Item No. 3 & 4

BEFORE THE NATIONAL GREENTRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Appeal No.20/2022 (CZ)

M/s Bahirubaba Mines — Appellant(s)

Versus

Rajasthan, SEIAA — Respondent(s)

AND

Appeal No.21/2022 (CZ)

Yogesh Kumar Sharma — Appellant(s)

Versus

Rajasthan SEIAA & Ors. — Respondent(s)

Date of Completion of Hearing and Reserving of Order: 20.01.2023
Date of Uploading of Order on the Website : 01.02.2023

CORAM : HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
: HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Appellant(s): Mr. Yadvendra Yadav, Adv.

For Respondent(s) : Mr. Rohit Sharma, Adv.

ORDER

1. A common question of law has been raised in both the appeals thus, both the appeals are taken up together for disposal.
2. Heard the learned counsel for the parties and perused the records.
3. Challenge in this appeal is the order dated 15.07.2022 passed by Rajasthan State Environment Impact Assessment Authority (SEIAA) whereby and whereunder the EC in favour of the Appellant was revoked. Secondly, the letter under challenge is

dated 25.07.2022 issued by the R-1 to the Director, Mines and Geology, Udaipur Rajasthan. The main contention of the Appellant is that opportunity of hearing was not provided to the Appellant.

4. The appellant is aggrieved by the impugned order dated 15.07.2022, which runs as follows: -

> *"Sub.: EC for proposed project of Kuhara, kalyanpura masonary Stone Mining Ref. No. 20201000025260, Area-1.1410 ha., Production capacity: 2,21,310 TPA (ROM), at Khasra no: 547, 548, 549, 595, NIv- Kuhara, Kalyanpura, TehsilKotputali, Distt.- Jaipur (Raj.) (Proposal No.- 219549).*
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> *With reference to subject the above and SEIAA meeting in reference, SEIAA discussed the proposal of Kuhara, Kalyanpura Masonry Stone Mining Ref. No. 20201000025260, Area-1.1410 ha., Production capacity: 2,21,310 TPA (ROM), at Khasra no: 547, 548, 549, 595, NivKuhara, Kalyanpura, Tehsil- Kotputali, Distt.- Jaipur (Raj.) (Proposal No.- 219549) in detail and after careful examination found that:-*
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> 1. *EC was granted to this proposal by SEIAA in its 5.271 meeting held on 14th June, 2022 and subsequently EC was uploaded on the Portal.*
> 2. *However, it has been brought to notice that the lease area of this proposal is only 28m from the forest area.*
> 3. *SEIAA in its 4.62nd meeting held on 7th July, 2021 had decided to refuse to grant EC to those proposals which are at a distance of less than 50m from the forest area as such closeness is detrimental to environment and may prompt illegal mining. This decision of SEIAA was upheld by NGT in its order dated I3`' December, 2021 inAppeal No. 20/2021 Premaram Vs SEIAA. SEIAA since then has been following this consistently and has not given EC in those cases where distance from forest area is less than 50m.*

4. *It was observed that in the meeting held on 14th June 2022 reliance had been placed on the letter no. 386 Dated 19th Jan 2022 issued by territorial DCF i.e. DCF Jaipur North in which it had been mentioned that the lease area was not within 10 km from periphery of any National park or Wildlife Sanctuary. No mention was made of it being to close proximity to the forest. No such mention was also made in the recommendation of SEAC. However subsequent to the issue of EC it was brought to the notice of Member Secretary SEIAA that this is a case where the lease area is within a distance of less than 50 meters from the forest area. Based on such information the file was examined again.*
5. *Project proponent has also not mentioned the distance of 28m from the forest area in Point no. 9 (II) 2 in which the distance from all other forests has been mentioned in Form no. 1 while submitting the proposal. This is tantamount to concealing of information as per EIA Notification 2006.*
6. *It would be unfair to all other cases who have been denied EC on the ground that their lease area was a distance of less than 50 m from the nearest forest area, in case EC in this case is issued.*
7. *In view of the fact that SEIAA being of the view that it is not prudent to issue EC in such cases where the lease area is within a distance of 50 meter from the periphery of any forest area and this view having been upheld by NGT the authority decided to revoke the EC granted vide its 5.27th meeting held on 14th June 2022".*

5. The appellant has challenged the aforesaid order on the following grounds: -

    1. *"Violation of Principles of Natural Justice as no opportunity of being heard was provided to the*

Appellant.

2. *Contrary to the Circular issued by Forest Department wherein there is no specific distance to be maintained between the forest area and mining lease area. Moreover, in the circular it is mentioned that in case the mines are at close proximity to the forest area, then certain conditions may be stipulated. In the instant retaining wall of approx. 6 feet height has already been constructed by the Appellant.*
3. *Six different types of forest non-objection certificates were already obtained by the appellant and all of them were duly acknowledged by the Respondent.*
4. *There is a retaining wall of almost 6 feet height already constructed between the forest area and the mines are of the appellant.*
5. *Hostile discrimination has been exercised against the appellant as similarly placed Environment Clearances are still in existence.*
6. *The appellant firm consists of a young female entrepreneur who has invested a huge amount of money in making the mining lease area operational and now at such a belated stage, the earlier granted EC has been revoked/ refused by the Respondent No. 1. Such conduct of the Respondent is demoting young entrepreneurs and leading to curtailment of development under the farce garb of environmental issues.*
7. *There is no possibility of any environmental damage likely to occur to the nearby situated forest area as there is already a retaining wall constructed by the appellant with approximately 6 feet of height."*

6. The learned counsel for the appellant has argued that in the state of Rajasthan, a circular dated 02.12.2021 has been issued wherein it is mentioned that if the distance between the forest area and mining area is less than 100 meters, then a permanent

wall has to be constructed between the forest area and the mining lease area. There is no such restriction of maintaining a certain distance between the forest area and mining lease area. In the instant case, the forest is at a distance of 28 meters from the lease are of the appellant and there exists a retaining wall of about 6 feet in height between the lease area and forest area.

7. The SEIAA revoked the EC of the appellant on the pretext that it would not be prudent to grant EC to leases situated within the distance of 50 meters from the periphery of the forest area. Further contention of the appellant is that the Respondent No. 1 has exercised hostile discrimination against the appellant as similarly placed ECs have not been revoked till date and some of the ECs were granted by the respondent to similar mine lease owners.

