect. Circle, 5th Floor, U.T.
   Chandigarh

.....Respondents

AND

ORIGINAL APPLICATION NO. 130 OF 2013

IN THE MATTER OF:

ATC India Tower Corp Pvt. Ltd.
404, 4th Floor, Skyline Icon
Near Mittal Industrial Estate
Andheri Kurla Road
Andheri East, Mumbai

.....Applicant

Versus

1. Union of Territory of Chandigarh
   Through Director, Environment
   Department of Environment
   Chandigarh Administration
   3rd Floor, Paryavaran Bhawan
   Madhya Marg, Sector-19B
   Chandigarh

2. Chandigarh Pollution Control Committee
   Through the Member Secretary
   Paryavaran Bhawan, Madhya Marg
   Sector-19B, Chandigarh

3. Punjab Pollution Control Board
   Through the Environmental Engineer
   Nodal Office, Plot No. 55, Phase-II
   Opposite Bassi Theater, SAS Nagar
   Mohali

4. Union of India
   Through Secretary
   Ministry of Communications & IT
   Department of Telecommunications
   Sanchar Bhawan, 20 Ashoka Road
   New Delhi

.....Respondents

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Mr. C.D. Singh, Advocate
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Mr. Gurinderjit, Advocate

JUDGEMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 11th August, 2017
Pronounced on: 24th August, 2017

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)

The Madhya Pradesh Pollution Control Board (hereinafter, MPPCB) on 31st March, 2009 passed an order based upon its 117th meeting held on 28th January, 2009 stating as follows:-

> *"Pursuant to the decision taken in the Board 117th meeting dated 28th January, 2009 on the agenda No. 1.6 the registration and renewal of registration under Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008, of Medium Scale Industry and mines above area of 5 Hectare has been given to Director and registration and renewal of small scale industries and mines upto 5 Hectare and below it has been given to local officers. The director would be authorized to include or omit any condition in the Rules of 2008. The administrative Fees towards Registration and renewal of Registration would be as under:-*

Class of Industry	Administrative fees per year for the Registration (In Rupees)	Administrative fees for Renewal of Registration (In Rupees)
1. Medium Scale Industry and Mines above 5 Hect.	10000	6000

2. Small Scale Industry and Mines below or upto 5 Hect.	5000	3000

2. The above order was assailed before the Hon'ble High Court of Jabalpur, Madhya Pradesh by different petitioners. The High Court *vide* its order dated 2nd February, 2012 disposed of five Writ Petitions directing the MPPCB to consider the objections of the petitioners raised before it, against the applicability of the Act and rules *vide* reasoned order before taking action under the provision of the said Acts and the Rules. The primary contention raised before the Hon'ble High court was that the service providers like the petitioners who were using generator sets and standlone items along with the towers which they had installed for providing cellular services to the public at large were not covered within the definition of "industrial plant" in terms of Section 2(k) of the Air (Prevention and Control of Pollution) Act, 1981 (for short, the 'Act of 1981') and the Rules framed thereunder. The Hon'ble High Court did not deal with this contention but directed the Board to consider all contentions raised by the petitioner by passing a reasoned order.

3. The order of the MPPCB dated 31st March, 2009 obviously was not given effect to and the matter was remanded to the same. The Board provided hearing to all the petitioners with the opportunity to file written submissions. By a detailed order dated 28th June, 2012, the Board came to the conclusion that the petitioners were required to make an application, in a prescribed form and obtain consent of the

Board under the provision of the Act of 1981 and also pay requisite fee for submission of the application and obtain an authorization, as per the provision of the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 (for short, the 'Rules of 2008') within 15 days from the date of issuance of the letter by the Member Secretary of the Board. We consider it appropriate to reproduce Annexure P-5 hereunder:-

> *"As per Hon'ble High Court's order dated 02/02/2012. M.P. Pollution Control Board issued letters to the telecom companies with request to submit their grievances (if any) in addition to those submitted earlier. (Ref. no.1). Board is in receipt of responses from the companies, the same have been scrutinized thoroughly by the Board.*
> *Based on the response received from telecom companies following considerations are being recorded by the M.P. Pollution Control Board.*
>
> - *That the 'Cell site' or 'Cell towers' by virtue of their functioning and utility (i.e. provide service through transmitting the telecom signals to subscribers) fall under the 'industrial category' as per accepted definition for industry. Hence all the environmental laws/rules are applicable to each and every such cell tower installed by your telecom company.*
> - *That, the provisions of the Water Act of 1974 and of Air Act of 1981 provides that no person is entitled to carry on any activity which would cause danger or any kind of prejudice to the environment. It is also evident that before carrying any such activity/operation the prior consent from the State Pollution Board, is required under Section 21 of the Act of 1981.*
> - *That, it is also necessary to consider the meaning of the word 'air pollutant' which is defined under Section 2 (a) of the Act of 1981 and reads as under:-*
>
> *"2(a) "air pollutant" means any solid, liquid or gaseous substance (including noise)*

present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;"

- *That, Section 21 of the Act of 1981 restricts on use of certain industrial plants. Section 21 of the Act of 1981 clearly states that subject to the provisions of Section 21 of the Act of 1981 no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. It is noted that the entire State of Madhya Pradesh is declared as air pollution control area vide notification dated 9.3.1988. Proviso to sub-section (1) of Section 21 provides that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the same period of three months, till the disposal of such application.*
- *That, the D.G. sets are installed by cellular towers to perform trade activities. The D.G. sets are used for generating power with the help of diesel as fuel. Fuel gases emitted from the Chimney of D.G. sets contains various air pollutants like particulate matters (PM), Oxide of Nitrogen (NOx), Hydrocarbon (HC), Carbon Monoxide (CO), Noise etc. Because of the nature of the discharge material, emitted elements into the air it comes under the definition of industrial plant. Central Pollution Control board has laid down guidelines for installation and operation of D.G. sets* ***(Annexure-1).*** *Hence, these are to be monitored regularly by the Board so as to regulate the standards laid down under the concerned rules.*

