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

APPEAL NO. 22 OF 2015

IN THE MATTER OF:

Krishan Lal Gera
S/o Late Shri Bhawani Dass,
R/o 572, Sector 15-A, Faridabad,
Haryana

.....Appellant

Versus

1. State of Haryana
   Through The Director General,
   Town and Country Planning.

2. Haryana Urban Development Authority
   Through Chief Administrator, Panchkula
   Haryana

3. Haryana Urban Development Authority
   Through Administrator, Faridabad
   Haryana

4. Municipal Corporation of Faridabad
   Haryana

5. Haryana State Pollution Control Board
   Through Member–Secretary
   C-11, Sector – 6
   Panchkula

6. Haryana State Pollution Control Board
   Through Regional Officer,
   Faridabad

7. State Environment Impact Assessment Authority
   Through Chairperson
   Panchkula, Haryana

8. Dental Council of India
   Aiwan-E-Galib Marg,
   Kotla Road, Temple Lane
   New Delhi – 110002

9. M/s. Vivekanand Ashram Society
Through its Managing Director
Plot No. 1, Sector 16
Faridabd, Haryana

10. M/s. QRG Medicare Limited
Through its Managing Director
Plot No. 1, Sector 16
Faridabad, Haryana

11. Ministry of Environment, Forest & Climate Change
Indira Paryavaran Bhawan, Jor Bagh Road
New Delhi- 110 003

.....Respondents

COUNSEL FOR APPELLANT:
Mr. Narender Hooda, Sr. Advocate and Ms. Bano Deswal, Advocate

COUNSEL FOR RESPONDENTS:
Mr. Anil Grover, AAG, Mr. Rahul Khurana and Mr. Satish Kumar, Advocate for Respondent No. 1
Ms. Panchajanya Batra Singh, Advocate for Respondent No. 3
Mr. T. Singh, Advocate for Respondent No. 8
Mr. Pinaki Misra, Sr. Advocate, Ms. Vanita Bhargava, Mr. Jeevan Ballav Panda and Ms. Abhisaar Bairagi, Advocates for Respondent no. 9 & 10

JUDGMENT

PRESENT:
Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)

Reserved on: 23rd July, 2015
Pronounced on: 25th August, 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?

SWATANTER KUMAR, J.

State Environmental Impact Assessment Authority, State of Haryana (for short 'SEIAA'), vide its order dated 26th November, 2014 granted Environmental Clearance for construction of Super-Speciality Hospital and a Harijan Residential School at Plot No. 1, Sector-16, Faridabad, Haryana. The appellant in the present appeal impugned the said Environmental Clearance and the minutes of 77th meeting of SEIAA dated 14th November, 2014, on the basis of which, the said Environmental Clearance was granted. The challenge, *inter-alia*, but primarily is based on the ground that the prescribed land use by Haryana Urban Development Authority (for short 'HUDA') does not permit construction of a Super-Speciality Hospital at the site in question. It is averred by the appellant that the construction of Super-Speciality Hospital had commenced prior to applying for grant of Environmental Clearance and the project was practically completed even before granting of Environmental Clearance. The concerned authorities had found serious violations on part of the Project Proponent and decided to initiate credible action against him by invoking powers under Section 19 of the Environment (Protection) Act, 1986 (for short 'Act of 1986'). It is averred by the appellant that grant of Environmental Clearance is contrary to the laws in force. Also, that SEIAA had even emphasised on the fact that it was a case of clear violation as Environmental Clearance is required prior to commencement of any construction activity. The land in question, having been allotted for construction of a Harijan Residential School

and Social Development Centre, construction for any other purpose was impermissible. Thus, the grant of Environmental Clearance to the Project Proponent is entirely arbitrary, unsustainable and contrary to the laws in force.

2. Before noticing the stand of the respective respondents to the grounds of challenge raised by the appellant, we may notice the facts of the case as averred by the appellant.

3. M/s. Vivekananda Ashrama, respondent no. 9, was allotted Plot No. 1, Sector-16, Faridabad, Haryana on lease hold basis for a period of 99 years vide letter dated 30th September, 1978 for establishment of Harijan Residential School and Social Development Centre. The possession thereof was delivered to respondent no. 9 by the State of Haryana. The terms and conditions of allotment were stated in the lease deed that was executed between the parties on 13th March, 1980. It is submitted by the appellant respondent no. 9 did not adhere to the terms and conditions of the lease deed and letter of allotment. Thus, HUDA vide its letter dated 13th July, 1993 cancelled the allotment and directed resumption of the plot in question on the grounds that the land was sub-leased by the respondent and Rama Krishna Public School had been set up instead of Harijan Residential School and Social Development Centre. Also, the ground rent was not paid.

4. Respondent no. 9 approached the High Court of Punjab and Haryana by filing a writ petition against the resumption order, which came to be dismissed with liberty to the said respondent to approach

the Appellate Authority. The Appellate Authority under the HUDA Act, 1977 disposed the appeal with an undertaking from respondent no. 9 that it will comply with the terms and conditions of the lease deed vide its order dated 4th March, 1994. According to the appellant, respondent no. 9 still failed to comply with the order of the Appellate Authority and committed breaches thereof, resulting in passing of a second order of resumption dated 5th September, 1994. This order of HUDA was again challenged by respondent no. 9 before the Punjab & Haryana High Court. The High Court vide its order dated 16th October, 1995 upset the resumption order dated 5th September, 1994 and granted three months time to respondent no. 9 to comply with the conditions stated in the order of the Appellate Authority dated 4th March, 1994.

5. Respondent no. 9 approached HUDA for granting permission for establishing a Dental College-cum-Hospital on the same premises in the year 2003. This matter was placed before the Authority in its 89th meeting held on 11th July, 2003. The Authority granted permission to respondent no. 9 for establishing the Dental College-cum-Hospital at the said site, subject to certain terms and conditions. On the basis of this meeting, the Chief Administrator, HUDA, vide its letter dated 24th July, 2003 informed the Administrator, HUDA regarding grant of the permission to respondent no. 9. Reference can be made to the said letter conveying permission to respondent no. 9, which reads as follows:-

> "This is in continuation of HUDA H.Q.s memo no. 3869 dated 16.06.2003.
> The matter was placed before the Authority in its 89th meeting held on 11.7.2003. The Authority has

accorded the permission for establishing of a Dental College-Cum-Hospital in favour of Vivekanand Society in Sector-16, Faridabad. Subject to the following terms and conditions:-

1. That the residential school for which the land was earlier allotted to the Society shall remain on the said premises.
2. The Society shall have to produce the permission letter of Dental Council of India to run the Dental College at Faridabad.
3. The Society shall get the building plan approved from HUDA Authorities, besides arranging funds for the construction of building.
4. In case the land is not used for the purposes for which the permission is granted the same shall revert back to HUDA in accordance with HUDA Act-1977 & Rules & Regulations framed thereunder.

5. No change of land use shall be allowed.

6. The transfer of plot/change of constitution shall not be allowed in any circumstances.

7. The facilities provided shall be open to all irrespective case, creed & religions.

8. Shops shall not be constructed on any portion of land.

9. The Society will have to get clearance/affiliation from the Dental Council of India at their own level.

10. The society shall provide fee concession to the deserving candidates, ……., Economically Weaker Section of the Society who are given admissions ……. ….. open merit upon the extent of 5% seats available in the college in each ……

You are requested to take further necessary action accordingly…….. action taken in the mater may also be communicated to this office …….. positively. A copy of the agenda item and an extract of proceedings is ……. reference …….”

However, it is pertinent to note that vide letter dated 15th July, 2003, the Estate Officer, HUDA, Faridabad, had informed the authorities of the violations committed by respondent no. 9.

6. The building plans from the Municipal Corporation, Faridabad, for construction of Dental College-cum-Hospital and Harijan Residential School were approved. A Writ Petition was filed in the High Court of Punjab & Haryana, being CWP No. 630 of 2007, praying, that the Harijan Residential School should remain on the site, the purpose for which the site had been allotted to respondent no. 9. Respondent no. 9 had made a statement before the said High Court that the Harijan Residential School would remain along with the Dental College-cum-Hospital on the site in question, in accordance with the terms and conditions of the permission letter. Thereafter, it came to the notice of the Authorities that a hospital was being run in the name of M/s. QRG Central Hospital at Unit-II at the premises and the building plans for the same were not approved by the HUDA but were approved by the Municipal Corporation, Faridabad. On the basis of this information and report, Estate Officer, HUDA, issued a Show Cause Notice to respondent no. 9 on 25th October, 2010. On 22nd November, 2010, respondent no. 9, submitted its reply to the Show Cause Notice denying the allegations. The premises were inspected by the survey staff of HUDA on 2nd December, 2010 who reported to the effect that the Harijan Residential School and Social Development Centre were not running on the premises. Again, on the basis of this inspection of 2nd December, 2010, a Show Cause Notice was issued by the Estate Officer, HUDA to respondent no. 9 on 28th November, 2011. Respondent no. 9 submitted its reply to the said Notice stating that they had been granted permission to establish a Dental College-cum-Hospital at the premises. The Authorities had also required respondent no. 9 to appear in person for hearing, vide their letter

dated 14th December, 2012. It is averred by the appellant that the respondent no. 9 did not appear before the Authorities. Another Writ Petition was filed before the Punjab & Haryana High Court by Dr. Ambedkar Society praying that the land in question was earmarked for Harijan Residential School and had been illegally allotted for establishment of a Dental College-cum-Hospital. The survey staff of HUDA inspected the site and submitted a report that instead of Harijan Residential School, a 450 bedded hospital, in the name and title of M/s. QRG Central Unit-II had been constructed and was running. The writ petition before the Punjab & Haryana High Court was disposed of vide order dated 23rd July, 2013 directing the Authorities to look into the question as to whether or not the residential school meant for Harijans was being run at the site as per the terms and conditions of the allotment.

7. In the meanwhile, in furtherance to the Show Cause Notices issued, the Estate Officer, Faridabad, directed resumption of the site along with the building vide order dated 4th July, 2013. In that order, it was specifically noticed that there was transfer of property as the hospital under the name and title of M/s. QRG Central Unit-II was running and Harijan Residential School and Social Development Centre were not running in the premises. This was in violation of the Letter of Allotment and even of the permission granted by the Authorities on 24th July, 2003.

Respondent no. 9 filed an appeal against the said order of Estate Officer, HUDA, which was allowed by the Appellate Authority vide its order dated 14th January, 2014. The Appellate Authority noticed the

grounds recorded by the Estate Officer in the order under appeal before it. It was noticed by the Appellate Authority that respondent no. 9 had submitted a representation to the Chief Administrator, HUDA, requesting him to increase their FAR from 100% to 150%. The Project Proponent, i.e., respondent no. 9 has also filed an affidavit that in case the increase of FAR from 100% to150% was not permitted, they would remove extra construction at their own cost and by their own resources.

It was also noticed that, as the building was vacant therefore, it cannot be said that the hospital had been established. Appellate Authority in this order further stated that the respondent no. 9 also made a representation to the authorities for running of Super-Specialty Hospital and hence, there was no transfer of the land. Also, there was an undertaking of the respondent no. 9, that it will not use the land for any other purpose other than the one for which it was allotted. Upon noticing these facts and subject to the compliance of conditions, the order of the Estate Officer dated 4th July, 2013, was set aside. Relevant extract from the order dated 14th January, 2014 is reproduced herein under: -

> "In the present case since the allottee has resumed the activity of running the school as is clear from the report of the three member committee hence the appeal is allowed and the resumption order of the Estate Officer, HUDA Faridabad dated 4.7.2013 is hereby directed, subject to the following conditions:
>
> (i) The society will run the school as stipulated in the allotment letter. If it ever comes to the notice of HUDA Authorities that the society has closed down or stopped running the school, the resumption order will automatically come into force and without any prior notice.
>
> (ii) The allottee will remove all zoning violations except violations related to ramps mentioned at serial no. 2&3 within a period of 45 days from the

issuance of this order. Regarding construction of ramps, SDE(S) will re-inspect the building and submit a fresh report for re-consideration since it is a building which will be used by a large number of people and hence must be complaint for people with disabilities as is mandatory.

(iii) The applicant will get the case of increase in FAR approved from the office of the Chief Administrator, HUDA, Panchkula within a period of xxxxxxx issuance of this order, otherwise allottee will have to demolish the excess coverage area within 15 days of the expiry of the above period."

8. On 20th September, 2013, the SDO (Survey) HUDA, submitted to the Administrator, HUDA a report stating that respondent no. 9, has violated the zoning provisions and HUDA byelaws and the violations were non compoundable. Respondent no. 10, in the meanwhile, on 12th June, 2013 submitted a proposal for grant of Environmental Clearance for proposed QRG Hospital at the site in question. This was received by Authorities on 17th June, 2013. This application was filed in the name of QRG Medicare Ltd. but later, a revised application was filed on 23rd June, 2014 in the name of respondent no. 9. On 27th March, 2014, in its 101st meeting, the State Environmental Assessment Committee (for short 'SEAC') discussed the application for grant of Environmental Clearance to QRG Medicare Ltd., wherein it was asked to furnish additional documents including a copy of the Allotment letter, approved lay out plan, building plans, details of the works executed and resolution of the Board of Directors. In the 101st and 102nd meeting of SEAC, an unanimous decision was taken that the respondent no. 10 was a proved violator and it recommended SEIAA to initiate appropriate legal action in terms of the Office

Memorandum issued by Minsitry of Enivironment,Forests&Climate Change (for short 'MoEF&CC') dated 12th December, 2012.

9. The Board of Directors of M/s. QRG Medicare Ltd. submitted an affidavit admitting completion of the hospital project with a built up area of 39261.82 square meters. The case was again taken up by SEAC in its 103rd meeting held on 28th April, 2014. In this meeting, it was recorded that Vivekananda Ashrama was the original allottee and it continued to be liable for compliance of all legal requirements and consequences of default thereto. They then recommended that prosecution proceedings should be initiated against both Vivekananda Ashrama as well as M/s. QRG Medicare Ltd.