8. Learned counsel for the respondent no.1 Rajasthan SEIAA has argued that the SEAC considered the project for appraisal in its meeting 5A.07th held on 10th to 13th January, 2022 after deliberation resolved for query letter to ask the PP to submit the Revised Aravali certificate. The Project Proponent submitted the reply vide letter dated 17.02.2022. The certificate was examined and it was observed that the Aravali certificate submitted by Project Proponent was ambiguous. The Project Proponent was therefore advised to submit revised Aravali certificate vide SEAC letter dated 02.03.2022. The Project Proponent submitted the reply vide letter dated 04.04.2022 after which the proposal was again considered in its 5A.15th meeting dated 10th – 12th May 2022 and after detailed deliberations it was resolved to recommended to SEIAA for grant of Environment Clearance with conditions as Annexure- 'A'.

Accordingly, SEIAA granted EC to the project vide letter dated 15.06.2022 and the SEIAA, in its 4.62nd meeting held on 07.07.2021 decided to refuse the grant EC to mining projects situated within less than 50m from the forest area and admittedly the distance of forest from the lease area of Appellant is 28 meters. Therefore, the project proposal was reconsidered by SEIAA in its 5.30th meeting dated 12.07.2022 and in accordance with the minutes of 4.62nd meeting of SEIAA, SEIAA decided to revoke the EC of the project granted vide SEIAA letter dated 15.06.2022. Accordingly SIEAA vide order dated 15.07.2022 revoked the Environment Clearance of the project proponent which was issued vide letter dated 15.06.2022.

9. It is further argued that the SEIAA in its 4.62nd meeting held on 07.07.2021 decided to refuse to grant EC to those proposals which are at a distance of less than 50 m from the forest area as such closeness is detrimental to environment and may prompt illegal mining. In compliance of the same and as the project proponent has also not mentioned the distance of 28 meter from the forest area in point no. 9(II) 2 in Form no. 1 in which the distance from all other forests has been mentioned while submitting the proposal which was tantamount to concealing of information as per EIA notification, 2006. Therefore, the project proposal was reconsidered by SEIAA in its 5.30th meeting dated 12.07.2022 and in accordance with the minutes of 4.62nd meeting of SEIAA, SEIAA decided to revoke the EC of the project granted vide SEIAA letter dated 16.06.2022. Accordingly, SEIAA vide order dated 15.07.2022 revoked the EC which was issued vide letter dated 15.06.2022.

10. The perusal of form-1 Appendix-1 shows that the appellant has not disclosed the full facts with regard to the general condition and specific condition or with regard to the proposal involving any clearance under the Forest Conservation or Wildlife or CRZ Acts or any violation of government orders and policy. The main contention of the appellant is letter dated 02.12.2021 issued by the Government of Rajasthan, Forest Department containing paras 3, 7 and 8 which are as follows :-

> 3. खनिज अभियन्ता/सहायक खनिज अभियान्ता द्वारा खनन पट्टा हेतु भूमि चयन करते समय वन विभाग द्वारा प्रमाणित जी.टी. शीट्स जिसमें वन भूमि एवं ईको सेन्सीटिव जोन दर्शायी गयी है व ऊपर वर्णित सूचितयों को देखकर यह विनश्चियन किया जावे कि प्रस्तावित भू–स्थल माननीय उच्चतम न्यायालय द्वारा परिभाषित वन भूमि या ईको सेन्सिटिव जोन के 500 मीटर की परिधि में आता है या नहीं। प्रस्तावित भू–स्थल (खनन क्षेत्र) वन भूमि या ईको सेन्सिटिव जोन के 500 मीटर की परिधि में आता है तो प्रकरण वन विभाग को FMDDS के माध्यम से प्रस्तुत किये जायें।
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> 7. प्रस्तावित खनन क्षेत्र, वन सीमा से 100 मीटर की परिधि में प्रस्तावित की गयी है तो इसका निरीक्षण सहायक वन संरक्षक या उच्च स्तर के अधिकारी द्वारा किया जाना अनिवार्य होगा तथा यदि प्रस्तावित खान वन सीमा से 50 मीटर के भी प्रस्तावित की गयी है तो उसका निरीक्षण उप वन संरक्षक/मण्डल वन अधिकारी द्वारा किया जाना अनिवार्य होगा।
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> 8. यदि प्रस्तावित खान वन सीमा से 100 मीटर की परिधि में अवस्थित है तो खान विभाग द्वारा खनन कार्य की अनुमति देने से पूर्व यह सुनिश्चित हो कि खननकर्ता द्वारा वन सीमा की ओर वाली खान की सीमा पर पक्की दीवार का निर्माण व अन्य शर्त के पालना करने के बाद ही खनन कार्य प्रारम्भ किया जावे।

11. Learned Counsel for the Respondent has argued that it nowhere mentions that the parameter of distance of 100 meter can be reduced up to zero by way of constructing dividing wall or retaining wall. The purpose of the legislature or the government is to maintain a reasonable distance of 100 meters. Though in Para 5 it is of 500 meters but in Para 7 it has been explained as 100 meter to be minimum and even if it is of 50 meters then the inspection by the specific designated forest officer is required that does not permit anybody to claim right to exercise mining right even up to

the level of zero meter.

12. It is further argued that these rules and regulations are intended to fulfill the conditions and protection of forest and not to violate the environmental laws. If the legislations or the rules were intended to reduce the distance up to the zero meter then there was no need to mention the distance up to 500 meters or 100 meters. This matter was raised before this Tribunal in Appeal no. 20/2021 and five Members bench vide order dated 13.12.2021 considered the facts and decided as follows:

> *"2. Contention of the appellant is that EC should have been granted when mining was not in forest area, in the case of M/s Himanshu Joshi, EC was granted within 26 mtrs. away from the forest land and that there is recommendation of the State Level Expert Appraisal Committee (SEAC) in favour of the appellant. There is also no national park or wildlife sanctuary within 10 Kms of the project site.*
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> *3. Vide order dated 19.08.2021, notice was issued and reply has been filed by the respondents.*
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> *4. We have heard learned counsel for the parties. We do not find any ground to interfere with the impugned order. Mining being hazardous, prohibition against mining is not applicable merely within the forest or close to a national park or wildlife sanctuary but also within reasonable distance from eco sensitive area, including a forest as in the present case. Mere recommendation of the SEAC does not create any indefeasible right nor illegal EC to someone else be a precedent to grant EC to all. Proposal for mining in the present case being for area very close to the forest, decision to maintain buffer between the forest and mining is certainly justified for protection of the environment. No right to do mining close to the forest is shown nor any illegality or impropriety shown in the impugned order.*

For above reasons, there is no merit in the appeal which is accordingly dismissed."