- *That the noise generated during operation of DG sets also cause vibration to nearby buildings, create psychological affect on the human life, causing headache, poor hearing, agitation and blood-pressure disorder. It is noted that the noise pollution is the part of the provisions of the Act of 1981 as has been stated that the definition of Section 2 (a) of air pollutants include noise also. It is noted that in view of the aforesaid provisions of law the petitioner cannot escape from obtaining prior consent under the provisions of Act of 1981.*
- *That, further it is stated that to control and check the various air pollutants and also emission standard and noise pollution the consent under Section 21 of the Act of 1981 is required. It is noteworthy that non-obtainment of the consent under Section 21 of the Act of 1981 will cause tremendous disturbance related to environment in entire society. It is noted that the requirement of obtainment of consent under Section 21 is mandatory and hence the petitioner cannot claim exemption or escape from obtainment of the consent under Section 21 of the Act of 1981. Each DG set is an individual unit and every individual unit shall require consent and renewal under the provisions of the Act of 1981.*
- *That, you are thus required to make an application to the M.P. Pollution Control Board for obtainment of Air Consent and Authorization under the provisions of Air Act and Hazardous Waste (management, Handling & Trans-boundary Movement) Rules respectively. Whereas, no such application for Consent/ Authorization has been filed, which attracts Penalty for Contravention of the Provisions of the section 37 of the Air Act and under section 15 of the Environment Protection Act.*
- *It is also worth to mention that the section 31 (A) of Air Act and section 5 of Environmental Protection Act empowers the State Pollution Control Board and Chairman State PCB*

respectively to issue closure direction to the defaulters.

Thus, in view of above facts you are required to make an application in prescribed forms to M.P. Pollution Control Board for obtaining Consent under Air Act along with the prescribed fees as applicable and Authorization as per the provisions of Hazardous Waste (Management, Handling & Trans-boundary) Rules without any administrative charges within 15 days from the date of issue of this letter, after which the Board shall be free to initiate legal action against the company as per the provisions of the respective acts."

4. Being aggrieved by the order dated 28th June, 2012 all the petitioners again approached the Hon'ble High Court of Jabalpur, Madhya Pradesh and filed writ petitions. All these writ petitions came to be transferred to the Tribunal *vide* order dated 10th September, 2012. Upon transfer, four writ petitions were registered as Original Application Nos. 55(T_{HC}) of 2012, Original Application No. 77(T_{HC}) of 2012, Original Application No. 80(T_{HC}) of 2012, and Appeal No. 83(T_{HC}) of 2012.

5. Similar directions had already been issued by the Chandigarh Pollution Control Committee, while exercising its jurisdiction in the Union Territory of Chandigarh. It had issued orders on 21st May, 2013 similar to the MPPCB order dated 28th June, 2012 which were challenged by the petitioner, i.e., ATC Telecom Infrastructure Pvt. Ltd. resulting in registration of two applications filed before the Tribunal, i.e., Original Application No. 129 of 2013 and Original Application No. 130 of 2013.

6. We may notice that the orders were issued by the Chandigarh Pollution Control Committee against Viom Network Ltd. which was later renamed as ATC Telecom Infrastructure Pvt. Ltd. Hence, the Original Application No. 129 of 2013 was renamed as ATC Telecom Infrastructure Pvt. Ltd. vs. Union Territory of Chandigarh. The Original Application No. 130 of 2013 was filed by another group of companies ATC India Tower Corp. Pvt. Ltd. against the similar order of the Board. Thus, by this common order we would dispose of all the Original Applications and Appeal filed by the parties afore-noticed.

7. While challenging the order dated 28th June, 2012, various contentions have been raised on behalf of appellants/applicants, however, primary emphasis is only on one contention that the standlone DG set attached to a tower as an alternative source of energy cannot be termed as "industrial plant" and thus, is not covered under the definition thereof, in terms of Section 2(k) of the Act of 1981. Hence, according to the applicants/appellant no consequences would follow, including passing of the impugned order. It is also submitted that the order dated 31st March, 2009 had been issued, requiring the medium scale industry and the mines above the area of 5 hectares to be covered under the provision of the Act of 1981 and thus, required to pay administrative fee towards registration and to obtain the consent of the Board. It is the case of the applicants/appellant that their activity is not covered under a medium scale industry and therefore, the issuance of the order was not in consonance with the decision of the Board. Lastly, it is

contended that the DG sets being used as an alternative source of the energy by the petitioner has to be taken as a standlone machine which cannot be equated and treated inclusive of industrial plant as that is not the legislative intent of the provision of the Act of 1981.

8. In relation to the applicability of the Rules of 2008, it is submitted that in terms of these rules also, the production of hazardous waste should be a result of 'industrial operation' and the DG Sets attached to a tower cannot be termed as an 'industrial process' so as to attract the applicability of the Rules of 2008. Under Entry-5 of Schedule-I of the Rules of 2008, neither the ingredients thereof are specified nor the language of the Entry on its plain reading covers the same.

In support of its contention, the applicants/appellant also placed reliance upon the definition of the word 'industrial plant' appearing in the Project Imports Regulations, 1986 dated 3rd April, 1986 issued by the Central Board of Excise and Customs. The said definition reads as under:-

"ANNEXURE X

PROJECT IMPORTS REGULATIONS, 1986

[M.F. (D.R.) Notification No. 230/86-Cus., dated 3-4-1986 as amended]

REGULATION [1][3. Definitions.-For the purposes of these regulations,-

(a) "industrial plants" means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity, but does not include-

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film

processing laboratories, photocopying studios, laundries, garages and workshops; or

(ii) a single machine or a composite machine, within the meaning assigned to it Notes 3 and 4 to Section XVI of the said First Schedule.

Explanation.- For the purposes of sub-clause (i), the expression "establishments designed to offer services of any description" shall not include video recording or editing units, cinematographic studios, cinematographic film processing laboratories and sound recording, processing, mixing or editing studios;

(b) "Sponsoring authority" means an authority specified in the Table annexed to these regulations;

(c) "substantial expansion" means an expansion which will increase the existing installed capacity by not less than 25 per cent.

(d) "unit" means any self-contained portion of an industrial plant or any self-contained portion of a project specified under the said Heading No. 98.01 and having an independent function in the execution of the said project]."

9. In order to examine the merit or otherwise of the core contention raised by the parties before us, it is necessary to refer to certain relevant provisions of the Act of 1981.

(a) "air pollutant" means any solid, liquid or gaseous substance[(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air;

(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

21. **Restrictions on use of certain industrial plants-**[(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area,

immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed 'and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:]

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provisio, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4),

shall comply with the following conditions, namely -

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; .and

(v) such other conditions as the State Board, may specify in this behalf,

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf-

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months :

Provided further that-

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an

> opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.
> (7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

10. On examining the above mentioned provisions cumulatively, it becomes evident that the above-stated expression are of very wide connotation and are intended to cover variety of activities, with the prime purpose of preventing and controlling air pollution. 'Air pollutants' means any solid, liquid or gaseous substance including noise present in the atmosphere, in such concentration which may tend to be injurious to the human health or environment. 'Air pollution' means the presence of any air pollutant in the atmosphere. In other words, the definition of air pollution under section 2(b) includes air pollutants which have been defined under section 2(a) in very generic terms. Once the air pollution controlled areas are notified then no person can establish or operate industrial plant without prior consent of the State Board. The restrictions under Section 21 of the Act of 1981 are prospective upon coming into force of the Act of 1981. It also covers the existing units who were to apply for obtaining such consent within three months from the commencement of such Act.