10. SEAC in its 106th meeting dated 16th June, 2014 appointed a sub-committee to visit the site and report on environmental aspects. The sub-committee inspected the site on 20th July, 2014 and submitted its report to SEAC, which was accepted in its 109th meeting held on 14th August, 2014. SEAC also deliberated upon the application of the Project Proponents in its 112th meeting held on 18th – 19th September, 2014. In this meeting, it was specifically noticed that in the 106th meeting, it had been admitted that construction of the hospital project with a built up area of 39261.82 sq meters was in violation of the Environment Clearance Regulations, 2006 (for short 'Notification of 2006') and that the case was recommended for prosecution to SEIAA. SEAC in this meeting also referred to the cost of the project and other ingredients which were pointed out by the sub-committee. However, the case was not finally heard as the Project Proponent undertook to submit compliance of the ten points as

noticed in the said meeting, dated 18th-19th September, 2014. The case was again taken up in the 113th meeting of SEAC held on 10th October, 2014. In this meeting, while noticing certain deficiencies, violations and changes in land use and also finding that some of the violations were non-compoundable, SEAC took into consideration the affidavit of the Project Proponent dated 4th October, 2014 and rated the project with 'Gold Rating'. SEAC contemplated certain specific conditions, with regard to construction and operational phase and recommended the case to SEIAA for grant of Environmental Clearance in terms of Notification of 2006. A direction was also issued to the sub-committee to visit the site again after Project Proponent confirmed due compliance and report the matter by December, 2014. The SEIAA in its 77th meeting held on 14th November, 2014 considered these recommendations of SEAC and granted Environmental Clearance for construction of Super Speciality Hospital and Harijan Residential School at the site in question. The SEIAA took a note of the NOC granted by other authorities, including NOC from DFO regarding non-involvement of forest land as stated by the representative of the Project Proponent as well as the assurance of the Municipal Corporation of Faridabad for supply of water and stated that the Environmental Clearance granted is limited to the issue concerning environment and all other issues like ownership of land, lease of land, purpose of lease for allotment of land by HUDA, FAR cover and any other connected issue will be decided by the Competent Authorities only. SEIAA agreed with the recommendations of SEAC to accord Environmental Clearance to the proposed project relating to the construction of Super-Specialty Hospital and Harijan Residential

School at Plot No.1, Sector-16, Faridabad, Haryana. They imposed certain conditions to the usual conditions in practice, which were as follows:

> "[1] The Project Proponent shall provide sound reduction techniques during day time."
> [2] The Project Proponent shall dispose of Bio-Medical waste as per Bio-Medical (Management & Handling) rules 1998.
> [3] The Project Proponent is responsible for compliance of all conditions in Environmental Clearance letter and Project Proponent can not absolve himself/herself of the responsibility by shifted it to any contractor engaged by project proponent.
> [4] The green space (21%) of plot area shall be developed before the project site is revisited after removal of all deficiencies by end of November, 2014.
> [5] The environment clearance granted to the Vivekanand Ashram Society under the EPA 1986/Environment Impact Assessment Notification dated 14.09.2006 shall not create or confer any right to Land use of project site for establishment of proposed Super/Multi Speciality Hospital which is exclusively within the purview of Chief Administrator HUDA, Panchkula and binding upon the Society.
> [6] All zoning violations outside the building line shall be removed and PP shall not create any grade separation between the building line & outer boundary wall. This shall conform to approve drawing No. DTP (F 2209/03 dated 20.06.2003. Unauthorised entry/exit facing north side (Sector-18) shall be removed & boundary wall reconstructed as per approved design.
> [7] The Environmental Clearance granted shall be limited to the issue concerning the environment and all other issues like ownership of land, lease of land, purpose of the lease for allotment of land by HUDA, FAR covered and allowed of any other connected issue and any other legal issue/court case etc. will be decided and considered by the concerned competent authority only.
> [8] The Project Proponent shall provide free medical-aid to 2% of the poor patient as per the assurance given to the Authority.
> [9] The Project Proponent shall implement parking plan marked 'A/19' 77th (earmarking space for future parking).
> [10] Corporate Environment and Social Responsibility (CSER) shall be laid down by the Project Proponent (2% shall be earmarked) as per guidelines of MoEF, GoI Office Memorandum No. J-11013/41/2006-IA.II(I) dated 18.05.2012 and Ministry of Corporate Affairs, GoI Notification Dated 27.12.2014. A separate audit

statement shall be submitted in the compliance. Environment related work proposed to be executed under this responsibility shall be undertaken simultaneously. The Project Proponent shall select and prepare the list of the work for implementation of CSER of its own choice and shall submit the same before the start of construction.

[11] Vertical fenestration shall not exceed 40% of total wall area.

[12] The Project Proponent shall provide green area on terrace and roof top.

[13] The Project Proponent shall not use fresh water for HVAC and DG cooling. Air based HVAC system should be adopted and only treated water shall be used by Project Proponent for cooling, if it is at all needed.

[14] The Project Proponent shall install solar panel for energy conservation.

The Member Secretary, SEIAA then issued a detailed order according Environmental Clearance to this project on 26th November, 2014. The appellant, as already noticed, in this appeal, has challenged both the Minutes of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 granting Environmental Clearance.

11. Respondent no. 1 to 3, 7, 8 and 11 have not filed any independent reply. Respondent no. 5 and 6 have filed a common reply affidavit in which it was stated that the Haryana State Pollution Control Board (for short 'HSPCB') has given a sanction for prosecution against respondent no. 10 for violating the provisions of the Notification of 2006. The Project Proponent had completed nearly 90 per cent of the construction work at site without taking the Environmental Clearance. The State of Haryana had also issued a letter to the Chairman of the HSPCB on 11th August, 2014 on the basis of the letter of Member Secretary, SEIAA in which it was requested to initiate action against respondent no. 10. It is averred

that a complaint has been filed by the Regional Officer of the HSPCB and trial in the complaint is pending before the Special Environmental Court, Faridabad, Haryana.

12. Respondent No. 4 in its reply has stated that Joint Commissioners, NIT, Faridabad Zone, Old Faridabad Zone and Ballabhgarh Zone were delegated with the powers of Estate Officer as defined in Section 2(l) of the HUDA Act, 1977 for sanctioning of Building Plans and issuance of Completion Certificates in respect of HUDA Sectors which had already been transferred to the Municipal Corporation of Faridabad. Within its competence, the Municipal Corporation of Faridabad sanctioned the Building Plan in question vide its letter dated 18th July, 2006 subject to the provisions of the Haryana Urban Development Authority (Erection of Buildings Regulation) 1978, as amended from time to time. Both these respondents have filed short affidavits and have not dealt with the detailed facts on record.

13. Respondent No. 9 and 10 have filed separate replies but their averment and content is similar. Both these respondents have raised a plea that the appeal preferred by the appellant is barred by time. The appeal is not maintainable as the appellant has failed to show the adverse impacts of the Environmental Clearance on environment.

It is also averred that the grounds stated by the appellant do not fall within the parameters of Section 14 and/or Section 16 of the National Green Tribunal Act, 2010 (for short 'Act of 2010'). The grounds like change in land use and sanctioning of plan etc. would not be the grounds to question the correctness of Environmental

Clearance. Furthermore, the matter in relation to change in land use is sub-judice before the competent authority i.e., the Revisional Authority and the appellant cannot urge a sub-judice ground before other authorities as a ground of attack in the present appeal. In the reply, reference has also been made to the order of the Punjab & Haryana High Court dated 18th December, 2013 passed in Writ Petition No. 27853 of 2013 preferred by the appellant wherein the same was not entertained as a PIL, while holding the matter sub-judice before HUDA which was expected to examine the matter. These respondents have already filed a revision against the order of the 1st Appellate Authority dated 14th January, 2014 passed by the Chief Administrator, HUDA before the Commissioner, Town and Country Planning Department, Government of Haryana, Chandigarh which is pending and the grounds raised in the present appeal have been raised for consideration before that authority also. It is also averred that the appellant has no *locus standi* as the appellant is not a 'person aggrieved' within the meaning of Section 18 of the Act of 2010.

14. On facts, the stand taken by these respondents is that the appellant has deliberately and intentionally concealed material facts. The appellant has approached the High Court of Punjab and Haryana on related issues, time and again, without any success. The appellant had even filed a Special Leave Petition before the Supreme Court of India without much consequence. In the reply, the facts as afore-noticed are really not disputed except the grounds which have been taken up by the appellant. It is the case of these respondents in their replies that MoEF had taken a decision on 19th June, 2013 that in

order to meet the stipulated time lines, avert duplication of work and to speed up the process of scrutiny with respect to grant of Environmental Clearance with respect to building and real estate projects, SEIAA/SEAC may only focus on the points stated in that Office Memorandum. The Chief Administrator, HUDA in his order dated 14th June, 2014 while disturbing the findings of the Estate Officers, had observed that since, 'hospital' is mentioned as one of the usages in the zonal plan, there is no change of land use. However, this order is pending adjudication before the Revisional Authority, as already noticed.

15. Reference had been made to the order of the Punjab and Haryana High Court dated 18th December, 2013 passed in Writ Petition No. 27853 of 2013 where the writ filed by the appellant was not entertained as a PIL, holding that the matter was sub-judice before HUDA and it was expected to look into that matter. Also, a Civil Writ Petition No. 7679 of 2015 was filed before Punjab and Haryana High Court, where challenge was made to the order dated 14th January, 2014 passed by the Appellate Authority of HUDA. The Court held vide its order dated 24th April, 2015, that the appellant has no *locus standi* to file the Writ Petition and the challenge to the change of land use could be brought to the notice of the Supreme Court of India where the matter is already pending. Earlier, the Supreme Court had permitted the applicant to withdraw the Special Leave Petition with liberty to approach the Punjab & Haryana High Court in terms of the order of the Supreme Court of India dated 23rd September, 2013. It is stated by the respondents that, in view of the matter being pending

before the Revisional Authority, the Tribunal should not interfere in the order granting the Environmental Clearance. The Respondents also submit that the construction carried out prior to grant of Environmental Clearance does not bar grant of subsequent Environmental Clearance. Reliance in this regard is placed upon the Office Memorandum dated 12th December, 2012 issued by MoEF&CC. It is contended that the Office Memorandum applies to the cases where construction of the project has been started without obtaining prior Environmental Clearance. It is further stated that the violations pointed out by the authorities have already been complied with and an undertaking has also been given by them stating that the same will not be repeated in future. SEIAA, after considering all the environmental impacts in terms of the Office Memoranda dated 12th December, 2012 and 19th June, 2013 has thought it fit to grant Environmental Clearance. The prosecution against Project Proponent is pending before the Special Environmental Court at Faridabad, Haryana. The last order of resumption dated 4th July, 2013 for violation of the terms and conditions of the lease was challenged in an appeal which had been allowed vide order dated 14th January, 2014. This order is pending before the Revisional Authority and has a bearing on the appeal before the Tribunal. The Office Memorandum issued by MoEF&CC dated 12th December, 2012, in terms of its 'Corporate Environmental Policy' has laid down a procedure for dealing with the application for grant of Environmental Clearance, where construction is made out without obtaining 'prior Environmental Clearance'. It contemplates issuance of Environmental Clearance which would be issued to such projects upon prior

furnishing of an undertaking and affidavit by them. It is denied by the Project Proponent that the Harijan Residential School for which the permission was granted has not been running. It has been found, as a matter of fact, that the Harijan Residential School has not been running for the academic session 2010-13 since construction was going on at the site. However, specifically for 2014-15, academic session of the school again began and allotment conditions are thus satisfied.

16. The Respondents have further averred that they have been directed under the Environmental Clearance to develop a green belt of 21.57 per cent of project area for which the respondents have already started activity. Finally, it is averred that these respondents have complied with all the conditions, while the appellant had been taking contradictory stands before different Courts and the Tribunal. Thus, they pray that the appeal be dismissed.

17. In order to analytically examine the correctness and merit of the rival contentions raised, it would be appropriate for us to formulate the issues that fall for consideration of the Tribunal. Precisely, they can be stated as under:

1) Whether the present appeal is barred by time?
2) Whether the appellant has *locus standi* to file the present appeal?
3) Whether the appeal discloses the 'cause of action' that clearly falls within the ambit and scope of the jurisdiction of the Tribunal under the Act of 2010?

4) Whether the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the Environmental Clearance dated 26th November, 2014 granted in favour of the Project Proponent are liable to be set aside and quashed?

5) What directions, if any, are required to be issued by the Tribunal in the facts and circumstances of the case?

6) Relief.

DISCUSSION ON ISSUES

DISCUSSION ON ISSUE NO. 1.

1) Whether the present application is barred by time?

18. The respondents no. 9 and 10 had taken a preliminary objection that the present appeal is barred by time. Thus the onus to show that the appeal is barred by time lies upon them.

Except making an averment that the Environmental Clearance dated 26th November, 2014 passed in their favour had been published in 2 local newspapers, no further details about compliance of the various provisions of the Notification of 2006 have been stated by these Respondents in their reply. Furthermore, MoEF&CC has not filed a reply. No reply has been filed on behalf of SEIAA. However, respondents no. 5 and 6 have only stated that criminal prosecution has been launched against respondents no. 9 and 10. Besides this, no document has been placed on record to show that the legal provisions relating to communication of grant of Environmental Clearance have been complied with, the onus of which, would primarily be on the Project Proponent or at best upon the authority issuing such Environmental Clearance.

19. According to the appellant, the present appeal has been filed within the prescribed period of limitation since the official respondents as well as the Project Proponent have not complied with the requirement of communicating the grant of Environmental Clearance as contemplated under Regulation 10 of the Notification of 2006. Once there is no complete compliance to the requirement of the said Regulation, then it will not trigger the period of limitations so as to render an appeal barred by time. Further, according to the appellant, none of the respondents have uploaded the Environmental Clearance on their respective websites. The Project Proponent has also not published the contents of the Environmental Clearance and has not informed the requisite authorities in this behalf. Thus, the period of limitation has not triggered at all and the appellant came to know about the said Environmental Clearance dated 26th November, 2014 on 8th April, 2015 and the present appeal was instituted on 13th April, 2015 which is well within the period of limitation.