13. Similarly in Appeal No. 22, 23 & 24/2021 which were heard and decided dated 16.11.2021, the matters of similar nature were again referred back to SEIAA for reconsideration, the order does not mean to enforce or compel the authorities to grant the EC but to reconsider and it was reconsidered by the competent authorities by way of exercising their power under the statutory laws with the discussion and interpreting that a minimum distance is required to be maintained from the forest area to maintain the ecology on the forest preservation that discussion should not be interfered with without any expert report. The intention of the Forest Act should not be frustrated by reducing the minimum distance up to zero or without any parameter. If the distance of 500 meter is reduced to 100 and again it is reduced to less than 50, or ultimately to zero, then the total regulation is frustrated. By way of constructing a wall no one has a right to do mining up to zero distance near the forest area.

14. In other appeal no 21/2021, the EC in favour of appellant was refused vide order dated 03.08.2022 on the ground that the forest area is less than 50 meters. Again the contention of the appellant is that there is no such specific distance between the forest area and mining lease area laid down in the circular which restricts any mining activity within 50 meter of the distance based on which the respondent has rejected the environmental clearance application of the appellant. It is further contended by the appellant that the mining falls under the concurrent list and thus the State has right to frame its own laws and rules consistent with central

rules for regulating the mining activities in the State. Laws, rules, regulations, notifications, circulars issued by the State Government are to be followed by all departments of the State and thus the respondent no. 1 was obligated to treat action in order with the circular dated 02.12.2021 which nowhere restricts any fixed distance between the forest area and mining lease area. Reply of the similar nature has been filed in other appeals also.

15. Main contention of the appellants is that mining can be permitted at any area even if it is the below 100 meters of the distance from the Forest Area up to the zero meter. But the natural resources are valuable assets of the State. It is the primary duty of the State to conserve the natural resources for our future generation too. The citizens must be in a position to enjoy the resources without causing damage to the environment and the ecology. There must be an institutional framework and enforcement mechanism to prevent illegal and excess quarrying. The mining should be undertaken by the State without any adverse impact on the environment. The Government must undertake a scientific study with the help of experts to identify the mineral deposits and its exact location. The State must excavate the minerals only from the places identified by the experts and by following the conditions imposed by the environmental authorities.

16. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and

environment. This Doctrine of public trust and precautionary measures were discussed in public interest litigation no. 87/ 2006; Bombay Environmental Action Group Vs. State of Maharashtra2018 SCC online bombay 2680.2019(1) Bombay CRI and it was held as follows: -

"Apex Court observed thus:

"2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life."

"The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."

In the case of M.C. Mehta v. Kamal Nath, in paragraph 34 and 35, the Apex Court held thus:

"34. Our legal system - based on English common law

- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

In the case of Fomento Resorts & Hotels Limited v. Minguel Martins , In paragraphs 53 to 55 and 65, the Apex Court heldthus:

55. The public trust doctrine enjoins upon the

Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargoon the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long- established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it

another way, a land owner or lessee and a water right holder has an obligation to use such resources in a manner as not to impairor diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems." (emphasis added)

54. Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.

PRECAUTIONARYPRINCIPLE

55. In the case of M.C. Mehta (Badhkal and Surajkund Lakes matter) v. Union of India, the Apex Court held thus:

"10. In M.C. Mehta v. Union of India [(1987) 4 SCC 463] this Court held as under:

> *"The financial capacity of the tanneries should be considered as irrelevant while*

requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem."

The "Precautionary Principle" has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51- A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes."

17. The natural source of air, water and soil cannot be utilized, if the utilization results in irreversible damage to environment. There has been accelerated degradation of the environment primarily on account of lack of effective enforcement of environmental laws and non-compliance with statutory norms. It has been repeatedly held by the Supreme Court that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life.

The definition of sustainable development covers the development that meets the need of the present without compromising the availability of future generation to meet their own needs. Sustainable development means the type or extent of development that can be sustained by nature / ecology with or without mitigation. In these matters the required standards now is that the risk of harm to the environment or to human health is to be decided in public interest according to a reasonable person test. Life, public health and ecology has priority over unemployment and loss of revenue.

18. It is argued by the learned counsel that while passing the order impugned, no opportunity of hearing was given to the appellants and there is no compliance of principles of natural justice. It cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in K.L. Tripathi Vs. State Bank of India & Ors., AIR 1984 SC 273; N.K. Prasada Vs. Government of India & Ors., (2004) 6 SCC 299; State of Punjab Vs. Jagir Singh, (2004) 8 SCC 129; Karnataka SRTC & Anr. Vs. S.G. Kotturappa & Anr., (2005) 3 SCC 409; and in Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd., (2005) 5 SCC 337.

19. In Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. Vs. Ramjee, AIR 1977 SC 965 the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure- all. If fairness is shown by the decision-maker to the man proceeded against, the form, features

and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

20. In Union of India Vs. Tulsiram Patel, AIR 1985 SC 1416 the Hon'ble Supreme Court held:-

> *"Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible."*

21. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference may be made to the decisions of the Supreme Court in Sohan Lal Gupta & Ors. Vs. Asha Devi Gupta & Ors., (2003) 7 SCC 492; Mardia Chemicals Ltd. Vs. Union of India, AIR 2004 SC 2371 and Canara Bank Vs. Debasis Das, AIR 2003 SC 2041.

22. In Hira Nath Mishra & Ors. Vs. The Principal, Rajendra Medical College, Ranchi & Anr. AIR 1973 SC 1260, the Hon'ble Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions.