11. To the contrary, the stand of the official respondent, particularly, MPPCB is that Entry 5 of Schedule I of Rules of 2008 is a generic

provision and it must be given liberal interpretation. According to them, industry lubricant accessories would not only be used in hydraulic process, but even in other operations. Industrial operation would include operation of generator sets and the used oil is undoubtedly covered under the Rule of 2008. Pollution will be generated even by the generators admittedly used by the applicants/appellant.

12. In relation to the applicability of the provision of Act of 1981, it is submitted by the respondents that the definition of industrial plant in terms of 2(k) of the Act of 1981 would bring within its ambit even DG sets. Firstly, the DG Set is not a standlone plant but in fact is an integral part of a process, i.e., towers emanating signals as a commercial or trade activity to which the DG set is attached as an alternative source of energy. Secondly, the use of DG set in the entire process satisfies the essentials of an industrial plant and hence the Act and the Rules are applicable.

13. Section 21 of the Act of 1981, imposes restrictions, in the form of prohibition on any person to establish or operate any industrial plant in an air pollution controlled area without obtaining the consent of the concerned State Board under whose jurisdiction the area falls. The object of the Act is to provide for prevention, control and abatement of air pollution for the establishment, with a view to carry out the aforesaid purpose and to confer, assign such Board with the powers and functions relating thereto and the masses connected thereto. Air pollution is a term of very wide connotation so as to

prevent and control air pollution, to ensure protection of environment and public health at large.

This definition of 'industrial plant' under the Project Imports Regulations, 1986 has been intentionally restricted as it specifically provides what items will be excluded from its ambit. For instance, hospitals, hotels, photography studios, etc., or a single machine or a composite machine has been specifically excluded from the ambit of the definition provided under these Regulations. Furthermore, Regulation 3 relied upon by applicants have been framed for the limited and a specified purpose and in furtherance to the powers vested in the Board under Section 157 of the Customs Act, 1962. This definition is to serve a specific purpose under the Rules and it is not a definition of generic nature. In contradistinction to this, the Act of 1981 defines 'industrial plant' in very generic terms and the same expression also appears in Section 21. The restriction created under Section 21 applies to all as the words used in the Section are 'no person shall without previous consent of the Board establish or operate any industrial plant', which clearly demonstrates that it is an expression of generic nature and wide connotation. Therefore, there will be no reason for the Tribunal to interpret this expression of generic element in a restricted manner.

14. The common expression that has been used in the language of Section 2(k) and Section 21 of the Act of 1981, is 'industrial plant'. On reading of these provisions, contentions raised on behalf of the applicants/appellant is that the DG sets which are being used as an

alternative source of energy for operation of their towers is a standlone item and does not satisfy the basic ingredients of an industrial plant. The standlone DG sets being an 'industrial plant' cannot invite the rigours of air pollution under the Act of 1981 and subsequently of the order passed by the said Board dated 28th January, 2009. On the other hand, official respondents, particularly, the MPPCB has contended that the DG set is an essential feature and part of the towers created by the applicant companies and is a composite unit. Even otherwise, the DG sets would fall within the definition of 'industrial plant' being a complete machine in itself which generates emissions which are air pollutants while on the other hand it produces a remnant 'used oil' which is a hazardous waste and therefore, covered under the Rules of 2008.

15. Thus, the entire controversy revolves around the interpretation of the expression, 'industrial plant' appearing in section 2(k) of the Act of 1981. On a plain reading of this definition it means that any plant used for any industrial or trade purposes and emitting air pollutant into the atmosphere. Thus, it includes within its contours three essentials, i.e., i) it should be a plant, (ii) it should be used for any industrial or trade purposes and (iii) it must emit air pollutants into the atmosphere. While defining industrial plant, the legislature in its wisdom has enumerated what will be within its ambit. The expression 'plant' has been understood in its common parlance as tools, machinery, buildings, grounds etc. of a factory or business; the apparatus or equipment for a certain mechanical operation or

process. The word 'plant' has been defined or explained differently in context to different fields, activities or law. At this stage, we may refer to some of such meanings or explanations or the context in which it has been understood:

> Plant, has frequently been used in fiscal and other legislation. It is one of a fairly large category of words as to which no statutory definition is provided ('trade', office even 'income' are others), so that it is left to the court to interpret them. It naturally happens that as case follows case, and one extension leads to another, the meaning of the word gradually diverges from its natural or dictionary meaning. This is certainly true for plant, *I.R.C. v. Scottish & Newcastle Breweries Ltd.,* (1982) 1 WLR 322: (1982) 2 ALL ER 230: 55 TC 252 (HL).
>
> Plant, in the relevant sense, although admitted not a term of art, and therefore part of the general English tongue, is not, in this sense, an ordinary word, but one of imprecise application, and, so far as I can see, has been applied to industrial and commercial equipment in a highly analogical and metaphorical sense, borrowed, unless I am mistaken, from the world of botany, *Cole Bros Ltd. V. Phillips (Inspector of Taxes),* (1982) 1 WLR 1450: (1982) 2 ALL ER 247 (HC).
>
> Plant, includes whatever apparatus is used by a businessman for carrying on his business, not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business, *C.I.T. v. Taj Mahal Hotel,* (1971) 3 SCC 550: (1971) 82 ITR 44; *Scientific Engineering House (P) Ltd. v. C.I.T.,* (1986) 1 SCC 11: 1986 SCC (Tax) 143: (1986) 157 ILR 86.
>
> "Plant", includes machinery, equipment or appliance, whether affixed to land or not. [Atomic Energy Act, 1962 (33 of 1962) s. 2(1) (e)]
>
> Plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which issued for mechanical operations or processes or is employed in mechanical or industrial business, *Scientific Engineering House (P) Ltd. v. CIT,* AIR

1986 SC 338 (344): (1986) 1 SCC 11. (Income-tax Act, 1961, s. 32)
Plant, would include any article or object fixed or movable, live or dead by a businessman for carrying on his business and it is not necessarily confined to any means as used as mechanical operations or process employed in mechanical or industrial business, *Scientific Engineering House Pvt. Ltd. v. Commissioner of Income Tax*, (1986) 1 SCC 11.
Plant, would include whatever apparatus is used by a businessman for carrying on his business; not his stock-in-trade which he buys or makes for sales, but all goods and chattels fixed or movable which he keeps for employment in his business and which have some degree or durability, *State of Bihar v. Steel City Beverages Ltd.,* (1999) 1 SCC 10.