20. We have already noticed that no documents have been placed on record to show that the concerned authority had placed the order granting Environmental Clearance on its website even as on 12th April, 2015. On the contrary, the snapshot of website dated 12th April, 2015 (Annexure A-20), which is placed on record to substantiate this point, clearly shows that the order of Environmental Clearance has not been uploaded even as on 12th April, 2015. The Project Proponent has also not placed any documents on record to show that they have complied with the specific obligations imposed upon it under Regulation 10 of the Notification of 2006. The law requires the Project Proponent not

only to publish intimation of the Environmental Clearance in the two local newspapers, but also to publish the conditions and safeguards stipulated in the Environmental Clearance. This apparently has not been done by the Project Proponent. Furthermore, in contemplation of Clauses (ii) (a and d) and Clauses (ii and iii) of Regulation 10 of the Notification of 2006 it is no where shown before us that Environmental Clearance had been submitted to the head of the Local Authorities, Panchayat, Municipal bodies, in addition to the relevant offices of the Government, who in turn has to display the same at their notice board for a period of 30 days from the date of such receipt. The Project Proponent has not placed the Environmental Clearance even on its website. The Project Proponent has miserably failed to show either by placing documents or by making averments in the reply that the requirements of Regulation 10 have been complied with.

In this regard, we may make a reference to the Judgment of a Larger Bench of the Tribunal in the case of the *Save Mon Region Federation & Anr. v. Union of India & Ors,* (2013) 1 All (I) NGT REPORTER 1 and *Medha Patkar v. MoEF*, (2013) All (I) NGT REPORTER (2) Delhi, 174, wherein it was held that the liability to file an appeal within 30 days is to be counted from the date on which the order is communicated to the aggrieved person. The period of limitation prescribed under Section 16 of the Act of 2010 is to be determined in accordance with the compliance of Regulation 10 of the Notification of 2006. Thus, in the present case, the limitation period would not trigger for want of compliance on the part of SEIAA as well as the Project Proponent. Even if we take that the present appeal

should have been filed within the prescribed period of limitation, this Tribunal would have the jurisdiction to condone the delay up to 60 days after the expiry of the prescribed period of limitation of 30 days. Another aspect in relation to limitation that can be noticed by the Tribunal is that the appellant has also challenged the minutes of 77th meeting of SEIAA dated 14th November, 2014 and the proceedings of SEAC as well. This, according to the appellant, would fall within the ambit of Section 14 of the Act of 2010 and the appeal, as filed, would not be barred by time in any case. But, that situation would not arise in the present case for the reasons aforesaid. Consequently, we reject the contentions of the private respondents that the present appeal is barred by time.

DISCUSSION ON ISSUE NO. 2

2) Whether the appellant has the *locus standi* to file the present appeal?

21. Section 16 of the Act of 2010 gives the statutory right to any 'Aggrieved Person' to prefer an appeal before the Tribunal. The expression 'Person Aggrieved' has neither been defined under the Act of 2010 nor in any of the Acts specified in Schedule I of the Act of 2010. Keeping in mind the object of the Act of 2010, its legislative scheme and the purpose enumerated in the Scheduled Acts, it can be concluded that the expression 'Aggrieved Person' has to be interpreted liberally.

The concept of *locus standi* as applicable to the Civil or Constitutional jurisprudence cannot be *stricto sensu* applied to the interpretation of this expression under the Act of 2010. The term

'Person Aggrieved' does not have to show any personal interest or damage or injury as the concept of personal injury would be applicable to applicant invoking the jurisdiction of the Tribunal under Sections 15 and/or 17 of the Act of 2010, but it would not be true for a person invoking the jurisdiction of the Tribunal under Section 14 and/or Section 16 of the Act of 2010. In fact, this preposition need not detain us any further as a larger bench of the Tribunal has settled this principle in its various judgments. At best, the person has to show that he is directly or indirectly concerned with adverse environmental impacts which are likely to be caused due to grant of the Environmental Clearance by the competent authority.

22. It may be noticed that by coming into force of the Act of 2010, National Environmental Appellate Authority Act, 1997 was repealed. Under the provisions of that Act, any person aggrieved had a right to prefer an appeal against the orders to the Appellate Authority in terms of Section 11 which defines an 'Aggrieved Person' and provides that any person who is likely to be affected by the grant of the Environmental Clearance could prefer an appeal. However, every such definition is conspicuous by its absence in the provisions of Section 16 of the Act of 2010. Thus, it cannot be said that a person actually and really aggrieved should alone be permitted to prefer an appeal under the Act of 2010. It will be sufficient that a person states that the environment of the area would be adversely effected, the protection of which, is of his interest. Expression 'Aggrieved Person' must be given a wide connotation and the persons directly or indirectly affected or even interested should be permitted to ventilate

their grievances in an appeal. (Refer:- *Sri Ranganathan v. Union of India*, (2014) ALL (I) NGT REPORTER (2) (SZ) 1 and *Mr. Vithal Gopichand Bhugersay v. Ganga K Head Sugar and Energy Ltd,*. (2014) ALL (I) NGT REPORTER (1) (SZ) 49.

23. 'Aggrieved Person' is one, who has a legal right to enforce a remedy. Such person must satisfy the ingredients as stated in the laws in force. Although the legal right must fall within the framework of the statute, but, that does not mean that the Tribunal would unduly restrict the meaning of this expression. It must receive a liberal construction in consonance with the object of the Act of 2010. We may also refer to the Judgment of a larger bench of the Tribunal in the case of *Goa Foundation v. Union of India,* (2013) ALL (I) NGT REPORTER (Delhi) 234, where the Tribunal examined the ambit and scope of this expression while referring to various judgments of the Supreme Court of India. The relevant extract of the judgment reads as under:

> 25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon* supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' *[Ebrahim Aboodbakar v. Custodian General of Evacue Property,* AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person

wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of *Bar Council of Maharashtra v. M.V. Dabholkar and Others* AIR 1976 SC 242 held as under:-

> "27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably con fined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.
>
> 28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar

Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and. if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get

entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar,* AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

28. Section 16 of the NGT Act gives a right to any person to prefer an appeal. These expressions have to be considered widely and liberally. The person aggrieved, thus, can be a person who has no direct or personal interest in invoking the provisions of the Act or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act.

24. The objection of the respondents with reference to the judgments of the Tribunal which we have already referred, is, that a person

(appellant) has to be an 'Aggrieved Person' who has suffered a legal injury, i.e., to say that he has been wrongly deprived of something. Further, it is averred by the respondent that no specific averments have been made in the appeal in this regard and this contention is without any merit. Firstly, there are averments in the appeal in this regard and secondly, the appellant has taken a specific plea that being resident of the area, he is concerned with the protection of environment and ecology of the area which is affected by the unauthorized construction activities of the respondent.

25. In light of the above dictums of the Tribunal, we may refer to the memorandum of appeal preferred by the appellant. The appellant has specifically stated that the Environmental Clearance for the project would have adverse impacts on the environment and ecology of the area. According to him, it would cause traffic jams and air pollution since the Super-Speciality Hospital has been established contrary to the laws in force. The maintenance of prescribed percentage of green area has not been complied with by the Project Proponent and other conditions of the Environmental Clearance have also been violated by him. According to the appellant, the Environmental Clearance has been granted arbitrarily and in violation to the Notification of 2006. The appellant claims to be a resident of that area and has a direct interest in the environment of the area. Furthermore, the appellant has been pursuing the cause of environment protection before various forums for a considerable time. Thus, we are of the considered opinion that the appellant is covered within the ambit of the term

'Aggrieved Person' and once he is an 'Aggrieved Person' he would have the *locus standi* to file this appeal.

DISCUSSION ON ISSUES 3 AND 4:

3) **Whether the appeal discloses the 'cause of action' that clearly falls within the ambit and scope of the jurisdiction of the Tribunal under the Act of 2010?**

4) **Whether the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the Environmental Clearance dated 26th November, 2014 granted in favour of the Project Proponent are liable to be set aside and quashed?**

26. Since, Issues No. 3 and 4 are interconnected; we may deal with them collectively. 'Cause of Action', as understood in legal parlance, is a bundle of essential facts, which is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be an entire set of facts that give rise to an enforceable claim. The phase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. It is the substance and not merely the form that has to be looked into. The pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the concerned party is to be gathered from the pleading taken as a whole. 'Cause of Action' under the provisions of the Act of 2010 should essentially have nexus to the matter relating to environment. It should raise substantial questions of environment relating to implementation of the provisions of the Statutes specified in Schedule I of the Act of 2010. The Cause of Action would give right

to sue or a right to take action. (Reference can be made to the Judgment of the Tribunal in the case of *Forward Foundation* O.A. 222 of 2014 decided on 7th May, 2015). In the present case, the appellant has satisfied the basic ingredients and has shown that besides invoking the appellate jurisdiction of the Tribunal, for the violation and breaches committed by the respondent he has also been able to raise a substantial question relating to environment. He, being the resident of that area, can be an 'aggrieved person' if it is shown that there would be an adverse environmental impact from the construction of the project, such as, generation of various types of wastes by the hospital, the traffic congestion and other allied activities, which will be injurious to the environment of the area in question.

The challenge of the appellant is to the recommendations of SEAC, minutes of 77th meeting of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 granting Environmental Clearance. From the records before the Tribunal, it is undisputable that Plot No. 1, Sector-16, Faridabad was allotted to respondent no. 9 for construction of Harijan Residential School and Social Development Centre. As per the terms and conditions of the allotment letter and provisions of the HUDA Act, 1977, this plot was treated as preferential plot. Two major restrictions of the letter of allotment were that, the allottee has no right to transfer the property or any interest therein, except with the prior permission of the competent authority, and secondly, in the event of breach of any of the conditions, they would be liable to be proceeded against, in accordance with the laws in force. A clear restriction was placed that the plot/building shall not be used

for any purpose other than for which it had been sanctioned/ allotted in the plan approved by the concerned authorities.

27. From the above narrated facts, it is clear that there were serious breaches and violations committed by respondent no. 9 and on different occasions plot allotted to the Society was resumed by Estate Officer, including that on 13th July, 1993, 5th September, 1994 and 4th July, 2013. The Show Cause Notices for violation were also issued to respondent no. 9 on 25th October, 2010, 28th November, 2011 and 14th December, 2012 in addition to the last order of resumption dated 4th July, 2013 which required resumption of land and building in question. An appeal was filed before the Appellate Authority, HUDA which was allowed on 14th January, 2014. The Appellate Authority, vide its order dated 14th January, 2014, had set aside the order of the Estate Officer, subject to the conditions that we have afore reproduced. The society was required to run a Harijan Residential School as stipulated in the letter of allotment. As per the said order, if the school was not found running, the order of resumption was to automatically revive. The order further required the respondents to remove all zoning violations within 45 days and respondents were also required to get the case of increased FAR approved from the concerned authority within 15 days. HUDA being aggrieved from the said order, had preferred a revision before the Commissioner, Town & Country Planning Department, Government of Haryana. In the revision it has been averred that building of the hospital on the project site was not permissible as the permission was granted for Harijan Residential School and not for super specialty hospital in addition to

the Harijan Residential School. Furthermore, running of Hospital can only be an incidental purpose and not the main purpose which is, running of Harijan Residential School. Besides this, excess FAR and zoning violations were stated to be serious. The said revision is pending even as of now.

Various disputes are pending adjudication between the parties before authorities and Courts. *Inter-alia,* following are the main issues that are pending consideration before the authorities:

a) Change in land use.

b) Establishing and running of Super-Specialty Hospital as opposed to Dental College–cum–Hospital and Harijan Residential School for which the permission had been granted originally and letter by the authorities permitting the dental college along-with Harijan Residential School. The running of dental hospital was an incidental purpose to the primary purpose of running Harijan Residential School. Thus, there was complete violation of the terms and conditions of the letter of allotment**.**

c) Unauthorized and illegal construction, much in excess of that approved by sanction plans. The request of respondent no. 9 and 10 is pending consideration for increase of FAR.

d). There is no compliance to the order of the Appellate Authority as such and the plot automatically stands resumed. Hence, the project cannot subsist any further.

Of course, the Project Proponent claims that they have applied for permission in relation to establishment of Super-Specialty Hospital and increase in FAR. Furthermore, the revision application against resumption order is sub-judice and according to them, the conditions

of the order dated 14th January, 2014 have been complied with. Reliance has been placed upon the letter issued by the Estate Officer, HUDA dated 4th October, 2014 addressed to the Project Proponent which states that as per the revised zoning plan dated 26th June, 2003, the use of the site includes 'hospital' and the level of services to be provided by the hospital is the prerogative of the user. This letter further states that the Project Proponent must also run the Harijan Residential School at site.

28. At this stage, we may also notice that vide letter dated 24th July, 2003, the Chief Administrator, HUDA, permitted respondent no. 9 to establish a Dental College-cum-Hospital at the site in question with the specific condition that the Harijan Residential School shall remain at the premises and the dental college would be permitted only when permission from the Dental Council of India is provided and building plans are approved. It was specifically stated therein that if the land was used for any other purpose, the same shall revert back to HUDA in accordance with the provisions of the HUDA Act, 1977. The letter also prohibits transfer of the plot or even change of land use under any circumstances. Respondent no. 9 shall provide concession to the deserving persons from economically weaker sections in the dental college to the extent of five per cent of the seats. The Dental Council of India, vide its letter dated 15th June, 2007, had informed the Secretary to the Government of India, Ministry of Health & F.W that application of respondent no. 9 for establishment of a new dental college with 100 admissions for academic session 2007-2008 had been disapproved.