23. The Constitution Bench of the Supreme Court in Managing Director ECIL, Hyderabad Vs. B. Karunakar, AIR 1994 SC 1074 made reference to its earlier decisions and observed:-

> *"In A.K. Kraipak & Ors. Vs. Union of India & Ors., AIR 1970 SC 150, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice." (Emphasis added)".*

24. The Hon'ble Supreme Court in Bihar School Examination Board Vs. Subhas Chandra Sinha & Ors., AIR 1970 SC 1269 while considering the cancellation of the entire examination because of use of mass copy considered the scope of the principles of natural justice in such a matter and observed:-

> *"It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go....."*

25. After referring to the aforesaid decision, the Supreme Court in Chairman J&K State Board of Education Vs. Feyaz Ahmed Malik, AIR 2000 SC 1039, emphasized that the Board is entrusted with the duty of proper conduct of examinations.

26. In Biswa Ranjan Sahoo & Ors., Vs. Sushanta Kumar Dinda & Ors., AIR 1996 SC 2552, the Hon'ble Supreme Court had the occasion to examine whether principles of natural justice were required to be followed in a matter where because of large scale malpractice in the selection process, the selection was cancelled and in this context it was observed:-

> *"Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment."*

27. In Union of India & Ors. Vs. O. Chakradhar, AIR 2002 SC 1119, the Hon'ble Supreme Court considered the question whether it was necessary to issue individual show cause notices to each selected person when the entire selection was cancelled because of widespread and all pervasive irregularities affecting the result of selection and it was observed:-

> *"The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such aselection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable."*

28. In the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors., AIR 1994 SC 853, the Hon'ble Supreme Court refused to interfere on the ground of breach of principles of natural justice by observing that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

29. It is further to be noted that the Tribunal is to proceed as to whether non- observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice. On examining the facts and circumstances of the present case, it cannot be held that the process adopted or decision made by the respondents is completely arbitrary or irrational or in violation of the principles of natural justice.

30. Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Courts have even held that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed under Article 21 of the Constitution. Thus, the right of an individual to healthy and clean environment including air, water, soil and noise-free environment is of paramount consideration and it is impermissible to cause environmental pollution and particularly in violation of the prescribed standards. Since the different facets of environment are relatable to life and human rights and concern a person's liberty, it is necessary that resources are utilised in a planned manner. As envisaged under Article 21 of the Constitution of India it also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean environment is a guaranteed as a fundamental right. The State and the citizens are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creatures. Right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. The most vital necessities, namely air, water and soil having regard to the right to life under Article 21 cannot be permitted to be misused or polluted so as to reduce the quality

of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue.

31. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimizing the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. Wherever industrialization has an impact on utilisation of essential resources like air, water and soil and results in irreversible damage to environment, then it may be impermissible to utilise these resources in that fashion.

32. While applying the concept of sustainable development, one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. Sustainable development would be the development which can be maintained indefinitely in proportion to environment and ecology. Thus, there should not be development at the cost of causing irretrievable or irreversible damage to the ecology or the environment. They must find a common path and

objectivity in achieving the goal of sustainable development.

33. Precautionary principle is one of the most important concepts of sustainable development. This principle essentially has the element of prevention as well as prohibition. In order to protect the environment, it may become necessary to take some preventive measures as well as to prohibit certain activities. These decisions should be based on best possible scientific information and analysis of risks. Precautionary measures may still have to be taken where there is uncertainty but potential risk exists. Ecological impact should be given paramount consideration, particularly when the end result would be irreversible. The decision-making authority should assess the records and conclude whether it was a case of directing precautionary and preventive measures to be taken or that the information on which it has to reach a determination is inadequate. Informed decision is the essence of a preventive or a prohibitory decision. The principle of direction thereunder involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity which is based on scientific certainty.

34. The Supreme Court of India, in the case of Vellore Citizens' Welfare Forum Union of India (MANU/SC/0686/1996 : AIR 1996 SC 2715) recognised the precautionary principle and explained it as follows:

> *"11. (i) Environmental measures-by the State Government and the statutory authorities-must anticipate, prevent and attack the causes of environmental degradation.*
>
> *(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as*

a reason for postponing measures to prevent environmental degradation.

(iii) The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign."

35. On the analysis of the above, one could state the essentials of invocation of precautionary principle as under:

(a) There should be an imminent environmental or ecological threat in regard to carrying out of an activity or development;

(b) Such threat should be supported by reasonable scientific data; and

(c) Taking precautionary, preventive or prohibitory steps would serve the larger public and environmental interest.

36. With reference to these ingredients, the decision making authority, upon taking an objective approach, could take recourse to and pass directives under the precautionary and preventive principles. These are the tools available to the authorities concerned to adopt a balanced and pragmatic approach to ensure environmental protection while permitting sustainable development.

37. Hon'ble the Supreme Court in A.P. Pollution Control Board v. Prof. M.V. Nayudu supra, where the Hon'ble Court, while discussing the onus in environmental matters, held as under:

"31. The Vellore judgment has referred to these principles briefly but, in our view, it is necessary to explain their meaning in more detail, so that Courts and tribunals or environmental authorities can properly apply the said principles in the matters which come before them.

The precautionary Principle replaces the Assimilative Capacity principle:

32. A basic shift in the approach to environmental protection occurred initially between 1972 and 1982. Earlier the concept was based on the 'assimilative capacity rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'precautionary Principle', and this was reiterated in the Rio Conference of 1992 in its Principle 15 which reads as follows:

Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.

33. In regard to the cause for the emergence of this principle, Chairman Barton, in the article earlier referred to in Vol. 22, Harv. Envtt. L. Rev. (1998) P. 509 at (p. 547) says:

> *"There is nothing to prevent decision makers from assessing the record and concluding there is inadequate information on which to reach a determination. If it is not possible to make a decision with "some" confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm. An informed decision can be made at a later stage when additional datais available or*

resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through Judicial and legislative means is necessary.

In other words, inadequacies of science is the real basis that has led to the precautionary principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

34. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (Justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). The Bomako Convention also lowered the threshold at which scientific evidence might require action by not referring to "serious" or "irreversible" as adjectives qualifying harm. However, summing up the legal status of the precautionary principle, one commentator characterised the principle as still "evolving" for though it is accepted as part of the international customary law, "the consequences of its application in any potential situation will be influenced by the circumstances of each case". (See First Report of Dr. Sreenivasa Rao Pemmaraju, Special- Rapporteur, International Law Commission dated 3.4.1998 paras 61 to 72).