16. From the above-stated various meanings of the word 'plant', it is clear that 'plant' is a term of wide connotation, capable of taking within its ambit, large and varied themes. It will not be feasible to construe this expression narrowly or give it a very strict meaning. A theater building *per se* cannot be a plant but a building constructed in which machinery, objects or articles are installed to carry on manufacturing or trading process, would be a plant. Once the expression 'plant' covers a particular item, then it would automatically fall within the definition of industrial plant. The Act defines 'industrial plant' as any plant, used for any industrial or trade purpose. Of course, being a plant is one of the three essentials and to bring it within the ambit of the definition of 'industrial plant' under section 2(k), other two ingredients should also be satisfied. The use of DG sets by the applicant company is to supply alternative source of power to keep the towers operative uninterruptedly. Towers are being used for receiving and passing of signals in relation to mobile etc. If section

2(k) contained 'industry' only and not 'trade', then the matter would have been different. The legislature in its wisdom has used both the words, i.e., 'industrial' and 'trade'. It is a settled principle of law that use of any expression by the legislature is not without a purpose and cannot be treated as futile or odious. The machine may be used only for the purposes of industrial activity or it may be used for trade purposes or even for both. In either of the cases, it would have to be termed as a 'plant'. It is not appropriate to state that the words 'industrial' or 'trade' used in section 2(k) are synonymous or interchangeable. In fact, they cover different fields which can exist independent of each other or even co-jointly.

17. Significance of these expressions is to be examined with reference to the pollution they cause or are likely to cause. If they fall in either of these categories, what requisite steps are required to be taken to prevent and control such pollution. The DG sets being used by the applicants/appellant companies are certainly a machine or equipment. This equipment or machine is being used for industrial purposes. The towers emanating and receiving signals as a composite unit with DG set, are in any case, an industrial plant which is being used for trading purposes. The very business of the applicants/appellant is to carry on trade by providing cellular services to the consumers by installing towers which are attached to the DG Sets in the notified air pollution controlled areas. It is important to note here that the State of Madhya Pradesh has issued a Notification dated 9th March, 1988 declaring the entire state of Madhya Pradesh

as an air pollution controlled area. The DG sets is used for the purposes of running this trade activity. They are not manufacturing or producing a product but they are using both these equipments put together as a unit for trading purposes to provide cellular services to the customers for certain monetary considerations. It is undisputed that the DG sets which are being used in this activity, generate emissions which will or may pollute the atmosphere, unless they are regulated and operated strictly within the prescribed norms for which they are expected to move applications.

18. 'Emissions' under section 2(j) of the Act of 1981 include gaseous substances from any outlet. Thus, all the three essentials in relation to 'industrial plant' afore-stated by us are satisfied in the present case. Section 21 of the Act of 1981 contemplates a prohibition not only on operating of such industrial plant but even upon establishment of the same. There is no doubt that the areas in question are covered as air pollution controlled areas and the rigours of Section 21 will apply. At this stage, we are not concerned whether these DG sets would actually cause air pollution or not. That is a matter to be examined by the Board at the appropriate stage. At that stage the Board will decide what conditions are required to be enforced and what should be the permissible standards applicable. This Tribunal is presently concerned with a very limited controversy of whether or not the applicant/appellant company should be called upon to file application for obtaining the consent of the Board and deposit the requisite fee.

19. We may also examine the cumulative effect of the statutory provisions contained in the Environment (Protection) Act, 1986 (hereinafter, 'Act of 1986') and the Act of 1981. In relation to the restrictions imposed on the activities that would cause emissions in air pollution controlled area, we have already referred to section 2(a) and 2(b) of the Act of 1981. On reading these definition clauses in conjunction with the provisions of section 7 of the Act of 1986, it becomes evident that no person carrying on any industrial operation or process shall discharge or emit or even be permitted to discharge or emit any environmental pollutants in excess of the prescribed standards. An environmental pollutant under section 2(b) of the Act of 1986 means any solid, liquid or gaseous substance present in such concentration as may be, or which may tend to be, injurious to environment. Emissions under section 2(j) of the Act of 1981 mean any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet. The term 'industrial plant' under Act of 1981 would include its use for industrial or trade purposes. The expression 'trade' appearing in section 2(k) of the Act of 1981, is of very general application and may always be considered in the context of its usage. The word 'business' is even a wider term and may ordinarily include 'trade', as the primary meaning of the word 'trade' is the exchange of goods for goods or exchange of goods for money. However, the word 'trade' also has its secondary meaning, viz., business carried on with a view to gain profit. In some situations the word 'trade' has even been interchangeably used for industry. A trade

is an organization seeking profits, as a rule with the aid of physical assets (referred to *Khoday Distilleries Ltd. and Ors. v. State of Karnataka,* (1995) 1 SCC 574).

On the cumulative reading of these provisions, it is evident that an industrial plant need not necessarily be for the purposes of industrial activity. It could be simpliciter for trade purposes. The expression 'industrial' or 'trade' are disjunctive and extend to their own fields. A trade activity could be independent of any industrial activity, be it manufacturing or a process or operation. In light of this, it may not be appropriate to accept the contention that DG set is a standlone item or a standlone plant in itself. In fact, it is an integral part of the composite system of towers emitting/receiving signals and for a consideration. This would make the DG set an integral part of trading/commercial activity of providing service to the public at large. The DG set is an alternative which is regularly used as a source of energy, therefore, if the DG set was kept separately/disconnected from the tower, it would be of no use, utility and consequences. Its use and utility is for a trading purpose and is connected to the tower for ensuring uninterrupted power supply.