DISCUSSION ON ENVIRONMENTAL CLEARANCE

29. The Project Proponent, respondent no. 10 had started the construction without even applying for Environmental Clearance. As already noticed, M/s. QRG Medicare Ltd. had not only started construction before grant of Environmental Clearance, but also partially completed the construction of Super-Specialty Hospital. It was on 12th June, 2013, for the first time that QRG Medicare Ltd., respondent no. 10, submitted a proposal for grant of Environmental Clearance and not respondent no. 9. After inspection dated 28th June, 2013, conducted by the Survey Staff, a report was submitted stating that instead of Harijan Residential School, a 450 bedded hospital was constructed at the site. The proposal for Environmental Clearance was referred to SEAC which dealt with the application in its various meetings commencing from 101st meeting on 27th March, 2014. In this meeting, SEAC required respondent no. 10 to submit further documents. In its 102nd meeting dated 17th April, 2014, an unanimous decision was taken that the case of respondent no. 10 was that of proved violation and same was recommended for prosecution in furtherance to the Office Memorandum of MoEF&CC dated 12th December, 2012. In pursuance to such Office Memorandum, respondent no. 10 passed a resolution of the Board of Directors stating that there was completion of construction of the project with a total built up area of 39, 261.82 square meters without obtaining Environmental Clearance. Respondent No. 10 also submitted an affidavit along with resolution dated 20th May, 2014, stating that there was violation and the same will not be repeated in future.

30. In the 103rd meeting of SEAC dated 28th April, 2014, it was recommended that both respondents no. 9 and 10 should be prosecuted and the case was recommended for that purpose to the Competent Authority. These recommendations were forwarded to SEIAA in furtherance to 106th meeting of SEAC for passing of order in relation to taking legal action against the Project Proponent. However, in 106th meeting of SEAC dated 17th June, 2014, it was noticed that Principal Secretary, Government of Haryana had provided evidence of credible action taken against the Project Proponent. A sub-committee was later appointed to visit the site and the committee was required to submit the report, which was accepted by SEAC on 14th August, 2014 in its 109th meeting. In its 112th meeting held on 18th-19th September, 2014, it was noticed that construction of the project is almost complete. The cost of the project was estimated to be Rs.137.71 crores. The sub-committee had made certain recommendations which were noticed and the case was not finalized in that meeting. It was again taken up in 113th meeting of SEAC held on 9th-10th October, 2014, where the SEAC while rating the project as "Gold", recommended it for grant of Environmental Clearance to SEIAA as per the terms and conditions which we have already referred above. SEAC in this meeting directed the sub-committee to visit the site again after the Project Proponent confirms due compliance and to submit a compliance report before December, 2014. However, without waiting for the report, SEIAA in its 77th meeting dated 14th November, 2014 accepted the recommendations of SEAC.

31. In furtherance to this, on 26th November, 2014, a detailed order granting Environmental Clearance was issued with certain terms and conditions. There is nothing on record filed by any of the official respondents to say that conditions stated in the order dated 26th November, 2014 have been complied with.

32. The challenge to the Minutes of 77th Meeting of SEIAA dated 14th November, 2014 and the order dated 26th November, 2014 is defended by respondent no. 9 & 10 on the strength of the Office Memorandum issued by the MoEF&CC dated 12th December, 2012 which permits filing of an application at different stages of the project and its consideration. The contention of the respondents in this regard is that, there is no bar in law for grant of Environmental Clearance to a project which has already completed construction prior to grant of Environmental Clearance.

33. The Office Memorandum dated 12th December, 2012, superseded the earlier Office Memorandum issued by the MoEF&CC on 16th November, 2010. This Office Memorandum in para 4 to 7, provided the procedure for handling an application by SEIAA and SEAC in relation to the projects which have applied for the Environmental Clearance after the project work has been undertaken and there are violations in this regard. Para 5 (i) of this Office Memorandum mandated Board of Directors of the Project Proponent's company to file a resolution that they would not repeat the violations in future. The Office Memorandum dated 27th June, 2013, which inserted sub-para (iii) & (iv) to para 5 in the Office Memorandum dated 12th December, 2012 had specifically provided that directions will be

issued by MoEF&CC in respect of violation and compliance by Project Proponent to such directions was mandatory. Till then, construction activities at the site shall be suspended till Environmental Clearance is obtained. All these conditions of the Office Memorandum were even to apply to the projects which were for extension.

34. The question that primarily arises for the consideration of the Tribunal is whether the order granting Environmental Clearance is sustainable and can stand the scrutiny of law?

The application for grant of Environmental Clearance was firstly, submitted by respondent no. 10 on 12th June, 2013, who, as per the records, had no *locus standi* to file the application. The QRG Medicare Ltd., respondent no. 10, was neither allotted the land in question nor was the same ever transferred to him by any Competent Authority. The conditions of allotment letter dated 30th May, 1978 and letter of Chief Administrator, HUDA dated 24th July, 2003 completely prohibited transfer of the property as well as change of land use. This was considered by SEAC in its 102nd meeting wherein it was pointed out that the applicant should be Vivekanada Ashrama, respondent no. 9, whereupon, M/s. QRG Medicare Ltd. amended their application seeking Environmental Clearance on 23rd June, 2014. By the time an application was filed jointly by the respondent no. 9 and 10, even if in any law such a application could be filed, the Office Memorandum of the MoEF&CC dated 12th December, 2012 had already been amended vide Office Memorandum dated 27th June, 2013. In other words, the application had to be considered in terms of the Office Memorandum dated 12th December, 2012 read with Office Memorandum dated 27th

June, 2013. There is no record filed by the official respondents that the conditions of these Office Memorandums had been completely satisfied. On the contrary, no affidavit was filed by these respondents, stating that the construction work has been stopped and would not be carried till grant/refusal of the Environmental Clearance. Though an affidavit was filed by respondents, it only stated that the violation would not be committed in future, which confirms that in the past, violation have been committed. It is also clear from the records that construction work of the project was carried on right from the year 2006 and the construction is not only complete now, but is much in excess than the permissible covered area. The documents placed on record show that 1974.99 sq meter area has been constructed without getting sanctioned plan and 10714.684 sq meter area has been constructed without obtaining NOC from DPC. According to the affidavit filed by the Director of the respondent no. 10, construction of the project began in the year 2006 and an area of 32080 sq meters was constructed up to 2009. From 2009-13, the area of 7181 sq meter was constructed and renovation and changes of existing structures was carried after March, 2013 till April 2014.

Seen in light of the document on record, it is more than clear that besides unauthorized and illegal construction, the construction was also carried out after filing the application for grant of Environmental Clearance. This clearly demonstrates that respondent no. 9 and 10 violated the mandate of both the Office Memoranda issued by MoEF&CC on 12th December, 2012 and 27th June, 2013 in all respects.

In this background, having failed to comply with the requirements of the Office Memoranda and adhere to the conditions stipulated therein, respondent no. 9 and 10 cannot claim benefit of these Office Memoranda. The authorities concerned have also failed to take notice of this admitted position on record and have issued the order granting Environmental Clearance dated 26th November, 2014.

35. SEAC as well as SEIAA had recorded gross violation of the provisions of the Notification of 2006 by the Project Proponents and had directed prosecution of both the respondents. Having recorded such serious objections in its 101st, 102nd, 103rd, 106th, 109th and 112th meeting there appears no justification whatsoever for these authorities to turn around their findings and recommend the project for grant of Environmental Clearance. We are unable to appreciate, and, in any case find reasonable grounds for SEAC to completely alter its course of action against the Project Proponent. It is worth noting that in its 106th meeting, SEAC had recorded that the Principal Secretary, Government of Haryana, Environmental Department vide letter dated 6th June, 2014 has provided the evidence for credible action taken against the Project Proponent, still, it opted to appoint a sub-committee, obtained a report from that sub-committee on 14th August, 2014 and considered the same in its next meeting. In that very meeting, it also directed that respondent no. 9 should be the first applicant. Strangely, there is nothing on record before the Tribunal to show as to how and on the strength of which documents, respondent No. 9 has claimed right in the property, filed application for Environmental Clearance and its consideration thereof by SEIAA and

SEAC. This aspect attains some definite significance in light of the restrictions imposed in the letter of allotment as well as in the subsequent letters of Chief Administrator, HUDA granting permission to establish a Dental College-cum-Hospital. In any event, the Harijan Residential School was to be constructed and run as per conditions of the letter of allotment. A plea has also been taken as to whether the Harijan Residential School was constructed and actually running at the site in question. Respondent no. 9 & 10, themselves have admitted in their reply to the grounds that the school was not running from the year 2010-13 due to construction work of the Hospital. The school resumed only in the year 2014-15. The applicant has taken up the stand that the Harijan Residential School was never running effectively. One fact that is evident from the record is that a plot which was given to respondent no. 9 for construction of Harijan Residential School and for Social Development Centre was never exclusively used for the said purpose. Furthermore, immediately after allotment, an attempt was made to establish a Dental College-cum-Hospital and ultimately a Super-Speciality Hospital with 325 beds has come up. However, application for licence to the Joint Commissioner, Municipal Corporation Faridabad was made for setting up of a 400 beds hospital. Obviously, the very purpose for which the plot had been allotted was lost, if not entirely extinguished, by the construction of the Super-Specialty Hospital, which is a purely commercial project.

36. Now, we may examine the content and correctness of the order dated 26th November, 2014 granting Environmental Clearance to respondent no. 9. The Environmental Clearance has been accorded to

respondent no. 9, while the application for construction of the Super-Specialty Hospital of 325 beds was submitted by respondent no. 10. Respondent no. 9 was added as an applicant subsequent to the observations of the SEAC in its 101st meeting. Respondent no. 10 is a Limited Company while respondent no. 9 is a registered society. Thus, both of them are separate legal entities. On perusal of the documents placed before the Tribunal, it can be deduced that respondent no.10 has no interest in the land. As already noticed, the project had practically been completed at the time of filing of the application seeking Environmental Clearance. This order granting Environmental Clearance notices that the proposal had been appraised as per prescribed procedure under the provisions of Notification of 2006. This is factually incorrect as the entire process for grant of Environmental Clearance was started post completion of project which is not at all contemplated under the notification of 2006. Furthermore, the Environmental Clearance says:

> "Your application No.QRML/FBD/MS/EIAA/VP/2013/10329 dated 12.6.2013 addressed to M.S., SEIAA, Haryana received on 17.6.2013 and subsequent letters dated 3.2.2014, 15.4.2014, 30.9.2014 (revised application in the name of Vivekananda Ashrama) Seeking prior Environmental Clearance for the above project under the EIA Natification,2006"

The application by no stretch of imagination could be treated and dealt as an application seeking 'prior Environmental Clearance'.

37. The order granting Environmental Clearance imposed specific conditions in relation to construction and operational phase and also imposed certain general conditions for the project. The bare reading of the conditions imposed smacks of non-application of mind. This is

clear from the very first condition which mentioned about obtaining consent form the HSPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for establishing the project, while the project had already been completed and has started its operations. Conditions in relation to utilization of top soil excavated during construction activity and direction incidental thereto were inconsequential as the building had already been completed.

38. Large number of conditions have been imposed on the supposition that project was still to start its operation and was under construction. Conditions like the use of fly ash as building material, maintenance of ambient air quality and noise quality during construction were entirely irrelevant and have been incorporated without any plausible reasoning. Conditions no.19 to 29 totally relates to and are enforceable only prior to commencement and continuation of the construction work. If conditions stipulated in the Environmental Clearance are scrutinized, they can safely be termed as irrelevant and/or illogical**.** For instance, the electric supply should be ensured before construction and construction cannot be done solely on generators; the Project Proponent shall not raise any construction in natural land depression, nalas and water course; the Project Proponent shall keep the level of building block above the level of approach road; construction shall not be carried out so that density of population does not exceed norms approved by the Director General, Town and Country Department, Haryana; ground water will not be used for construction; Project Proponent shall not cut any existing trees; Project Proponent will provide 3 meter high barraged around the

project; there shall be dust screening for every floor above the ground; the Project Proponent shall construct a sedimentation basin in the lower level of the project site; he shall provide proper paths and passages before starting construction; size of the glass to be used etc.

39. All these conditions stand infructuous as on the date of consideration of the application by the authorities and their observance of default would be rendered inconsequential. Besides all this, there is nothing on record to show that these conditions stood compiled with or not. The authorities have not even bothered to suggest any remedial steps required to be taken by the Project Proponent in this regard. Further, condition no. 33 of the Environmental Clearance states that the site for Solid Waste Management Plant had to be earmarked on a layout plan and the detailed project for setting up of Solid Waste Management Plant shall be prepared.

40. A Super-Specialty Hospital of this magnitude, in normal course of its business, is expected to generate different kinds of waste. The Hospital would generate Bio-Medical Waste, Hazardous Waste, Municipal Solid Waste and will also cause water and air pollution. The impugned Environmental Clearance is completely silent on the measures that have been taken in regard to all these aspects, what the Project Proponent was required to do and what would be the final impact of an existing project on environment and ecology. The conditions like providing sprinkle system, providing adequate air pollution measures to mitigate air pollution, providing space for parking, providing greenbelt, stack heights of the D.G. Sets and

standards for discharge of environmental pollutants in accordance with the Act of 1986, energy conservation measures like installation of LED only for lightening and ensuring that the ground water is not contaminated due to leach of spoiled organic material are to be considered not only in terms of compliance, but even in terms of impact, by the concerned authorities upon physical inspection of the site prior to grant of Environmental Clearance. The entire order granting Environmental Clearance *ex facie* is a mere formality. It has no substance, much less ensuring protection of environment and prevention and control of pollution, which are the very essence of granting such permissions. Most importantly, in condition no. 36 of the impugned order it has been stated that Environmental Clearance granted to respondent no. 9 shall not create or confer any right to land use of the project site for establishment of the Super-Specialty Hospital. The very purpose of such a condition shows self-contradiction. On one hand, SEIAA has granted Environmental Clearance to the property owned by respondent no. 9 in relation to project exclusively propounded and executed by respondent no. 10, while on the other hand, there was nothing before the said authority to confirm whether such a land use, as proposed by respondent no. 9 was permissible on the site in question or not. Land use certainly is a relevant consideration for grant of Environmental Clearance. It is a land use of the area which would ultimately determine the ambient air quality and cumulative impact assessments and consequently, imposition of relevant conditions in the order granting Environmental Clearance.