The Special Burden of Proof in Environmental cases:

35. We shall next elaborate the new concept of burden of proofreferred to in the Vellore case AIR 1996 SC 2715. In that case, Kuldip Singh, J. stated as follows:

> *The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.*

36. It is to be noticed that while the inadequacies of science have led to the 'precautionary principle', the said 'precautionary principle' in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo (Wynne, Uncertainty and Environmental Learning, 2 Global Envtl. Change 111 (1992) at p. 123). This is oftentermed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the changes would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less- polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. (See James
M. Olson, Shifting the Burden of Proof, 20 Envtl. Law p. 891 at 898 (1990). (Quoted in Vol. 22 (1998) Harv. Env. Law Review p. 509 at 519, 550).

37. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to

place the burden of proof on the person or entityproposing the activity that is potentially harmful to the environment. (See Report of Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4.1998, para 61).

38. It is also explained that if the environmental risks being run by regulatory inaction are in some way "ascertain but non-negligible", then regulatory action is justified. This will lead to the question as to what is the non-negligible risk'. In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a 'reasonable ecological or medical concern. That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection. Such a presumption has been applied in Ashburton Acclimatisation Society v. Federated Fanners of New Zealand [1988] 1 NZLR 78. The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable persons' test. (See Precautionary Principle in Australia by Chairman Barton) (Vol. 22) (1988) Harv. Env. L. Rev. 509 at 549).

38. The normal rule of evidence is that one who pleads must prove before the Court or the Tribunal i.e. the onus of proving, while claiming relief, is on the person who approaches the Court/Tribunal. However, this rule may not be applicable to this Tribunal stric to sensu.

39. This Tribunal has been established both with original and appellate jurisdiction relating to environmental laws. The NGT

Act, 2010 was enacted for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal rights relating to environment. In relation to NGT, the legislature, in its wisdom, has specifically excluded the application of the procedure under the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 (for short 'the Evidence Act') in terms of Section 19(1) and 19(3) of the NGT Act. On the contrary, Section 19(2) of the NGT Act empowers the Tribunal to have the power to regulate its own procedure. In terms of its Section 19(5), NGT is a judicial Tribunal.

40. The cases of environmental degradation, damage and health hazards are obvious by themselves as a result of some industrial activity or development. In that event and keeping in view the very object of the NGT Act, it will be unacceptable to require the applicant to discharge his primary onus by strict number of events and their details.

41. In Ravi Kapur v. State of Rajasthan MANU/SC/0659/2012 : (2012) 9 SCC 284, it was held that the doctrine of resipsa loquitur serves two purposes. Firstly, that an accident may by its nature be more consistent with being caused by negligence for which the opposite party is responsible than by any other cause and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Secondly, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. Recourse to this principle is also permissible where there is no direct evidence brought on record. These stated principles apply more often than not to motor

accident cases and can squarely be applied to cases of environmental pollution resulting from industrial activities or development.

42. In the case of Km. Shrilekha Vidyarthi (supra) the Apex Court has held that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness it would be unconstitutional.

43. In the case of Ugar Sugar Works Ltd. v. Delhi Administrative and Ors. MANU/SC/0189/2001 : (2001) 3 SCC 635 the Apex Court has held as follows:

> *18. ...It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy....*
>
> *26. In the aforesaid paragraph the Apex Court has further held that the Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.*

44. In the case of Delhi Development Authority and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors. MANU/SC/0202/2008 : (2008) 2 SCC 672, the Apex Court has

held as follows:

> *"An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty's of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review."*

45. Broadly, a policy decision is subject to judicial review on the following grounds:

    a) *if it is unconstitutional;*
    b) *if it is dehors the provisions of the Act and the Regulations;*
    c) *if the delegate has acted beyond its power of delegation;*
    d) *if the executive policy is contrary to the statutory or a larger policy.*

46. The rule can also be challenged if it is beyond its limits permissible under the principal Act and it must be in good faith and in the public interest. In the case of *State of U.P. and others v. Renusagar Power Co. and others*, MANU/SC/0505/1988 : (1988) 4 SCC 59, the Supreme Court has observed as under:

> *"79. If the exercise of power is in the nature of subordinate legislation the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled. "*
>
> *48. A subordinate legislation can be declared ultra vires if it is found that the rule challenged is not within the scope of authority conferred on the rule maker by the parent Act. The Court cannot examine the wisdom or officiousness of the rules. It cannot consider the merit or demerit of a policy of the State. It is well- settled law that*

delegatee cannot frame a rule which is not authorized by the parent statute. If the rule has not been framed within the powers delegated by the parent Act and if it is beyond the said power, only in those cases the Court can declare it ultra vires.

49. De. Smith in his book in 'Principles of Judicial Review', 1999 Edition, at page 95 has observed as under:

> *"In essence, the doctrine of ultra vires permits the Courts to strike down decisions made by bodies exercising public functions which they have no power to make. Acting ultra vires and acting without jurisdiction have essentially the same meaning, although in general the term "vires" has been employed when considering administrative decisions and subordinate legislative orders, and "jurisdiction" when considering judicial decisions, or those having a judicial flavour."*

Sir William Wade and Christopher Forsyth in their book on 'Administrative Law', Eighth Edition, at page 35, has defined the ultra vires in the following terms:

> *"The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law. The juristic basis of judicial review is the doctrine of ultra vires. To a large extent the Courts have developed the subject by extending the refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality."*

In the case of P. Krishnamurthy (supra) the Supreme Court has culled out the following principles:

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

a) Lack of legislative competence to make the subordinate legislation.

b) Violation of fundamental rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness / unreasonableness (to an extent where Court might well say that the legislature never intended to give authority to make such Rules)."

47. It is argued on behalf of the respondent that in exercise of power of judicial review, the Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed arbitrariness, irrationality, perversity and mala fide, render the policy unconstitutional. Unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any Statute or the

Constitution, it cannot be a subject of judicial interference. However, if the policy cannot be touched on any of these grounds, the mere fact that it may affect business interests of a party does not justify invalidating the policy. (Vide M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration & Ors., AIR 2001 SC 1447; State of Himachal Pradesh & Anr. Vs. Padam Dev & Ors., (2002) 4 SCC510; Balco Employees' Union (Regd) Vs. Union of India & Ors., AIR 2002 SC 350; State of Rajasthan & Ors. Vs. Lata Arun AIR 2002SC 2642; and Federation of Railway Officers Association Vs. Union of India, (2003) 4 SCC 289).