20. The Precautionary Principle applied to the facts of the present case, would require the applicant company to take all precautions to prevent and control the air pollution resulting from the activity that they are carrying on. The activity of operating DG sets for whatever period, generate air pollutants and such polluters must know liabilities under the law. The liability is absolute and the provisions of

section 17 (3) of the NGT Act does not allow any escape to the applicants in relation to the consequences flowing from their activity. In our considered view, it may be appropriate to require the applicant/appellant company to pay composite fee for all the generators installed within a given air pollution controlled area rather than paying fee on each DG set separately. The air pollution is not restricted to a particular area but it extends to the adjacent areas also. Pollution emanating from a given site would spread in the entire area and it is the cumulative effect of such emanation on that area which has to be taken into consideration and all polluters who are liable for causing such pollution are to be held responsible with financial liabilities. Thus, it will be in consonance with the settled principles that the applicant company is called upon to pay the cumulative fee at a specified rate to be predetermined by the Board. Keeping in view the various aspects, it must be ensured that the liability cast upon the applicant company is not unreasonable or unduly harsh, as they would ultimately pass such liability upon the customers which would not meet the ends of justice.

21. The contention raised on behalf of the applicants/appellant is that the MPPCB had issued an office order dated 1st June, 2016, exempting the green industries from taking the consent of the Board. According to the applicants/appellant, the DG sets used by the applicants/appellant fall in green category and thus, there is no requirement for the applicants/appellant to take the consent of the Board for use of DG sets.

This contention of the applicants/appellant is misconceived. The order dated 1st June, 2016, was issued by the Member Secretary, MPPCB stating that in continuation of its earlier order dated 20th April, 2015 and for ease of doing business, the green category industries were exempted from inspection of the unit at the time of renewal of the consent and it is only in the event of non-compliance in regard to pollution that such industries would be subjected to inspection. This order at the face of it does not in any way exempt the persons concerned from the statutory obligations of obtaining the consent of the Board to use such DG sets which release emissions into the environment. This order merely introduced the methodology for conducting an inspection prior to renewal of the consent. It only truncates the process for grant/renewal of consent and nowhere it grants absolute exemption to such units from the compliance of the statutory provisions appearing under section 7 of the Act of 1986 and section 22 of the Act of 1981. The language of these two sections does not provide any scope for exemption as there is an absolute statutory obligation on the part of the all concerned. Both these sections use the expression 'no person' would carry on industrial or other activities where it releases emissions in violation of the prescribed standards. Certainly, they do not contain any provisions for grant of exemption as such. The MPPCB in furtherance to the guidelines issued by the CPCB has drawn up the list of the industries or projects categorised as red, orange, green and white. They were also categorized as small scale, medium scale etc. According to the learned counsel appearing for the Board, the categorisation was done primarily for administrative

reasons and was based upon appropriate inspection of the unit/project. This granted no exemption from the statutory provisions. The list that has been placed on record says that the industries, activities, projects are of green category. The DG sets of 15 KVA to 1 MVA fall at serial no. 86 of this category. Under this very list, a wide category of industries were included and the DG sets do not find place in this list.

On 27th December, 2016, the MPPCB issued simplified process for issuing consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Act of 1981. This sought to grant exemption to the white category industries. It needs to be noticed that these classifications do not grant any clear exemption to any industries. The word used in these guidelines is 'may'. Furthermore, these are mere guidelines framed for the purposes of administrative convenience. They have not been issued in exercise of any statutory powers. There cannot be an absolute exemption under section 7 of the Act of 1986 and section 22 of the Act of 1981, particularly, when there is no power to exempt under the statute itself. Yes, the Board or the Government could truncate the process of grant of inspection/grant of consent in consonance with the provisions of law. In our considered view, these applicants/appellant cannot derive any advantage from these letters, guidelines and the lists issued.

22. Now, we would deal with the application of the Rules of 2008 to the facts and circumstances of the present case. According to the applicants/appellant, these rules have no application to the DG sets

of any of their activities, as they do not fall within the ambit of the ingredients stated in these rules. In any case, they do not carry on any industrial process which would generate hazardous waste to bring into play the said Rules of 2008 *qua* the applicants/appellant. The applicants/appellant do not themselves deal with the used oil/waste oil generated from the DG sets but have engaged outside agencies (the manufactures of the DG sets) who not only service their DG sets but also change the oil by replacing the used oil with the new oil. According to the applicants/appellant the Rules of 2008 also do not apply to them as Entry 5 under schedule I of the Rules of 2008 do not cover their activities and that they use DG sets as an alternative source of energy. It is not an industrial operation and they do not use mineral/synthetic oil as lubricant in hydraulic systems.

We are equally not impressed by contention of the applicants that the term 'other applications' has to draw colour from its nearby context and the mineral/synthetic oil as lubricant in hydraulic systems performs dual purpose, i.e., lubricate and transmit power efficiently. Both these purpose would be equally applicable to all these applications. This is misinterpretation of the maxim *ejusdem generis*. The expression 'other applications' is intended to cover all other items of industrial plant which uses oil, either for the purpose of lubrication or for transmission of power. Merely because the oil is being used only for lubrication in the DG sets, cannot absolve the liability of the applicants. Fact of the matter is that the oil is used for operating DG sets to complete the industrial process of supplying power to the

towers. In this process used/waste oil is generated, therefore, it satisfies all the basic essentials of Entry-5 in Schedule I read with the provisions of the other relevant laws. On the other hand the learned counsel appearing for the respondents contended that keeping in mind Rule 3 and Rule 5 read with item no. 5 under Schedule I of the Rules of 2008 makes it clear that the applicants/appellant are carrying on industrial operations. They use oil in other activities/applications, i.e., DG sets which generates used oil which is a hazardous waste. Thus, the Rules of 2008 would apply to the applicants/appellant with all force. It is also contended that the DG sets are under the control and supervision of the applicants/appellant. Thus, as an occupier it is their duty to handle and dispose of the hazardous waste in accordance with the Rules of 2008.

In order to examine the merit or otherwise of the rival contentions, it will be necessary for us to refer to the certain provisions of the Rules of 2008. The Rule 3 of the Rules of 2008 defines disposal, hazardous waste, hazardous waste site, occupier, used oil and waste oil as follows:

> (e) "disposal" means any operation which does not lead to recycling, recovery or reuse and includes physico chemical, biological treatment, incineration and disposal in secured landfill;
>
> (l) "hazardous waste" means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or in likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances, and shall include-

(i) waste specified under column (3) of Schedule I,
(ii) wastes having constituents specified in Schedule II if their concentration is equal to or more than the limit indicated in the said Schedule, and
(iii) waster specified in Part A or Part B of the Schedule III in respect of import or export of such wastes in accordance with rules 12, 13 and 14 or the wastes other than those specified in Part A or Part B if they possess any of the hazardous characteristics specified in Part C of that Schedule;

(m) "hazardous waste site""means a place of collection, reception treatment, storage of hazardous wastes and its disposal to the environment which is approved by the competent authority;

(q) "occupier""in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any hazardous waste the person in possession of the hazardous waste;

(ze) "used oil" means any oil-—
(a) derived from crude oil or mixtures containing synthetic oil including used engine oil, gear oil, hydraulic oil, turbine oil, compressor oil, industrial gear oil, heat transfer oil, transformer oil, spent oil and their, tank bottom sludges; and
(b) suitable for reprocessing, if it meets the specification laid down in Part A of Schedule V but does not include waste oil;

(zf) "waste oil" means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refineries, installation or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part B of Schedule 5 either as such or after reprocessing.