41. In 101st meeting of SEAC information on actual ground coverage, paved surface area and vacant green area was sought to work out actually possible green belt development. As per site inspection report of the sub-committee of SEAC, details of landscape area as follows:

> 1. "On the Eastern side of the project there is a main gate for Hospital and School. On the periphery of the project on this side only there is a grassy area of land with two rows of newly planted Ashoka Trees in an area of about 10' X 50' near the underground water tank provided with grassy cover.
> 2. On the North & West sides of the project, roads are provided with complete concrete flooring. There is no land for afforestation/ Plantation, few gamlas with plants have been placed on the periphery of the project on this side which cannot be counted as afforestation/plantation.
> 3. On the Southern side a small grassy lawn is provided but no plantation has been done at all.
>
> Note: The identified landscape area for plantation (21%) is not correct as the management claims. The plantation/afforestation parameter for EC is almost totally missing and has been neglected completely. The plantation at eastern side does not form even 0.1% of the requisite percentage of plantation i.e. 21%"

Being fully aware of the ground realty that practically no open space is available of development of green belt, imposition of specific condition 4 regarding 21 per cent green area has no basis.

42. Another critical aspect that has been totally overlooked in all stages of planning and grant of Environmental Clearance pertains to the fact that the buildings for a Super-Specialty Hospital like the one under reference require specific considerations in terms of medical services to be offered which in turn govern the requirements of Entrance area, Ambulatory care area, Diagnostic services, Intermediate care area, Intensive care area, Critical care area,

Therapeutic services, Hospital services, Engineering services, and Administrative/Ancillary services. These in turn govern the requirements in terms of water supply, sewage, Solid Waste management, Bio-Medical Waste management, power back up, manpower, parking space, etc. It is worth noting that for most of the above BIS standards are available for planning purpose and in the absence of any reference to such planning exercise, it is difficult to comprehend as to how the project under reference at the first place complies with the functional requirements and thus with the likely pollution control measures that are proposed.

To highlight, provision of 95 ECS in the parking for a 325 bedded hospital with the restriction for allowing parking outside the premises as a specific condition 9, appears to be a mere formality and non-application of mind. It is a common knowledge that the hospital of such nature would itself have around 500 employees, thus put together with the patients (indoor and outdoor both), one can just guess the huge requirement for parking apart from the large space requirement for ambulance services.

Another glaring example of non-application of mind can be seen in specific condition 2 pertaining to Bio-Medical Waste management. Apart from mentioning the specific condition, it occurred to no one that how the infectious liquid waste that would be disposed in the sewer would be treated. Obviously in such an establishment, apart from domestic sewage from laundry, kitchen and toilets, a huge quantity of infectious liquid waste would also be generated from various sections of the hospitals. First question that arises for consideration is the fact that whether separate sewer lines have been

laid for that purpose and the second question pertains to installing proper ETP for the treatment of such infectious liquid waste.

43. Hospitals are significant consumers of water and they generate considerable amount of wastewater which consists of pathogens and harmful bacteria, virus, pharmaceuticals and its metabolites, radio-active elements, toxic chemicals, and heavy metals. The pathogens can spread disease, adversely affect the biodiversity whereas microbial resistant strains to antibiotics can spread resistance vertically and horizontally. Similarly persistent, non-biodegradable, hydrophilic chemicals can pass a normal STP and pollute water bodies.

Average water consumption pattern in Indian Hospitals indicate that water use in hospital for various purposes is around 750 l/p/d/b. Quantitative analysis of hospital wastewater shows that r pH ranges from 7.7-8.1, BOD is 300-400 mg/l, COD is 800-1000 mg/l, SS is 400-600 mg/l, TKN is 5-80 mg/l, Total – P is 0.2-13 mg/l, Fat, oil and Grease is 5-60 mg/l, Total Surfactant is 3-7.2, E.Coli is 10^{3} - 10^{6} MPN/100 ml, Faecal coliform is 10^{3}-10^{7} whereas Total Coliform is 10^{5}-10^{8}. In addition hospital waste water also has Analgesic (µg/l) 100, Antibiotic 11, Cytostatic 24, B- blockers 5.9, Hormones 0.16, ICM 1008, AOX 1371, Gadolinium 32, Platinum 13, Mercury 1.65 as micro pollutants.

Similarly, once the entire construction has taken place, in what manner the project proponent would install or create facilities for safe disposal of Solid Bio-Medical Waste which is of various categories and require different treatments.

S. No	Type of Waste	Waste Description	Generation Area
1	Human Anatomical	Human tissues, Amputated Body Parts	Cardiac OTs, Day care OTs, Emergency OT, Cath Lab
2	Infectious Solid Waste	Items contaminated with blood & body fluids including cotton, dressings, soiled plaster casts, beddings, pathological waste, infected blood, patient samples & specimens.	Cardiac OTs, Day care OTs, Emergency OT, Cath Lab, ICUs, Procedure rooms, IPD, OPD, Pathology lab, Phlebotomy room, Blood Bank
3	Microbiology Waste	Cultures, stocks of micro-organisms, dishes & devices used for culture	Microbiology lab
4	Disposables	Disposables other than sharps e.g. Gloves, tubings, catheters, IV–sets, clips, valves and any other infected plastics.	OTs, Cath labs, IPD, OPD, ER, ICUs
5	Sharps	Needles, Syringes, scalpels, blades, glass etc. which may cause puncture & cuts	OTs, Cath labs, IPD, OPD, ER, ICUs, Phlebotomy room
6	Liquid Waste	Waste generated in the laboratories cleaning, Housekeeping and disinfecting activities	Laboratories, Laundry, Housekeeping
7	Chemical Waste	Chemicals used in the production of biologicals, chemicals used in disinfection	Labs
8	Discarded Medicines	Waste comprising outdated, contaminated & discarded medicines	All patient areas, Pharmacy.
9	Incineration Ash	Ash from incineration of any biomedical waste	Incinerator site
10	Non-infectious waste	Office waste like paper, cartons, cardboard boxes, metal cans, packaging material, garden waste and kitchen waste	All areas of the Hospital
11	Kitchen Waste	Waste food (cooked or raw)	F&B
12	Radioactive Waste	Radio-isotopes	Nuclear Medicine Lab

Following are the potential adverse impact due to improper handling of Bio-Medical Waste on the human environment:

- Physical injuries may occur to the hospital personnel as well as waste handlers outside the hospital due to improper handling of various Bio-Medical Wastes. Out of the different categories of wastes, sharps are most likely to cause physical injury especially when they are mixed with other Bio-Medical Waste that increases the risk of Hepatitis and HIV infections.
- Chemical injuries can occur due to hazardous- toxic, corrosive, flammable, and reactive and genotoxic wastes which are likely to cause chemical burns on accidental exposure, or toxicity to cells cytotoxic materials.

- Nosocomial infections to the patients from poor infection control policies and poor waste management practices.
- Increasing uses of disposables in hospitals generate large quantum of infectious waste that can be reused if not managed effectively.
- Mushrooming business of disposables being repacked and sold without even being washed can be life threatening.
- Also when such waste is disposed in open likely to contaminate land and water environment either through percolation or surface runoff.

Other potential Impacts during the operation phase of any Hospital are as follows:

1. Mixing of Municipal Solid Waste & Bio-Medical Waste can cause severe contamination problem if it is not handled carefully.
2. Due to development of Health care facility in the area, Road side vendors and small shopkeepers will encroach upon road/ pavement apart from likelihood of establishment of medical stores, diagnostic laboratories and eateries would lead to adverse Impact on traffic movement and would also increase the noise and air pollution.
3. Additional demand for electricity will be required for hospital facilities and diagnostic machinery.
4. Surrounding area will be required to be declared as silence zone for controlling the Noise pollution; however, with the Harijan Residential School in the same building, it would be totally contradictory.

44. In the whole exercise, the issues pertaining to School have not received due attention. The records clearly indicate that initially for 3-4 years it was operational and it is also on record that due to construction/alteration/modification activities, the school is not operational and in the process, what happened to the students. Apparently, this is the biggest fraud played by Respondent 9 and 10 to which all the public authorities have remained a mute spectator. In the whole process, they have ruined the career of the students for which strict action needs to be taken.

45. In light of the above, we have to now examine whether the order dated 26th November, 2014 granting Environmental Clearance to the project of private respondent no. 9 & 10 can stand the scrutiny of law? The answer to this has to be in the negative, *inter-alia,* for the following reasons and circumstances:

i) The impugned order granting Environmental Clearance dated 26th November, 2014 does not envisage appropriate conditions that would protect the environment and prevent and control air and water pollution. The impugned order suffers from the element of non-application of mind. It does not deal with the presence of complete and satisfactory mechanism for dealing with the Hazardous Waste as per the Hazardous Waste Management and Handling Rules,2008, Bio-Medical Waste as per the Bio-Medical Waste Management and Handling Rules, 2011, and the Municipal Solid Waste as per Municipal Solid Waste Management and Handling Rules, 2000, The impugned

order is founded on a factually erroneous assumption that the project is still to commence and the conditions stated in the impugned order should be adhered to during the commencement and course of the construction.

ii) Form I and I-A to the Notification of 2006 contemplates providing data and analysis report which must be at a stage prior to commencement of any project activity and Project Proponent may comply to these conditions. This aspect does not even find mention in the impugned order. The environmental aspects in regard to creating a green zone, landscaping, providing a mandatory 21.57 per cent green area, requisite parking area and infrastructure restrictions were not examined and even their possible compliance does not find a mention in the impugned order.

iii) The impugned order and entire exercise by SEIAA & SEAC is without jurisdiction and is contrary to law. Prior approval for commencement of the project activity is mandatory, as even noticed in the Environmental Clearance. The entire concept of prior approval has been brought to a halt by this post-construction exercise by the official respondents.

iv) Change in land use for building of a Super-Specialty Hospital, unauthorised construction, pendency of proceedings before the Revisional Authority, and respondent no. 10 having no interest or right in the land were the relevant considerations for grant of Environmental Clearance. Non-consideration of these factors would not

only adversely affect the decision making process, but will also affect the decision taken by the authorities. The impugned order suffers from the infirmity till its 112th meeting. SEAC, till its 112th meeting, was of the view that there are serious violations and punitive actions should be initiated against respondent no. 9 & 10. The Principal Secretary, Haryana had provided material evidence for taking credible action against the Project Proponent. However, ignoring all these factors and upon seeking a report of a sub-committee of its own, decision of recommending the project for grant of Environmental Clearance in its 113th meeting dated 9th & 10th October, 2014 is bereft of any reason, much less supported by environmentally sound considerations. It is evident from the record before the Tribunal that SEAC had constituted a sub-committee which, according to them, had submitted a report. While agreeing to this report and presuming that Project Proponent had taken care of environmental interests, SEAC, in its 113th meeting asked the sub-committee to visit the site again and submit a compliance report by December, 2014. But even without submission of such a report and prior to the period specified, the impugned order was passed on 26th November, 2014. This undue haste for ignoring its own directions by SEAC is a glaring example of arbitrariness as well as non-compliance to the provisions of Notification of 2006. It appears from the record that the minutes of the 113th SEAC meeting had

pointed certain shortcomings and required the Project Proponent to correct the same. There is nothing on record to show that before passing of the impugned order such compliances had been completely and satisfactorily carried out.

v) It has been incorrectly recorded in the impugned order that appraisal and other steps in accordance with the Notification of 2006 had been taken prior to issuance of the order dated 26th November, 2014. Appraisal of the project in accordance with the Notification of 2006 would be incapable of being executed in terms of Notification of 2006 since the project had already been constructed.

vi) The impugned order granting Environmental Clearance does not take into consideration the primary object for which the land was allotted, i.e., the Harijan Residential School. No efforts are made to enquire whether the school was established and actually running, which was the paramount object for allotment of the land to respondent no. 9 and if the school was running, then what is the impact of running the Super-Specialty Hospital on running of such a school. There is no comparative study, much less a study based upon physical inspection of the site was that was carried out prior to grant of Environmental clearance.

46. We have afore-noticed violations and non-compliance to other laws, including, the change in land use as relevant considerations for granting Environmental Clearance by SEIAA. But these are not the

aspects on which the Tribunal will pronounce its verdict in relation to the project in question, though Environmental Clearance to such project ought to have been granted prior to its establishment and operationalization, that too in consonance with the laws in force. A project, the foundation of which is illegal and in violation of the laws in force, cannot be permitted to contend that the Environmental Clearance should be granted to the project *de hors* of such consideration and irrespective of the flagrant violations committed by them. It is not only expected, but is a legal obligation upon every Project Proponent to obtain requisite permission, including Environmental Clearance prior to the commencement of any project activity, unless the laws specifically provides to the contrary. We are conscious of the fact that in the present case, the challenge to change of land use is pending adjudication before the Revisional Authority. The matter in regard to excess coverage has also not yet been resolved. Of course, the Project Proponent has obtained certain other clearances but that will not alter the position of law which requires the Project Proponent to take 'prior Environmental Clearance'. Thus, the discussion regarding other issues in this judgment should be recorded as a discussion on relevant factors only and not determination of those issues except to the extent of grant and/or refusal of Environmental Clearance to the Project Proponent. In this regard, reference can be made to the judgment of the larger bench of this Tribunal in the case of *S.P Muthraman v. Union of India,* O.A 37 of 2015 decided on 7th July, 2015.