48. In Union of India & Anr. Vs. International Trading Company & Anr. (2003) 5 SCC 437, the Supreme Court pointed out that the Policy of the Government, even in contractual matters, must satisfy the test of reasonableness and every State action must be informed by reason. Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. The Court further held as under:-

> *"15. While the discretion to change the policy in exercise of the executive power, when not trammeled by any statute or rule is wide enough, what is imperative and implicit in termsof Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity ofthe State is an accepted tenet. The basic requirement of Article14 is fairness in action by the State, and non-arbitrariness in essence and substance is the*

heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. ***Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labeled as arbitrary.*** *Every State action must be informed by reason and it follows that anact uninformed by reasonis per se arbitrary."*

49. In Union of India Vs. Dinesh Engineering Corpn. & Anr. (2001) 8 SCC 491 the Supreme Court observed as follows:-

".....Where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond

the pale of discrimination or unreasonableness, bearing in mind the material on record..... . Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution."

50. In Krishnan Kakkanth Vs. Govt. of Kerala, AIR 1997 SC 128; the Hon'ble Apex Court held that the judicial review of policy decision is permissible in exceptional circumstances only when the Court is of the view that the order suffers from arbitrariness and unreasonableness. The Court observed as under:-

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid embarking on uncharted ocean of public policy."

51. Learned counsel has also raised the issue that the control of illegal mining is purely within the domain of the State Government. It is necessary to quote the relevant paragraphs with regard to rule making power of the State which is enshrined in the constitution as follows:

> *"28. Entry-54 of List I-Union List of the Seventh Schedule of the Constitution of India deals with regulation of mines and mineral development under the control of the Union. Entry-54 of List-I reads as under:*
>
> > *"54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."*
>
> *29. Entry-23 of List II-State List of the Seventh Schedule of the Constitution provides as under:*
>
> > *"23. Regulation of mines and mineral development subject to the provisions of List-I with respect to regulation and development under the control of the Union."*
>
> *30. The Act, 1957 i.e. the Mines and Minerals (Development and Regulation) Act, 1957 is enacted by the Parliament to provide for the development and regulation of mines and minerals. Section 3(e) of the Act, 1957 defines 'minor minerals'. It reads thus:*
>
> > *"(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"*
>
> *31. Sub-section (1-A) of Section 4 of the Act, 1957 prohibits transportation and storage of minerals in the following manner:*

"4(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

32. Section 15 of the Act, 1957 gives power to the State Government to make rules in respect of minor minerals. Section 15 is extracted below:

"15. Power of State Governments to make rules in respect of minor minerals.--(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

a) *the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid there for; the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;*
b) *the matters which may be considered where applications in respect of the same land are received within the same day;*
c) *the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;*

d) *the procedure for obtaining quarry leases, mining leases or other mineral concessions;*

e) *the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;*

f) *the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;*

g) *the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;*

h) *the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;*

i) *the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;*

j) *the construction, maintenance and*

use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

k) *the form of registers to be maintained under this Act;*

l) *the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;*

m) *the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and*

n) *any other matter which is to be, or may be prescribed.*

2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

"Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely—

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub- section (2) of Section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of Section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession-holders of minor minerals under Section 15A.

"33. Section 23-C of the Act, 1957 gives power to the State Government to make rules for preventing illegal mining, transportation and storage of minerals. Section 23-C reads thus:

"23-C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.--(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) establishment of check-posts for checking ofminerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefore and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in Section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2).”

52. In the matter of Original Application No. 304/2019 M. Haridarsan & Anr. *Versus State of Kerala*, it was observed that the State PCB has permitted the stone quarrying beyond 50 meters from residence

and public roads and the Principal Bench of this Tribunal directed the State PCB to revisit the existing criteria based on an appropriate study. In compliance of the order, the CPCB has filed the report as follows :-

"2.0 Stone Quarrying:

Stone is classified as minor minerals under Section 3(e) of the Mines and Minerals (Development and Regulations) Act, 1957 . As per provisions of MMDR Act, the administrative and legal control over minor minerals vests with State Governments and empowered to make rules to govern minor minerals. Stone Quarrying / Mining is an activity where extraction of stone is done from hillocks or mountain or ground surface having geological mineral deposits. The stone extracted from stone quarry are used either as construction materials or in stone crushers to produce rori/ bajri and dust.

Systematic Mining (formation of benches) is done by blasting and drilling, to loosen up the rock materials followed by fragmentation of large size into smaller size. The reduced size material is then loaded and transferred to stone crushers for further processing in order to obtain necessary sizes required for final use. The blasting and drilling during mining operation have environmental impacts and requires mitigation measures to minimise the impacts on environment and nearby habitations.

Minor Mineral Concession Rules

As per sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), State Government has to make Rules for regulating the grant of quarry lease, mining lease/ permit, mineral concessions and purposes connected in respect of minor minerals.

Accordingly, State Governments have framed rules and defined the criteria of minimum distance of minor mineral

*mining from different locations based on the type of mining used.(**Annexure I**).*

Minimum distance prescribed by various states is vary with respect to mining operation of minor mineral involved. In general, minimum distance prescribed by states such as Rajasthan, Madhya Pradesh, Punjab, Tamil Nadu, Orissa, Bihar, Uttar Pradesh, Himachal Pradesh, West Bengal, Sikkim, Meghalaya and Manipur are:

- *In the range of **45 - 200 m** from any reservoir, canal, public works such aspublic roads and **buildings***
- *In the range of **45 - 100 m** from any railway line / area*
- *In the range of **60 - 100 m** from National Highway, State Highway and other roads and **10 m** from village roads Various states have further prescribed minimum distance based on the use of blasting in mining operation of minor mineral, as follow:*

Kerala:

*When blasting is involved, no mining within a range of **50 — 100 m** from the boundary line of any railway line, bridges, reservoirs, tanks, **residential buildings,** Government protected monuments, canals, rivers, public roads having vehicular traffic, any other public works or the boundary walls of places of worship whereas, when no blasting is involved, range of **50-75 m** is prescribed as minimum distance.*

Karnataka, Maharashtra, Goa, Gujarat:

*When blasting is involved, no mining within a distance of **200 m** from the*

boundary line of any railway line reservoir, tank bund, canal, or other public works and ***public structures*** *or any public road or building whereas, when no blasting is involved, minimum distance of* ***50 m*** *is defined.*

Jammu & Kashmir:

When blasting is involved, no mining within a distance of 500 m from the outer periphery of the defined limits of a National Highway, Railway line, State Highway, Major District Roads (MDR) and Other District Road (ODRs) whereas, when no blasting is involved, minimum distance of 150 m is defined.