23. Rule 5 of the said Rules require every person who is engaged in generation, processing, treatment, packaging, storage, transportation,

use, collection, destruction, conversion, transfer or the like of the hazardous waste shall require authorization from the State Pollution Control Boards. The occupier shall be responsible for environmentally safe and proper handling of hazardous waste generated in his establishment. The handling, transportation and disposal under these Rules have to be by a person who is holding the authorization and the determined disposal facility. In other words, except for an authorized person, no one is entitled to deal with or dispose of the hazardous waste which has to be strictly in accordance with the Rules of 2008.

Under Entry 5 of Schedule I of the Rules of 2008, industrial operations which use mineral/synthetic oil as lubricant in hydraulic systems or other applications and produce used/spent oil/waste/ residues containing oil shall be covered under the industry and will be a process which generates hazardous waste. It needs to be noticed that heading of Schedule I uses the words 'Processes Generating Hazardous Wastes' while Entry 5 uses the expression 'industrial operations'. It will be useful to refer the said Entry which reads as follows:

"SCHEDULE I
[See rules 3(1)]
LIST OF PROCESSES GENERATING HAZARDOUS WASTES

S.No.	Processes	Hazardous Waste*
5.	Industrial operations using mineral/synthetic oil as lubricant in hydraulic systems or other applications	5.1 Used/spent oil 5.2 Wastes/ residues containing oil

The Rules of 2008 do not define either industrial operation or industrial process. Thus, we have to look for the definition or explanation of these expressions in common parlance or in their generic terms. Industrial processes are procedures involving chemical, physical, electrical or mechanical steps to aid in the manufacturing of an item or items usually carried out on large scale industrial processes. The word 'industry' will include any business, profession, trade, undertaking or manufacture. In the case of *Management of Safdarjung Hospiral v. Kuldip Singh Sethi*, (1970) 1 SCC 735; the Hon'ble Supreme Court explained the word industry as follows:

> "The word 'industry' in this definition must take its colour from the definition and discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocations mentioned in relation to the employers. An industry is to be found when the employers are carrying on any business, trade, undertaking, manufacture or calling of employers. If they are not, there is not industry as such, *Management of Safdarjung Hospiral v. Kuldip Singh Sethi*, AIR 1970 SC 1407; (1970) 1 SCC 735: (1971) 1 SCR 177."

24. The word 'industry' has been used in different contexts under different laws, however, more often than not this expression has received a liberal construction. As is evident from the above, it has to be given a liberal construction, particularly, when it appears in a social-welfare legislation. Any process or operation in relation to an industrial activity obviously includes activity of trading, attracting the

provisions of the Rules of 2008, if it generates the hazardous waste. The contention of the applicants that they are not using mineral or synthetic oil as a lubricant in hydraulic systems has to be rejected. Entry 5 of the Rules of 2008, has been intentionally worded very widely by using the expression 'other applications'. In other words the mineral/synthetic oil is used in any other applications which would generate used/spent oil or waste oil and therefore, on its cumulative reading it would be squarely covered under the said Entry. Adoption of the principle of purposive construction is in relation to interpretation of entries existing in the legislation in the environmental acts. The larger bench of this Tribunal in the case of *Vikrant Tongad v. Noida Metro Rial Corpn & Ors.*, 2016 NGTR (2) PB 234 held as under:

> "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 15 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."

25. Following observations of the Tribunal in the case of *Sushil Raghav v. Union of India and Ors.,* pronounced on 20th September, 2016 are relevant to be referred at this stage:

> "In the case of *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Coporation,* (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 recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."

26. From the above dictums of the Supreme Court and this Tribunal, it is clear that the Entries which have used expressions of wide connotations may receive a liberal construction. The term 'other applications' appearing in Entry 5 is obviously to include what is not specifically stated but is an 'industrial operation' or 'process'. The term 'Industries' have different nuances. It would refer to the process

of manufacture, production and allied activities. It may also be used in the context of a service like hotel, tourism and organized activity to earn profits. In light of these principles, if we examine the present case, it is evident that the DG Set is an integral part of a process to provide cellular services to the people at large. It is strictly speaking not a standlone plant but is part of the entire process as it is a source of uninterrupted and continuous energy to the tower to ensure that there is no disruption of signals. The DG Sets operate on oil and after use of the same, it generates used/waste oil. The waste oil squarely falls within the definition afore-stated and it is a hazardous waste in terms of the above-stated Rules of 2008. The waste oil so generated has to be handled, transported and disposed of in accordance with the said Rules and the obligation to do so lies upon the applicants/appellant. Undisputedly, the DG Sets and the towers are under the control of the applicants/appellant. The mere fact that they have given the Annual Maintenance Contract to an agency which manufactures or maintains DG Sets would not be in compliance with the requirements of Rules of 2008 in *stricto senso*. It has to be a person, body which holds an authorization in terms of the Rules of 2008 to handle, transport and/or dispose of the waste/used oil. The site on which such waste oil is disposed of has again to be an approved site and not a mere ordinary site where the oil could be dumped indiscriminately without following the specifications provided in the authorization for that purpose. The applicants/appellant cannot escape the rigours of these provisions on the grounds that they are not causing pollution or the quantity of used oil generated is