> "122. What we need to notice here is that the compliance to the laws in force, submission of applications for grant of Environmental Clearance

complete in all respects with necessary documents are the conditions precedent of consideration of such application by the competent authorities. It is imperative that the activity for which the Environmental Clearance is sought must be an activity started completely in consonance with law. Even the approval of the drawings and principal approval of the construction of the project from CMDA was subject to compliance with the laws in force. We do not agree to the argument propounded by the Project Proponents that the grant of principal approval ipso facto had the effect of granting other permissions to start construction without complying with other laws and permissions from the other authorities, particularly in face of the fact that a clause of this principal approval required the Project Proponent to obtain Environmental Clearance. All these Project Proponents are deemed to be in knowledge of the laws relating to construction of such projects i.e. Act of 1986, Rules of 1986 and Notification of 2006. The Project Proponents are persons in the business of building projects, having huge means and perspicacity. They cannot be even expected to take environmental laws. It is in fact unfortunate that these Project Proponents have not only violated the laws and their own undertaking but in that process even made other innocent people invest their money into the project, being fully aware that the construction raised is completely illegal and unauthorized. The Constructions have been raised in complete and flagrant violation of law. This renders them liable to be prosecuted against in terms of Section 15 of the Act of 1986. The authorities have taken action against some of them, but that does not in any way by necessary implication or otherwise have the effect of regularizing the construction that has been raised illegally, in an unauthorized manner and in violation of the principles of law. We must notice that these constructions are bound to have adverse effect on environment, ecology and biodiversity in the areas where they are located. Some of the environmental degradation and deterioration would be irreversible while other would be correctable to some extent either by demolition or by taking curative measures which we will hereafter discuss. Their illegal acts and unacceptable conduct has even rendered compliance to the provisions of the Notification of 2006 impracticable if not impossible.

123. Another plea advanced on behalf of the Applicants before the Tribunal is that the Office Memoranda are clearly in derogation and not in support of the substantive law, the attempt to condone violation would lead to compounding of offences and permitting

what provisions of Notification of 2006 and Act of 1986 restricts. The legislature in its wisdom has statutorily introduced the Precautionary Principle in terms of section 20 of the NGT Act, effect of which would stand wiped out in substance by these Office Memoranda. The contention of the Applicants is that the Office Memoranda are neither remedial nor solution to a problem. It is not one time settlement for the category of the persons who might have under some bonafide impression or mistake commenced the activity of the project without obtaining environmental clearance. Office Memoranda in their operation and effect are continuous and do not propose to cover a given situation. The Office Memoranda were issued right from the year 2010 and were amended from time to time, lastly in 2013. The Office Memorandum of 27th June, 2013 ex facie is a law in itself as it operates as the procedure for all future times giving substantive rights to parties and runs contra to the statutory provision and procedure established under substantive law. On the plain reading of the Notification of 2006, it is manifestly clear that it is the procedure prescribed therein besides being mandatory in character is also sui-generis. Once the law prescribes things to be done in a particular way then they must be done in that way alone or not at all. In *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295, the Hon'ble Supreme Court held "As a general rule, if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited.

124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not prejudicially effect the environment and ecology."

43. We may, at this stage, deal with the aspects of the Notification of 2006 that have been rendered incapable of compliance or performance. Under the scheme of the Notification of 2006, the stages of screening, scoping, public consultation and appraisal leading to the

issuance of ToR can hardly be complied with at the stage when application seeking Environmental Clearance was filed post construction. The SEAC would hardly be in a position and in fact, has completely failed to perform its duties in consonance with the above stages which are mandatory for issuance of Environmental Clearance. In the case of *Gau Raxa Hitraxak Manch and Gauchar Paryavaran Bachav Trust, Rajula Through its President, Chetan N. Vyas v.. Union of India through the Secretary, Ministry of Environment and Forests, Gujarat Pollution Control Board Through its Member Secretary and M/s. Gujarat Pipavav Port Ltd.*, 2013 All (I) NGT REPORTER (DELHI), 506 a Bench of this Tribunal clearly held that there cannot be a duality of the opinion about the provisions of the Notification of 2006, thus, making it clear that appraisal is not a mere formality. It requires detailed scrutiny of the application as well as the other document by SEAC or SEIAA which would report outcome of the consultation to arrive at any final conclusion and the Tribunal held as under:

> "25. There cannot be duality of opinion that rejection of the proposal could also be at the stage of scooping. It is also contemplated as a result of Appraisal which is captioned as "Stage (4)-Appraisal". The wording as used in EIA Notification pertaining to stage(4) i.e. Appraisal, is reproduced to the extent it is necessary:-
>
> Stage (4)-Appraisal:
>
> *(i) Appraisal means the detail scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or*

through an authorized representative. <u>On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior Environmental Clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.</u>

(ii) xxx

(iii) xxx

(Emphasis supplied)

26. Perusal of the above provision would make it clear that at Stage (4)-Appraisal is not a mere formality. It does require the detailed scrutiny by the EAC or SLEAC of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

27. The EAC or SLEAC concerned has to make categorical recommendations to the Regulatory Authority concerned either for grant of prior Environmental Clearance on stipulated terms and conditions, or rejection of the application for prior EC, together with reasons for the same. The use of "coma" at the end of first part of the sentence, prefixing the words "terms and conditions" and also suffixing the words "together with reasons for the same" will have to be read in conjunction.

28. Moreover, sub-clause (iii) of Regulation 7 pertaining to Stage(4) indicates that the process of appraisal is required to be completed by the EAC or SLEAC within sixty (60) days of the receipt of the final EIA Report and other documents."

47. A larger bench of the Tribunal in a recent judgment in the case of *S.P. Muthuraman (*supra*)* while dealing with somewhat similar situation and particularly, in relation to the compliance of the Notification of 2006 held as under:

"117. The Notification of 2006 not only mandates an Applicant or Project Proponent to strictly comply with the provisions, but even requires the authorities to perform their prescribed functions and thus, comply with the provisions within the time stipulated under those paragraphs of the Notification of 2006. It furthermore provides the consequences of non-compliance by the authorities within the period statutorily prescribed. In terms of Para 3, it is not only the consequences of failure to comply on the part of the

authorities that are prescribed but it even specify the rights that accrue to the Project Proponent. These private rights are definite in character and are of serious consequences. The required compliance has been stated with exactitude in the Notification of 2006, which provides a schedule stating category-wise those projects which require an Environmental Clearance and even the Form which a Project Proponent is required to furnish with complete details at the time of applying for Environmental Clearance.

118. If the application is not in Form 1 and does not provide complete details and documentation in support thereof in terms of the Schedule to the Notification of 2006, the authorities have the right to decline to entertain such an application.

119. Sections 3 and 5 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment and to issue directions of very wide magnitude, including directions in relation to closure, prohibition or regulation of any industry, operation or process. It can in all event also direct disconnection of electricity or water supply of such industry or operation or process. In exercise of its powers under Sections 6 and 25 of the 1986 Act, the Central Government has framed the Rules of 1986. The Notification of 2006 has been issued in terms of Rule 3(2) of the Act of 1986 as well as Rule 5(3) of the Rules of 1986. In other words, these later enactments are integral part of the Act of 1986, their character being statutory and language of these provisions makes it obligatory upon every Project Proponent to obtain Environmental Clearance and comply with other environmental laws without default. Section 15 of the Act of 1986 provides penalty for contravention of the provisions of the Act of 1986, the Rules, orders and the directions passed thereunder. Interestingly, Section 15 of the Act of 1986 makes both non-compliance and contravention of the provisions of these enactments punishable. In other words, every default or violation and even non-compliance of the provisions have been made punishable. This necessarily implies the mandatory character of these provisions and statutory obligation on the part of the Project Proponent to comply with them.

120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial non-compliance or best discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely

mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.

Thus, in view of the above discretion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.

Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural *simplicitor*."

"142. In view of the above, if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form 1 and Form 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA report only a formality. In the whole process, even imposition of general and specific conditions in EC pertaining to construction phase of the project would be irrelevant. It is extremely important to note here that the major impacts of any building construction project (alteration to topography, water drawl, air pollution, etc.) are during the construction stage or are directly relatable to the construction of the project itself (provision of parking space, fire safety, rain water harvesting and recycling, storm water, construction methodology, enhancing energy efficiency, etc.). Lastly and most importantly, if the project layout plan requires certain changes in the layout plan on account of likely environmental concerns (such as fire safety, day lighting, seismic hazards, water conservation measures, number of basements, etc.), it would be practically impossible to do so.

143. The above discussion clearly demonstrates the intent of the framers of the law that the compliances under the Notification of 2006 will hardly have an application post-construction or after completion of projects or activities. The prescribed parameters, the documentation and data to be provided along with Form 1, in no uncertain terms oblige the Applicant not to commence any activity unless it has obtained the Environmental Clearance. The post-grant of Environmental Clearance will neither be in the interest of the environment nor would it serve the purpose of the Act of 1986 and/or the Notification of 2006. The primary data required to be submitted relates to pre-project situation and circumstances. Of course, it will also depend upon the nature of the project activity or development activity that the Project Proponent proposes to establish. The impact of building construction and the resultant concretization, particularly basement construction on the groundwater levels and flow directions can be a matter of serious concern. The manner in which the basements are being constructed, its impact on the groundwater table, in what manner how much groundwater is proposed to be extracted, would also be a relevant consideration. EIA Report prepared ex-post-facto, i.e. on completion of the project, would suffer from lack of due diligence and would foreclose the options for exploring alternatives. This will go against the fundamentals of the Precautionary Principle and Sustainable Development. Similarly, it will be very tedious and very difficult, if not impossible, to appropriately consider various components of the biodiversity at the site and alternative steps that 173 should be taken by the Project Proponent to protect any rare, endangered and threatened species at the site in question. In absence of such assessment, the opportunity of protecting the local ecology gets defeated and hence the goals of sustainable development. The cumulative effect of the above discussion would be that the illegal and indiscriminate development activity that has been carried out by the Project Proponents is bound to have serious impacts on environment, ecology and biodiversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts of the projects in question."

The undisputable situation which emerges from the discussion is that, the Project Proponent has not only attempted but has substantially succeeded in frustrating the laws in force; be it change of land use, extent and purpose of construction, obtaining statutory

permission in time and above all this, compliance of the provisions relating to environmental laws.

48. Now, we will take up the principal contention vehemently argued on behalf of the Project Proponent that they are entitled to get Environmental Clearance from the concerned authority on the strength of the Office Memorandum dated 12th December, 2012 issued by MoEF&CC. According to the Project Proponent, obtaining the Environmental Clearance post construction of the project is permissible and the concept of 'prior Environmental Clearance' contained in the Notification of 2006 does not, in any way, hamper the right that accrues to them on the strength of the said Office Memorandum. The Environmental Clearance has been granted to them. As such, their project should be permitted to operate and the appeal deserves to be dismissed.

49. We have already held that the order granting Environmental Clearance suffers from patent legal infirmities, non application of mind, arbitrariness and in fact is liable to be set aside, being contrary to law. Still, the question that calls for determination is the effect of the Office Memoranda issued by MoEF&CC upon the case of the Project Proponent. The legality, validity, correctness and its consequences in relation to such cases in somewhat similar circumstances were subject matter of judicial determination before the Tribunal in the case of *S.P. Muthuraman* (*Supra).* It is a larger bench judgment of the Tribunal and the question being no longer *res integra,* we will follow the principles laid down in that case and apply it to the case in hand.

50. In the case of *S.P. Muthuraman* (*Supra*) the Tribunal examined the validity and legality of these Office Memoranda and held that these Office Memorandums are not only in conflict with the Notification of 2006, but in fact, run contra thereto. The Office Memoranda have no power or source of law, they suffer from infirmities and defects of fact and law and have not even been authenticated in accordance with law. The Tribunal also held that it has the jurisdiction to quash both these Office Memoranda. The Tribunal, after discussing the various judgments of the Supreme Court of India and the history of law in force, held that the provisions of the Notification of 2006 were mandatory. Compliance to these provisions was essential and the scheme of the Act of 1986, Environment (Protection) Rules of 1986 and the Notification of 2006 did not admit of any ambiguity. The Tribunal also held that the concept of 'post grant of Environmental Clearance' would not only offend the statutory provision, but, would result in frustrating the same for all intent and purposes. At this stage, we may refer to the relevant paragraphs of the judgment of the Tribunal in the Case of *S.P. Muthuraman* (*Supra*).

> "82. Upon proper analysis of the language of these Office Memoranda and the law (referred herein after), these Office Memoranda whether they be issued as administrative orders or issued in exercise of executive power, are not clarificatory or supplementary to the Notification of 2006. On the contrary, under no uncertain terms, they are supplanting the Notification of 2006 and are in complete derogation to the laws in force.
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> 83. The Office Memoranda have been issued without proper application of mind, where casualty is the Notification of 2006 and the environment. The authorities have not even ventured to examine that these Office Memoranda which allegedly take recourse to the Notification of 2006 are incapable of complying with the procedure of Screening, Scoping, Public

Consultation and Appraisal even substantially. For instance, site selection itself is a part of this process and if the construction has already been completed substantially or otherwise, this criteria and other relevant considerations would be rendered irrelevant. Similarly the purpose of public hearing is to hear objections of the public at large in relation to all facets of the proposed project including site selection, its impact on environment, on their way of life and what directions are required to be issued to protect the environment and adjacent inhabitation or agricultural activities if any before any activity of the project is undertaken. All these requirements would be rendered otiose and irrelevant. Thus, even if the two most important aspects of the Notification of 2006 would not be complied with still the Office Memoranda would contemplate issuance of Environmental Clearance to these projects. This brings to the surface that the Ministry has not exercised its jurisdiction, even if vested in it, in accordance with law. The above are the few patent and serious infirmities in the Office Memoranda. An attempt is made to save them and their legality under the shelter of exercise of executive power. Certainly, the executive power of the Government is very wide. We have already dealt with the executive power by the State at some length above. Even if these instructions or orders are deemed to have been issued in exercise of executive power, even then, they have to be supplemental to and not to supplant, the law. 84. In the case of *Union of India (UOI) v. K.P. Joseph and Ors.,* AIR 1978 SC 303, dealing with the question whether Respondent No. 1 in that case was entitled to the benefit of ex-military personnel on re-employment, in view of the administrative instructions that had been issued in absence of rules framed under Article 309 of the Constitution, the Supreme Court while confirming the judgment o the High Court of Mysore held as under:

> "9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma v. State of Rajasthan and Anr. (1968) IILLJ 830 SC that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

85. The Supreme Court had also taken a similar view in the case of Sant Ram Sharma v. State of Rajasthan

and Anr., AIR 1967 SC 1910, where the Court clearly held that Government cannot amend or supersede statutory rules by administrative instructions, but, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Similarly, in the case of M. Srinivasa Prasad and Ors. v. The Comptroller and Auditor General of India and Ors., (2007)10 SCC 246, the Supreme Court held that if the statutory rules in force are absent or are silent on an particular aspect, then, executive orders can fill up such lacunas. The administrative instructions would normally have no force of law and would relate to matters procedural in nature, without affecting substantive rights or obligations.