Assam*:*

When blasting is involved, no mining within a distance of ***250 m*** *from the outer periphery of the defined limits of any* ***village habitation,*** *National Highway, State Highway and other roads whereas, when no blasting is involved, minimum distance of* ***50 m*** *is defined.*

Note: *Distance criteria defined by various states, has been defined from the outer edge of the cutting or outer edge of the bank, as the case may be and in the case of a building horizontally from the plinth thereof.*

4.0 Criteria of Danger Zone: Directorate General of Mines Safety

As per Directorate General of Mines Safety circular no. - DGMS (SOMA)/ (Tech) Cir No. 2 of 2003 Dt. 31/01/2003, on subject of Dangers due to blasting projectiles, all places within the radius of 500 m from the place of firing to be treated as danger zone and accordingly, all person in danger zone to take protection in substantially built shelter at the time of blasting.

Further, mine manager to control the throw and to prevent ejection of flying fragments within a safe distance with the use of refined blasting practices as well as developed explosives and accessories such as controlled blasting Technique with milli-second delay detonators / electric shock tubes/ cord relays or use of sequential blasting machines or by adequately muffling of holes etc.

5.0 Criteria of no blasting distance around blast sites: Indiana Department of Natural Resource, USA

(Source: Citizen Guide to Coal Mine Blasting in Indiana)

Indiana Department of Natural Resource, USA has stated that the blasting not to be conducted within 300 feet 91 m) of an occupied dwelling or school, church or hospital, public building, community or institutional building.

6.0 Conclusion:

In view of available information, following minimum distance criteria may be considered for permitting stone quarrying by SPCBs:

Mining Type		***Minimum Distance***	***Locations***
A.	*When Blasting isnot involved*	*100 m*	*Residential/Public buildings, Inhabited sites, Protected monuments, Heritage sites, National/State Highway, District roads, Public roads, Railway line/area, Ropeway or Ropeway trestle or station, Bridges, Dams, Reservoirs, River, Canals, e-F Lakes or Tanks, or any other locations to be considered by States.*
B.	*When Blasting isinvolved*	*200 m ***	

******Note:*** *The regulations for danger zone (500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should*

be taken to minimize the impact on environment.

However, if any states is already having stringent criteria than the above for minor mineral mining (i.e. more prescribed distances than the above), the same shall be applicable.

State	***Type of Mining***	***Distance***	***Location***	***Remarks***
Kerala	*Quarry*	*100 m*	*Minimum distance from boundary of quarry operation area to residential buildings, places of worship, public buildings, public road, river or lake, railway line and bridges.*	*Quarry distance as per SPCB circular no.PCB/TAC/WP/236/ 2006 dated13-6-2007.*
	Laterite Quarry	*50 m*	*Minimum distance to residences and other establishments (m)*	*Laterite Quarry distance as per SPCB circular no. PCB/T4/115/97 dated 20-7-2011*
	Quarrying where explosives are used	*100 m*	*Minimum distance from any railway line, bridges, reservoirs, tanks, residential buildings, Government protected monuments, canals, rivers, public roads having vehicular traffic, any other public works or the boundary walls of places of worship*	*Kerala Minor Mineral Concession Rules 1967.*
		50 m	*Minimum distance from any burial grounds or burning ghats or forest lands*	
	Quarrying where explosives are not used	*75 m*	*Minimum distance from any railway line and any bridge on National Highway*	
		50 m	*Minimum distance from any reservoir, tanks, canals, rivers, bridges, public roads, other public works, residential buildings, the boundary walls of places of worship, burial grounds, burning ghats or any Government protected monuments or forest lands*	
Karnataka	*Blasting is involved*	*200 m*	*Minimum distance from the boundary line of any railway line reservoir, tank*	*Karnataka Minor Mineral Concession Rules 1994*

			bund, canal, or other public works and public structures or any public road or building.	
		No blasting is involved	*50 m*	
Goa and Daman & Diu	*Blasting is involved*	*200 m*	*Minimum distance from the boundary of any railway line, any reservoir, canal, road or public works or buildings*	*The Goa, Daman and Diu Minor Mineral Concession Rules 1985*
	No blasting is involved	*50 m*		
Gujarat	*Blasting is involved*	*200 m*	*Minimum distance from any road, notified reservoirs, canal, national highway, state highway, boundary of any railway line, public works, cities, towns, villages and other approved continuous habitations.*	*Gujarat Minor Mineral Concession Rules 2017*
	No blasting is involved	*50 m*	*Minimum distance from any road (excluding a village road or other district road), notified reservoirs, canal, national highway, state highway, boundary of any railway line, public works, cities, towns, villages and other approved continuous habitations.*	
Rajasthan	*Minor Mineral Mining*	*45 m*	*Minimum distance from any railway line, under or beneath any ropeway or ropeway trestle or station or from any public roads (excluding mines approach road or village roads), reservoir, canal or other public place or buildings, pillars of railway and road bridge or inhabited site.*	*Rajasthan Minor Mineral Concession Rules 2017*
Madhya Pradesh	*Minor Mineral Mining*	*50 m*	*Minimum distance from any railway line or from any reservoir, canal or other public works such as public roads and buildings or inhabited site*	*Madhya Pradesh Minor Mineral Rules 1996*
Punjab	*Minor Mineral*	*75 m*	*Minimum distance from any railway line or bridges*	*Punjab Minor Mineral Concession*