very small or that they have given Annual Maintenance Contract of the DG Sets to some other agency. None of these grounds could be treated, in fact and in law, in compliance with the Rules of 2008. The Rules of 2008 provide for obligation, duties and functions to be performed by various stakeholders including the authorities like the State Governments, Central and State Pollution Control Boards. The framers of the Rules of 2008 have defined the 'hazardous waste' in explicit but in very wide terms which states, 'any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causing danger or is likely to cause danger to health or environment'. The primary consideration, therefore, is that such waste should cause danger or likely to cause danger to the public health or environment. It is undisputed that the generated waste/used oil shall certainly cause danger to public health and environment. We may also notice here that the official respondent conducted inspection and even analysed the ambient air quality. Upon inspection, some of the DG Sets were found to be in violation of the prescribed norms and at some places, the samples were also found to be excessive to the prescribed standards. The inspection report also commented upon the poor maintenance of the DG sets and the handling. The tabulated statement of inspection that has been placed on record shows that these inspections were conducted between 30th of January to 7th of February, 2013. The ambient air quality noticed upon analysis that PM μg/Nm^3 was found to be 14832 to 40370 against the prescribed value of 100. Noise levels were also found to be excessive varying between 76.8 to 89 dB

against the acceptable value of 75 dB. It was specifically noticed in the reports that the oil was being lifted by the companies which were engaged by the cellular companies. The correctness of these reports were seriously questioned by the applicants/appellant. It was stated that the applicants/appellant are not causing any pollution. It is not necessary for the Tribunal to examine the merit or otherwise of these contentions as the question before us is not whether the applicants/appellant are actually causing air pollution and are violating Rules of 2008 or not. The same will be for the Board to examine at the appropriate stage. The Tribunal is only concerned, at this stage, to the applicability or otherwise of these provisions to the cases in hand, i.e., the DG sets being used by the applicants/appellant as an alternative source of power to the mobile towers. We make it clear that we are not deciding the issue relating to the resulting pollution as a matter of fact in these proceedings. It is also the contention that the towers to which these DG sets are connected also emit electromagnetic radiation which could be a potent pollutant. Even this question we could not venture to decide because this would fall beyond the jurisdiction of the Tribunal as there is no Act relating thereof mentioned in the Schedule of the NGT Act, 2010, dealing with emissions of electromagnetic waves as held by a larger Bench of this Tribunal in the case of *Dr. Arvind Gupta v. Union of India* OA No. 61 of 2012 decided on 10th December, 2015. Furthermore, this question also does not directly arise for determination in the facts of the present case.

27. To sum up, it can be stated that the applicants/appellant are carrying on an industrial operation/process and/or a trade of which use of DG sets is an integral part that generates used/spent/ waste oil, satisfying the ingredients of Entry 5 of Schedule I of the Rules of 2008 and thus, the Rules of 2008 would be attracted to the facts and circumstances of the present case.

28. Another aspect relevant from the point of view of environmental protection is that the DG Sets being used by these applicants/appellant can cause noise pollution. Normally, the DG sets that are utilised for generation of power as an alternative source of energy like in the present case, do generate noise. According to the statement filed by the respondent Board, the DG Sets of most of the applicants/appellant were causing noise pollution as the decibel (dB) levels of these DG sets were in excess of the prescribed limit, i.e., they were found to be 76.8 to 89.0 dB as opposed to the prescribed limit of 75 dB. Again it is contended on behalf of the applicants/appellant that these reports are not authenticated and cannot be relied upon for questioning the manner of inspection as well as the analysis of the noise levels. It is not necessary for us to examine the correctness or otherwise of these reports at this stage, for the reason recorded above. But it is absolutely clear that the noise generated by the DG sets must be within the prescribed parameters. The applicants/appellant have not placed on record, any report to the contrary, though they have averred that these DG sets have been purchased from the manufacturers, certifying them to be non-polluting, as far as noise is

concerned. This by itself would not absolve the applicants/appellant from their responsibility of complying with the laws in force and ensuring that there is no pollution, particularly, that of noise. Item no. 94 and 95 of the Schedule-I to the Rules of 1986 deals with noise limit for DG sets and also prescribes emission limit for new diesel engines upto 800 KW. These entries state the maximum permissible sound pressure levels. It also provides the emission limit in relation to DG sets. These entries clearly show that the DG sets of all kinds are subjected to the prescribed standards under these two items, in relation to noise and emission. These restrictions come into play in addition to the provisions of the Act of 1981. Thus, there appears to be no possibility of escaping the liabilities and responsibilities emerging from the above stated laws.

29. We may also notice here that the order/judgement of the Central Zonal Bench at Bhopal had been assailed before the Hon'ble Supreme Court of India in the appeal of *Cellular Operators Association of India vs. Praveen Patkar & Ors.*, Hon'ble Supreme Court of India had stayed the operation of the judgement *vide* order dated 28th May, 2015 and 13th August, 2015, respectively. The appeals are still pending before the Hon'ble Supreme Court of India. It is for the detailed reasons recorded in the present judgement that we have arrived to this conclusion, independent of the order of the Bhopal Bench.

30. The object of the Act of 1981 is to provide for prevention, control and abatement of air pollution. Similarly, the aim of the Act of 1986 is to provide for the protection and improvement of the environment and

to satisfy the commitments of our country at the international level. The functions of the Board as defined under Section 16 of the Act of 1981 also mandate the functions to be performed by the Boards with the primary object of improvement of quality of air, prevention and control or abatement of pollution. It is need of the hour to advise the Government, to prepare programmes, co-ordinate activities, provide technical assistance and guidance, plan and organise the training programme, lay down standards of quality of air and collect and assimilate information on behalf of the Central Board. Similarly, the State Boards should also perform such functions. The function of the Board is not to emphasize on collection of revenue under the pretext of preventing and controlling air pollution. Though, the Act is absolutely silent with regard to fixation of any fee for processing of the consent application or the matters connected thereto. The Board has its own funds for the purposes of this Act and it may receive funds from the Central Government in form of fee, gifts, grants, donation, etc.

31. It is an established fact of which the Tribunal can take judicial note, that the towers are installed in large number by a particular applicants/appellant and each of such tower is separately connected to a DG set for an alternative source of energy. We have already discussed that the standlone DG set is not a concept applicable to the facts and circumstances of the present case but at the same time it will be unfair if the Board charges fee on each of the set at the rate which may not to be reasonable or would tantamount to be an

exorbitant fee, causing financial burden which would ultimately become part of the cost for the applicants/appellant thus, causing burden on the public at large.

It also needs to be noticed here that a similar issue had arisen before the Central Zonal Bench at Bhopal of this Tribunal, in the case of *Praveen Patkar vs. Sarla Tower & Ors.* O.A. No. 320 of 2014 as well as in the case of *Ramakant Mishra & Ors Vs. Bharat Sanchar Nigam Ltd., Chhindwara & Ors,* O.A. No. 31 of 2013 in which the Bench of the Tribunal had taken the view that the cases of the applicants/appellant were not entitled to exemption and they were covered under the provisions of the Acts and the Rules.