86. The executive instructions too cannot go beyond the executive power, which can also not be beyond the statutory provisions under which they are exercised. Furthermore, such instructions should not be vague or uncertain and must provide proper guidelines. By executive instructions, the authority issuing them cannot open new heads. The executive instructions within these confines should be issued only when there are no statutory provisions on the subject. They would also be issued to supplement statutory provisions, to ensure their proper application. In the case of Indra Sawhney etc. v. Union of India and others, etc., (1992) 3 SCC 217, Supreme Court mandated that such propositions are unexceptionable and executive instructions which go contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent they are contrary to the statutory provisions or rules. In the case of M.C. Mehta v. Union of India (UOI) and Ors., (Supra), not only that the Court reiterated these principles but even questioned MoEF's intent to legalise the commencement or continuance of mining activity without compliance to the stipulations of the Notification of 2006. However, it was observed that in any case, a statutory notification cannot be notified by issuance of circular. Such actions demonstrate non-sensitivity of MoEF to the principles of sustainable development and the object behind the issuance of the notification.

These principles would be equally applicable to the exercise of administrative power either by issuance of guidelines or Office Memoranda. A Bench of this Tribunal while dealing somewhat similar situation in the case of Himmat Singh Shekhawat v. State of Rajasthan and Ors., 2015 All (I) NGT Reporter (1) (Delhi) 44 held as under:

"58. This power to issue guidelines is not a general

power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category 'B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2 of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies are given the legislative powers because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum

which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of Sant Ram v. State of Rajasthan AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be made In Re: The Delhi Laws Act, 1912 AIR 1951 SC 332, P.D. Aggarwal and Ors. v. State of U.P. and Ors., (1987) 3 SCC 622, Ram Sharma v. State of Rajasthan and Anr., (1968) I ILLJ 830 SC, Mahender Lal Jaine v. State of Uttar Pradesh, (1963) Supp. 1 SCR 912, Naga People's Movement of Human Rights v. Union of India, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum.

Though, the Applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 ex facie permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memoranda in the light of the well settled legal principles that we have referred above, partially both these Office Memoranda cannot stand scrutiny of law. As far as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office Memorandum which provides guidelines for exercise of discretion by the State Level Expert

Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the Applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b) (i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986.The executive therefore, cannot take away the right which is impermissible under the principle or subordinate legislation. Of course, part of the same Paragraph 2(iii), in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It ex facie is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it

under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with sub rule 4 of rule 5 of the Rules of 1986.Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government……." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease of one year was changed to two years under the Notification dated 9th September, 2013."

87. There could be a case of executive instructions being derogatory to the principal statute or a statutory notification, still there could be cases of executive instructions being ultra vires or violative of the statutory notification and still further there could be cases of conflict between the tow. In either of the, the

Court have not titled in favour of sustaining such executive instructions. In the case of D.D.A. and Ors. v. Joginder S. Monga and Ors., (2004) 2 SCC 297, the Supreme Court held that only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. Executive instructions can supplement a statute, but they cannot run contrary to statutory provisions or whittle down their effect. In other words, executive instruction which is in conflict of and which whittles down the effect of the main Act would be liable to be struck down. When an executive instruction is beyond the power of the authority issuing the same, it would be ultra vires and whenever the instruction is found to be beyond the inherent jurisdiction, it would be wholly void. The delegatee can act only within the scope of delegation. The limitations are all with regard to the substance, procedure and form.

88. Another contention raised on behalf of the Respondent while relying upon the judgment of Supreme Court in the case of Vineet Narain and Ors. v. Union of India (UOI) and Anr., (1998)1 SCC 226 and other cases, is that executive instructions are enforceable if they do not change the essentials of law. This contention cannot be accepted for reasons that are recorded in this part of the Judgment. By whatever nomenclature it is addressed, whether as executive instructions do not dilute the effect of law but make it more rigorous. Furthermore, it being a policy decision of the MoEF, the Tribunal should not interfere in it. We are also unable to appreciate as to how these Office Memoranda fill up the gaps in the Notification of 2006. An instrument which provides for disobedience of law and indiscriminately condones the violations of the substantive law in force, it cannot be termed as an instrument made to fill up the gaps. It would be an administrative order contrary to the statutory provisions. In fact, issuance of such kind of orders received judicial causticism and was deprecated by the Supreme Court in the case of M.C. Mehta (supra).

89. The impugned Office Memoranda are not only in conflict with the Notification of 2006, but in fact run contra thereto. What is not only intended but in fact is prohibited to be done, is being permitted by the impugned Office Memoranda. They have been issued without reference to any power or source of law and are neither pronounced nor authenticated in the name of the prescribed executive authority. Besides this, we have already noticed in great detail the various infirmities and defects from which these Office Memoranda suffer in fact and in law. This being the position of law in relation to issuance of executive instructions in exercise of executive power or delegated

legislation, these Office Memoranda having been issued in exercise of administrative power, in any case, cannot withstand the legal scrutiny and resultantly, would be liable to be quashed."

In light of the above, now we would have to examine whether the Project Proponents are entitled to any benefits on the strength of the said Office Memorandum or not. On merits, we have held that the Project Proponents have violated the law. Their conduct is not in consonance with the expected norms and they have failed to produce any documents of compliance.

52. The status of respondent no. 10 in applying for Environmental Clearance for the project of the Super-Specialty Hospital as opposed to Dental College-cum-Hospital and running of the Harijan Residential School while having no recognizable title or interest in the property is beyond any reasonable comprehension. The Office Memorandum issued by MoEF&CC being invalid and contrary to law cannot provide any legal or other right to the Project Proponent to claim any benefit when it has particularly violated the laws in force. We have also held that even the application filed by the respondent was not complying with the provisions of the Notification of 2006 and the forms annexed thereto. In fact, in view of the fact that the project had practically been completed, compliance to the statutory requirements of the Notification of 2006 had become impossible. The Project Proponent, even after submission of the application for Environmental Clearance continued with finishing the project and carried on interior construction work as per their showing, which is completely prohibited even under the Office Memoranda.

53. There is no dispute to the fact that the project of the Project Proponent is covered in any of its forms by the Notification of 2006. On the one hand, the Project Proponent has violated the law, by not obtaining requisite permissions in time, while on the other hand continued to raise construction indiscriminately and in an unauthorized manner.

54. There is nothing on record to show that the plans for a Super-Specialty Hospital on the site in question have been sanctioned by any competent authority. The only document on record is for construction of a Dental College-cum-Hospital which was expected to have an area of nearly 20,28.659 sq. meters, while, according to their own showings it is 39,258 sq. meters. Strangely, none of the sanctioned plans or the application for grant of Environmental Clearance shows existence of Harijan Residential School and the fact that the Harijan Residential School is running at the site, forming an integral part of the project. The plot area remains to be the same, i.e., 20,28.659 sq. meters on which the plans were sanctioned for building up of the Dental College-cum-Hospital, where came up a Super-Specialty Hospital, for which no plans were sanctioned and it covered an area of 39,261.82 sq. meters as opposed to 30,106 sq meters as sanctioned for the Dental College cum Hospital. Still, another question that would be for determination by the appropriate authorities, is, if at all, the word 'hospital' would cover a Super-Specialty Hospital of this dimension, particularly when the allotment was for Harijan Residential School and construction of a Dental College-cum-Hospital. Another important aspect of the case is that even as of today the hospital does not have

requisite authorization, permission and consent from the concerned Pollution Control Board and other Competent Authorities to run a Super-Specialty Hospital, consent to operate, permission dealing with disposal of Municipal Solid Waste and Hazardous Waste. This would be again for the concerned authorities to examine. There appears to be a complete miss of this aspect in the entire process of sanctioning of plans, recommendation of SEAC and grant of Environmental Clearance by the SEIAA. The construction as shown by the Project Proponent in 2013 is 30,106.011 sq. meters in contrast to 20,028.659 Sq Mt as shown in the sanction plan. In other words even the authorities could not have applied their mind while sanctioning the plans, whether they were for Super-Specialty Hospital or a Dental College since their requirements, effluent, pollution caused and the structure that is required for such activity could not be comprehended. On the one hand, the authorities, particularly, SEIAA and SEAC have abrogated their statutory functions. On the other hand, from the stage of noticing complete violation, recommending strict action and prosecution against the Project Proponents to recommending grant of Environmental Clearance in the very next meeting predominantly shows absence of proper application of mind. This is also true that the authorities granted Environmental Clearance on incorrect assumptions. The authorities also erred in not providing specific conditions in regard to taking of adequate environmental protective measures, existence and proper functioning of the anti-pollution devices etc. with certainty. Authorities have acted arbitrarily in condoning such serious violations in such a casual manner.

55. There is nothing on record to show that the requirements of the Notification of 2006, data as contemplated by Form I and I A had been satisfied and it was a case of complete compliance and the project was a non-polluting project. SEAC in its 113th meeting had recommended conditional grant of Environmental Clearance, however, compliance of the conditions, were not even cared to be noticed, much less confirmed by SEIAA before issuing the order granting Environmental Clearance. The law casts upon these authorities statutory duties which are required to be performed comprehensively and with exactitude. These are the highest authorities in the State Administration and the development of the State depends upon their decision making process and the final decision for grant or refusal of Environmental Clearance. Higher the authority, greater is the need for acting with care, responsibility and in adherence to the laws in force. Undue hurry in granting the Environmental Clearance, even without the compliance report, does not speak well of the authorities in relation to discharge of their statutory functions. All concerned being at fault and the Project Proponent having violated all norms and laws in force, the Project Proponent cannot derive any benefit from these Office-Memoranda on merits of the case, when in any case, these Office-Memoranda are no more in force.

DISCUSSION ON ISSUE NO. 5 AND 6

5. **What directions, if any are required to be issued by the Tribunal in the facts and circumstances of the case?**
6. **Relief.**

56. In the case of *S.P. Muthuraman* (Supra), one amongst the various reasons stated by the Tribunal for quashing the Office Memoranda

was that, it encourages violators of law on one hand and on the other, it adversely effects the environment. The present case is a glaring example of substantiating the said reasoning. With the passage of time, large numbers of cases are coming up before the Tribunal which falls in this unique category of *fait accompli*. These are not the innocent people unaware of law residing in some remote parts of the country, all these are builders constructing huge residential, commercial, mixed purpose blocks, like hospital, as in the present case. The Project Proponents are persons having large means and perspicacity. These projects have started after the Notification of 2006 has come into force, but Project Proponents did not even bother to apply for the grant of Environmental Clearance prior to starting construction of the project. Instead, he moved an application only when the project was completed or major part of the construction activity was over. In this manner and without exception, such Project Proponents are able to violate the laws in force and frustrate the very object of the Act of 1986, Environment (Protection) Rules and Notification of 2006 leading to serious adverse environmental impact on concerned areas. These cases relate to major cities like Bangalore, Chennai and NCR Delhi. Reliance is placed on the recent judgment of Tribunal in the case of *S.P. Muthuraman* (supra), wherein it was held that:

> "130. We have already held that comprehensive and definite compliance to the provisions of the Notification of 2006 have been made redundant by the unauthorised actions of the private Respondents as well as by the impugned Office Memoranda issued by the MoEF. Collection of certain data, scientific analysis, preconstruction environmental impacts of the project and other information which are pre-requisite for the submission of the application in Form 1 or

supplementary Form I-A of the Appendix II under the Notification of 2006, can neither be collected nor be provided as the projects have already come up substantially or otherwise have completed construction work extensively. Not only the environmental impacts of the projects cannot be examined fairly but even the matters like site selection and public hearing cannot be deliberated upon, thus frustrating the very object of public hearing. The provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment. Therefore, we have to examine the various aspects of such noncompliance law and if there can be any tolerance to the breach of the statutory provisions. If so, its extent and impacts on matters of technical and environmental significance that would flow from such breaches or defaults. Let us now examine the requirements of law with reference to environment.

131. In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. The green cover, water bodies and ground water resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities.

132. An application seeking prior Environmental Clearance for building construction project is required to be made in the prescribed Form 1 and supplementary Form 1A, after the identification of prospective site for the project to which the application relates, before commencing any construction activity or preparation of land, at the site by the Applicant. The Applicant is required to submit along with the application, in addition to Form 1 and the supplementary Form 1A, a copy of the conceptual plan of the project.

133. Apart from profile of the Project Proponent, name and contact address, implementing organization, organizational chart, project consultants etc., are to be

mentioned clearly. After providing details of land (plot/ survey numbers, village, tehsil, district, state and area of the land), goal and objectives of the proposed project, significance of the project both at local and regional level, relevance of the project in light of the existing developmental plans of the region are required to be mentioned. Background information and overall scenario of the proposed activity in the Indian context, procedures adopted for selection, criteria for selection of the site for the proposed activity, such as environmental, socio-economic, minimization of impacts, ecological sensitivity, impact of existing activities on the proposed activity, etc. is required to be spelt out. Resources and manpower requirements have to be detailed apart from time frame for project initiation, implementation and completion in following manner:

- Total site area
- Total built up area (provide area details) and total activity area
- Source of water and consumption
- Source of power and requirement
- Connectivity to the city centre, utilities and transportation networks community facilities
- Parking requirements
- Type of building material to be used
- Environmental liability of the site
- Existing structure / type of material – demolition debris, etc.

134. A map of the study area showing 500 meters from the boundary of the project area, delineating the major topographical features such as land use, drainage, location of habitats, major constructions including roads, railways, pipelines, and industries, if any in the area is required to be enclosed. A map covering aerial distance of 15 km from the boundary of the proposed project area delineating environmentally sensitive areas as specified in Form I of the Notification of 2006 is also to be annexed. In the same map, the details of environmentally sensitive areas present within a radial distance of 1 km from the project boundary are to be specifically shown. Land use map of the study area is also required to be
furnished.