32. The fixation of fee should have a reasonable nexus to the manpower and the actual work involved in processing of these applications. The large number of applications would certainly cause administrative burden upon the Board as well as may cause undue delay in disposal of the applications. It is the case of the Boards before the Tribunal, in various cases without exception, that they have limited and in fact, shortage of infrastructure and manpower. Keeping that in mind and the economic balance which will ensure prevention and control of air and noise pollution by these DG sets would be better achieved if there was a consolidated fee relatable on territorial basis rather than the number of DG sets. The Board could consider charging of a consolidated fee on district basis as the entire State of Madhya Pradesh has been notified to be an air pollution controlled area under the provisions of the Act of 1981. It may be appropriate

that the Board charges every applicant, a reasonable and appropriate fee with reference to the DG set attached to the towers being provided in the territory falling under the district.

33. A common application on district basis and a consolidated charging of fee would certainly make it less burdensome for the Board, on administrative grounds. It will also provide economic balance to the Applicants and public at large while effectively preventing and controlling the air and noise pollution and handling of hazardous waste by the Applicants. The applicants/appellant must move composite applications for obtaining consent to operate the DG sets on the one hand, and they should also take authorisation for handling the hazardous waste in accordance with the Rules of 2008, on the other. They may either take the authorization, handle, manage and dispose of the hazardous waste or as an alternative they could engage an agency, duly authorised under the Rules of 2008, to perform such functions. But in no event the hazardous waste should be permitted to be handled in violation to the Rules of 2008. Compliance to the laws of the Act of 1981 and Rules of 2008 is the obligation of all these applicants/appellant that too, without exceptions. The contention of not being covered either under the Act of 1981 or the Rules of 2008, for varied reasons, are without substance and merit and have already been rejected above by the Tribunal. The obvious conclusion of the discussion would be that applicants/appellant are obliged to obtain consent to operate from the Board in relation to these DG sets and deal with the hazardous waste,

i.e., the used oil in accordance with the Rules of 2008 by obtaining authorization or by engaging a person duly authorised by the Board, in terms of the said Rules.

34. The Tribunal is also required to deal with O.A. No. 129 of 2013, *Viom Network Ltd. vs. UT of Chandigarh & Ors.*, as in this case, orders dated 25th April, 2013 and 21st May, 2013, issued by the Chandigarh Pollution Control Committee have been challenged, while all other cases relate to the orders passed by the MPPCB. After issuing of the above-stated orders, the Viom Network Ltd. was renamed as ATC Telecom Infrastructure Ltd. On an application filed by the company *vide* order dated 28th November, 2016, the Tribunal had permitted the substitution of name and consequently the amended memo was filed. The Chandigarh Pollution Control Committee *vide* its order dated 21st May, 2013, had directed the applicant to remove the DG sets in terms of the order of the Tribunal dated 25th April, 2013 and also to appear before the Member Secretary of the Committee. Subsequently, *vide* its order dated 25th April, 2013, the Chandigarh Pollution Control Committee passed directions under section 31-A of the Act of 1981 and section 5 of the Act of 1986, directing the applicant company not to restart DG sets before obtaining consent of the Committee and the concerned authority was directed to seal the DG sets immediately. These two orders have been challenged by the applicant company on similar grounds, the correctness of which have been questioned before this Tribunal. Thus, for the various reasons stated by us in this judgement above, we also decline to set-aside and quash the orders

dated 21st April, 2013 and 21st May, 2013. However, we make it clear that this application would be covered under the directions issued by the Tribunal in this judgement.

35. In O.A. No. 130 of 2013, ATC India Tower Corporation Private Limited, which is engaged in establishing and operating towers necessary for providing the telecommunication connectivity in India, uses DG sets as a third alternative source of power supply to the towers. Primarily, the power is supplied by the Electricity Board and secondly, there is the battery backup for these towers. The Punjab Pollution Control Board had issued notices requiring them to obtain consent for operating the DG sets under the Act of 1981 as well as the authorization under the Rules of 2008. The applicant contested these notices on the similar grounds stated in the above applications/appeal. The present application before the Tribunal is filed with the prayer that the applicant is a mere service provider and its activity does not fall within the ambit of industrial activity. It is not obligatory on the applicant to obtain the consent under the Act of 1981 or under the Rules of 2008. These grounds are similar to the grounds taken in the other cases discussed by us above, thus, for the same reason, this application is also liable to be dismissed. While we dismiss this application for the above reasons, we direct that the Punjab Pollution Control Board shall act in consonance with the directions contained in this judgment.

36. Having answered the legal issues, in the present case, in favour of the official respondents, we consider it appropriate to issue the following order and directions:

1. While we decline to quash the order dated 31st March, 2009, passed by the MPPCB, we order and direct that the following conditions/directions shall be read in consonance with the order dated 28th June, 2012. The parties to the *lis* shall abide by these directions.
2. We hold and declare that the applicants/appellant are obliged to take consent of the Madhya Pradesh State Pollution Control Board for installing and operating DG sets as an alternative source of power to the towers that they erect in the State under the provisions of the Act of 1981.
3. We also hold and declare that the applicants/appellant are also liable to apply for obtaining authorization for managing, handling and disposing of the hazardous waste (used/waste oil) or in alternative, to engage an agency duly authorised by the Board for that purpose and in accordance with the Rules of 2008.
4. The applicants/appellant are granted four weeks time to file such applications for consent to operate/authorization to the Madhya Pradesh Pollution Control Board which should be complete in all respects. If such applications are filed within the stipulated time, the Board shall deal with such applications expeditiously and in accordance with law.

5. For a period of eight weeks from the date of pronouncement of this judgement, the Board will not take any coercive steps against the applicants/appellant. However, after expiry of the above-said period, the Board shall be at liberty to proceed in accordance with law.
6. The applicants/appellant would be entitled to move a composite application for consent to operate of the DG sets connected to every tower that they are erecting or have erected in the territorial jurisdiction of any district in the State of Madhya Pradesh. Their applications shall be accompanied by a fee which the Board will determine within one week from today on the basis of the observation made in this judgement.
7. The Fee should be composite, as directed and discussed in this judgement.
8. All these directions would be operative prospectively.

37. Subject to the above directions, all the applications/appeal are partially allowed while leaving the parties to bear their own costs.

SWATANTER KUMAR
CHAIRPERSON

RAGHUVENDRA S. RATHORE
JUDICIAL MEMBER

BIKRAM SINGH SAJWAN
EXPERT MEMBER

New Delhi
24th August, 2017