135. Based on the examination of the relevant details, project specific Terms of Reference (TOR) are provided for the EIA studies. While awarding TOR for EIA studies, the points that are of concern include:

a. Likely alterations to the existing land use of the area;

b. Impact on the geomorphology vis-à-vis land disturbance resulting in soil erosion, subsidence & instability of the area;
c. Impact on the natural drainage systems, including wetlands;
d. Impact of the land use changes occurring due to the proposed project on the runoff characteristics vis-à-vis flooding or water logging of the area
e. Impacts of the proposed project on the ground water vis-à-vis pollution of land & aquifers;
f. Likely threats to the biodiversity, especially vegetation pattern and displacement of terrestrial and aquatic fauna;
g. Impact on the atmospheric concentration of gases and generation of dust, smoke, odorous fumes or other hazardous gases;
h. Likely impact on the transport system in the area, including the parking space for vehicles;
i. Impact on the noise levels and vibrations in the area;
j. Likely impact on the social structure of local communities, and likely disturbance to sacred sites or other cultural values.

136. It may be kept in mind that, prior to the grant of EC, concept of sustainable development and precautionary principles were the leading factors governing the environmental jurisprudence. The application of these Principles assumes that the impacts of any development on the environment and human health are difficult to predict with certainty, therefore, prudence requires that before embarking on the development project, we explore the possible alternatives to the project. Needless to say that exploring alternatives also includes exploring all the harmful actions which the project may cause, including such damages which may be completely irreversible. Equally important component of these Principles is, to place the burden of proof on the Project Proponents to highlight that the impact of the activity on the environment and the health of the people would be minimal and/or all precautionary measures have been adopted. While exploring alternatives with regard to siting the project and the technology of the project, exploring alternatives also includes “not taking up of the project as one of the alternatives”.

137. The very purpose of awarding project specific TOR for EIA studies is that it is expected that the report furnishes balanced and credible information for environmental safeguard apart from other essential environmental studies and most importantly contains the appropriate environmental management plan/s

along with budgetary provisions that form integral part of the project cost.

138. This EIA report is subjected to appraisal by the Experts, prior to the grant of Environmental Clearance depending upon the nature and location specificity of the project. TOR assists the EIA consultant, prior to execution of project, to prepare an effective and user friendly report with relevant project specific data, which are easily implementable.

139. A typical EIA report, as per Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Project of MoEF, 2010, includes:

1. Description of the project site, geology, topography, climate, transport and connectivity, demographic aspects, socio, cultural and economic aspects, villages, settlements are also to be given. Historical data on climate conditions such as wind pattern, history of cyclones, storm surges, earth quake etc., is also looked into. Detailed layout plan of proposed project development, communication facilities, access/approach roads, landscape, sewage disposal facilities, and waste disposal etc. is also given. Layout plan for proposed development of built up areas with covered construction such as DG Set rooms, Administrative buildings, Utilities such as Main and Stand-by Power, Water supply installations etc. is furnished. Most importantly, requirement of natural resources and their sources are to be detailed out.
2. The environmental impacts of construction and operation are established during the early phases of site selection and planning. Planning, site selection and design form an important stage in the development of these projects and will determine their environmental impact(s). Environmental data to be considered in relation to such development pertaining to (a) land (b) ground water, surface water (c) air (d) biological environment (e) noise (f) socio economic environment. The first feature which influences the development of a new project is the existing land use pattern of the neighbourhood of the project, whether the proposed development conforms to the development for that area or not. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., provides the first insight to the likely impacts of the project. Geographical latitude and microclimatic factors such as solar access and wind loads also have major impact.
3. Identification of Project activities, including construction phase, which may affect surface water or groundwater have a direct relation to the

estimated water intake requirements and identification of the source of water to be used. Description of water availability and sourcing plays a critical role in impact assessment. Baseline water quality from all sources such as ground water or municipal supply or surface water helps in proper assessment.

4. Climatological data, air and noise level pollution similarly plays an important role in assessing the likely environmental impacts and requires anti-pollution measures to be adopted.
5. Baseline information on the flora and fauna of the study area along with a description of the existing terrestrial, wetland and aquatic vegetation determines the environmental sensitivity and the need for environmental protection measures.
6. Details of solid wastes from construction sector can be categorized into two phases i.e. during construction & during operation. Details of the construction or demolition waste, i.e., massive and inert waste; Municipal waste, i.e., biodegradable and recyclable waste and hazardous & e-waste provide steps that are required to be adopted for its management.
7. Main anticipated impacts from building construction, which need to be addressed, are
    - Impact on the natural drainage system and soil erosion.
    - Loss of productive soil and impact on natural drainage pattern.
    - Study of the problem of landslides and assessment of soil erosion potential
    - Impact on air and noise quality during the construction and operation phase - the existing surrounding features of the study area and impact on them from various sources such as machinery, transportation, etc.
    - Impact of construction and operational phases on the surface and ground water on account of the building construction
    - Waste water generation its treatment and utilization
    - Impact of project during construction and operational phases on the biological environment
    - Predicted impact on the communities
    - Impact of the project during construction and operational phases for generation of waste
    - Energy requirements and infrastructure requirements needed for the activity
    - Steps to be taken to integrate the needs of other stakeholders into the location and design of

access infrastructure, to reduce and manage overall environmental impacts

8. Another important consideration pertains to requirements of building construction material and technologies to be used. Any project with proper TOR and EIA report would provide details of:
   - Types of materials used in each component part of the building and landscape (envelope, superstructure, openings, roads and surrounding landscape)
   - Plans and sections of buildings showing use of new technologies and nonconventional methods
   - Plans and sections of building using new construction techniques
9. Similarly, it will also deal with energy conservation aspects in terms of:
   - Use of alternate renewable resources such as solar / wind power etc.
   - Options considered for supplying the power required for the Project and the environmental implications, including opportunities to increase the energy efficiency of the Project
   - Details of U & R values
   - Details of the renewable energy systems (sizing and design), building costs and integration."

57. The present appeal has to be allowed in our considered view, but what require determination by the Tribunal in light of the provisions of the Section 20 of the Act of 2010 are the ultimate directions that the Tribunal should issue. Of course, the Project Proponents are not entitled to any relief, either in equity or in law. However, directing demolition of such a huge project at this stage may not serve ends, either of justice or of environment protection. In fact, demolition itself would result in serious environmental hazard.

58. The principles of Sustainable Development and Precautionary Principle have to be applied to such cases conjointly. The project cannot be permitted to operate till all the environmental safeguards are taken care of and are made operational. The Project Proponent should also pay environmental compensation in terms of Section 15 of

the Act of 2010, having violated the environmental norms and having caused adverse impacts to the environment and ecology of the area and more so, violating the provisions of Notification of 2006. Some effective and major steps can be taken to rectify the wrongs and deficiencies. In some cases compensation may be the adequate relief, while in others, even demolition may be necessary. We would follow the principle stated by the Tribunal in the case of *S.P. Muthuraman* (supra) even in the aspect of this case. In that case the Tribunal held as under:

> "157. From the above judgments of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The Project Proponents claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of A.P. Pollution Control Board (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.
> 158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of

omission, commission are attributable to the Project Proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgment of the Supreme Court in the case of *M.C. Mehta and another vs. Union of India and others*, JT 1987 (1)SC 1, *Vineet Narain and Ors. vs. Union of India (UOI) and Anr.*, JT 1997 (10)SC 247 and *University of Kerala vs. Council, Principals', Colleges, Kerala and Ors.*, JT 2009 (14)SC 283.

160. In light of the above, even if the structures of the Project Proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or noncompliance. The authorities have already initiated action against three of the Project Proponents and have take unauthorized action of the Project Proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the Project Proponents were heard at great length on facts and merits of the case.

> 161. We may specifically notice here that all the Project Proponents had filed contentions and documents in support of their respective case. They addressed the Tribunal at length on factual matrix of the case as well as on law. Various contentions and claims raised by the Project Proponents before the Tribunal have been deliberated in detail."

In view of the above position of law, the applicant would be entitled to partial acceptance of the appeal, since the Project Proponent may not be directed to demolish the structure at this stage, but, shall strictly comply with the directions that we propose to pass in the present case. The scope and ambit of such directions has to be in terms of the Act of 1986 circumscribed by the statutory jurisdiction of this Tribunal. Upon detailed discussion of the laws in force, the Tribunal in the case of *S.P. Muthuraman* (supra) has clearly held that such directions can be issued by the Tribunal. Admittedly, the hospital has not started functioning as of now. Thus, compliance to the directions would be a condition precedent before it is permitted to function under these proceedings or by any other authority.

59. Normally, where an impugned order is set aside, the Tribunal would send the case for re-examination or passing of an order afresh in accordance with law to the same authority. However, since we have recorded definite findings that the orders of the authorities are arbitrary, without application of mind, contrary to law and the authorities have not only acted with undue haste, but, in fact, their entire approach was casual and they having abrogated their entire functions, it would neither be appropriate nor in the interest of justice that the matter be remanded back to the said authorities. Thus, we hereby, prefer to constitute an independent committee to ensure that

the Project Proponent shall adhere to the laws in force, Act of 1986, the Environment (Protection) Rules, 1986 and the Notification of 2006, as the personal and commercial interest of the Project Proponent cannot be permitted to over-ride the public interest and environment and ecology of the area.

For the reasons afore-recorded, we pass the following directions:

1. We hold and declare that the minutes of the 77th meeting of SEIAA dated 14th November, 2014 and the impugned order granting Environmental Clearance dated 26th November, 2014 are liable to be set aside and quashed, which we do hereby quash.

2. Super-Specialty Hospital started by respondent no. 9 and 10 or any of them, would not carry on any activity in the entire premises till otherwise ordered by the Tribunal. If any activity or any act whatsoever is carried out in the entire premises, SEIAA and the HSPCB are directed to seal the premises without any further delay.

3. In the peculiar circumstances of the case, we would prefer the independent committee to examine the entire matter *de novo* and require the committee to inspect the site and make recommendations to ensure that the Project Proponent complies with all the relevant laws in force, particularly in relation to the protection of Environment and Ecology and also prevention and control of water and air pollution.

We hereby constitute the committee of the following:

1. Secretary, Environment, Government, State of Haryana.
2. Member Secretary, Central Pollution Control Board.
3. Senior Scientist from MoEF.
4. Senior Scientist from C.P.C.B.
5. Prof. from Delhi Technological University (Department of Environmental Engineering)
6. Chairman, SEAC, State of Haryana that made the recommendations.
7. Chief Engineer of the Municipal Corporation of Faridabad.
8. Chief Engineer of HUDA.

The Member Secretary, Central Pollution Control Board shall be the nodal officer.

a. The above committee shall inspect the hospital and the Harijan Residential School and submit a comprehensive report to the Tribunal.

b. The comprehensive report shall relate to illegal and unauthorized construction activities carried out by the Project Proponent.

c. The report shall state whether the Project Proponent has all anti-pollution devices in place or not.

d. The report shall state whether the Project Proponent has requisite permission and is capable of dealing with Hazardous Waste, Municipal Solid Waste, Bio-Medical Waste and all

restrictions in relation to water and air pollution in their premises.

e. The committee shall further report if the conditions stated in various permissions granted to the Project Proponent have been strictly complied with or not.

f. The committee shall in their report specifically notice whether the conditions which were imposed by SEAC/SEIAA for grant of Environment Clearance have been followed and completely complied with or not.

g. The report shall state the source of water for the project and whether the Project Proponent has permission from the Central Ground Water Authority for the same or not.

h. The report shall state the status with regard to regulating and reutilizing the effluents that are released from the premises.

i. The report shall state the extent of compensation which the Project Proponent should be called upon to pay finally for restoration and rectification of the environmental damages resulting from various breaches committed by the Project Proponent. It would also recommend, if any part of the property is required to be demolished in the interest of environment. In the event, the Project Proponent has adversely affected any water bodies, drainage, low lying areas and any other part of the plot or adjacent area covered by the

Project Proponent, the measures that should be taken in that regard to restore the same shall also be stated.

j. The committee will also report as to what are the hygiene standards, measures undertaken for environmental protection, discharge of sewage, domestic waste and other effluents from the Harijan Residential School and how it is treated and discharged, with its complete functioning. The Committee shall also examine the environmental and other adverse impacts or otherwise, of running of a Super Specialty Hospital, on the Harijan Residential School.

k. The committee shall report what measures and recommendations the committee would make in relation to any or all of the above directions.

l. The report shall be submitted to the Tribunal within 45 days of the pronouncement of this Judgment.

m. The registry shall place the said report before the Tribunal.

4. The Tribunal, after submission of the report would pass any further directions if necessary, in this case. We make it clear that the Project Proponent would not carry any activity without specific orders of the Tribunal.

5. The Project Proponent shall initially pay environmental compensation of Rs.6.8855 crores, being 5% of the total cost of the project, i.e., Rs.137.71 crores, as admitted by the Project Proponent itself, for restoration and restitution of the environment damaged and degraded by the Project Proponent and in addition to this, he shall also pay a sum of Rupees Five Crores (Rs.5,00,00,000/-) for violating the law by starting and

completing the project without obtaining Environmental Clearance, establishing a unit without consent and authorization from the Board and for all the above violations and defaults committed by the Project Proponent. This will be in consonance with the dictum of Hon'ble Supreme Court of India in the case of *Sterlite Industries (India) Ltd. v. Tamil Nadu PCB & Ors.,* JT 2013 (4) SC 388 and judgment of the Tribunal in the case of *S.P. Muthuraman*(supra).

6. We direct the Chief Secretary, State of Haryana to conduct an enquiry and fix the responsibility of the Officers and officials concerned with the entire process in light of this Judgment of the Tribunal.

60. The amount shall be payable to Haryana State Pollution Control Board subject to further adjustment and orders by the Tribunal. The payment should be made within three weeks from the date of the pronouncement of this Judgment.

61. The appeal of the appellant in this matter is disposed of without any order as to cost.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi
25th August, 2015