	Mining			*Rules 1964*
		60 m	*Minimum distance from national highway*	
		50 m	*Minimum distance from any reservoir tank canal roads or other public works or buildings or inhabited sites*	
Tamil Nadu	*Minor Mineral Mining*	*50 m*	*Minimum distance from any railway line or under or beneath any ropeway or any ropeway trestle or station or from any reservoir, canal or other public works such as public roads and buildings*	*Tamil Nadu Minor Mineral Concession Rules 1959* –
Orissa	*Minor Mineral Mining*	*100 m*	*Minimum distance from any railway line, National Highway, late Highway or any reservoir*	*Orissa Minor Minerals Concession Rules 2004*
		50 m	*Minimum distance from any tank, canal, road (other than a National or State Highway or other public works of buildings or inhabited sites), public roads, public buildings, temples, reservoirs, dams, burial ground, railway track monuments, heritage sites, etc.*	
Chhattisgarh	*Minor Mineral Mining*	*300 m*	*Minimum distance from sensitive area like radio station, doordarshan kendra, defence establishment etc. of the Central and State Government*	*Chhattisgarh Minor Mineral Rules 1996*
		100 m	*Minimum distance from abadi, school, hospital and other public places, buildings and habited sites*	
		75 m	*Minimum distance from any railway line, bridge or highway*	
		50 m	*Minimum distance from tank, river banks, reservoir, canal*	
		10 m	*Minimum distance from grameen kachcha road*	
Bihar	*Minor Mineral Mining*	*50 m*	*Minimum distance from any railway line or from any reservoir, public road, canal or other public work or buildings or inhabited site*	*Bihar Minor Mineral Concession Rules 1972*
		10 m	*Minimum distance from any village roads*	
Uttar Pradesh	*Minor Mineral Mining*	*50 m*	*Minimum distance from any railway line or from any reservoir, canal or other public works, such as public roads and buildings or*	*Uttar Pradesh Minor Minerals (Concession) Rules 1963*

			inhabited site	
		10 m	*Minimum distance from any village roads*	
Himachal Pradesh	*Minor Mineral Mining*	*75 m*	*Minimum distance from any railway line or bridges*	
		60 m	*Minimum distance from National Highway*	
		50 m	*Minimum distance from any reservoir, tank, canal, roads or other public works or buildings or inhabited sites*	
		50 m	*Minimum distance for all type of mining from any river banks (except in cases of ordinary sand)*	*Himachal Pradesh Minor Minerals (Concession) Revised Rules 1971*
Jammu & Kashmir	*Mining where excavation require use of explosives*	*500 m*	*Minimum distance from outer periphery of the defined limits of a National Highway, Railway line, State Highway, Major District Roads (MDR) and Other District Road (ODRs)*	
	Mining where excavation does not require use of explosives	*150 m*	*Minimum distance from outer periphery of the defined limits of a National Highway, Railway line, State Highway, Major District Roads (MDR) and Other District Road (ODRs)*	
	Minor Mineral Mining	*100 m*	*Minimum distance from any other public roads*	
		50 m	*Minimum distance from upstream as well as downstream of water works, head works or hydraulic works as defined under the J&K Water Resources (Regulation and Management) Act, 2010.*	
		25 m	*Minimum distance from any 'embankment' or 'flood embankment' as defined under the J&K Water Resources (Regulation and Management) Act, 2010.*	*Jammu & Kashmir Minor Mineral Concession Rules, 1962*
West Bengal	*Minor Mineral Mining*	*5000 m*	*Minimum distance from a barrage axis or dam or a river*	*West Bengal Minor Minerals Rules 2002*
		200 m	*Minimum distance from any hydraulic structure, reservoir, bridge, canal, road and other public works or buildings*	

		200 m	*Minimum distance from both sides of any river bridge or culvert over any waterway or from any embankment and structural works of the Irrigation and Waterways Department*	
		100 m	*Minimum distance from any Railway land*	
Sikkim	*Minor Mineral Mining*	*60 m*	*Minimum distance from bridges oh highways*	*Sikkim Minor Mineral Concession Rules 2016*
		50 m	*Minimum distance from any railway line or any reservoirs, canals or other public works, or buildings*	
Assam	*Mining where excavation require use of explosives*	*250 m*	*Minimum distance from the outer periphery of the defined limits of any village habitation, National Highway, State Highway and other roads*	*Assam Minor Mineral Concession Rules 2013*
		Mining where excavation does not require use of explosives	*50 m*	*Minimum distance from outer periphery of the defined limits of any village habitation, National Highway, State Highway and other roads*
		Minor Mineral Mining	*500 m*	*Minimum distance from major structures like R.C.C. bridges, Guide bund etc.*
			75 m	*Minimum distance from any railway line or bridges*
Meghalaya	*Minor Mineral Mining*	*50 m*	*Minimum distance from any railway line or under or beneath any rope way or any ropeway trestle or station, or from any reservoir, canal or other public works such as public roads and buildings or inhabited site*	*Meghalaya Minor Mineral Concession Rules 2016*
		10 m	*Minimum distance from any village roads*	
Manipur	*Minor Mineral Mining*	*50 m*	*Minimum distance from any reservoir, canal or other public works, or buildings.*	*Manipur Minor Mineral Concession Rules 2012*

53. Accidents due to projectiles ejecting from blasting had been major source of accident and the office of Director General of Mines and Safety has issued a notification no. No. DGMS (SOMA)/(Tech)Cir.No.2 of 2003 dated 31st January 2003 as follows :-

"Subject: Dangers due to blasting projectiles.

Accidents due to projectiles ejecting from blasting had been a major source of accident in both below ground and opencast workings. Under the existing provisions of Coal Mines Regulations, 1957 and the Metalliferous Mines Regulations 1961, before a shot is charge- d, stemmed or fired the shotfirer/blaster is required, amongst other things to ensure that all persons within a radius of 300m from the place of firing (referred, to hereinafter as danger Zone) have taken proper shelter, apart from giving sufficient warning by efficient signals or other means approved by the manager over the entire zone. There had been, however, a number or instances where flying fragments due to blasting had ejected not only within but also beyond the danger Zone, resulting into serious and even fatal accidents

This Directorate from tore to time had drawn the attention of all concerned about the dangers (torn flying projectiles through issue of DGMS Circulars Viz. Circular Tech. 15/1977 and 8/1982. Recently, however, another fatal accident occurred due to same reason.

Enquiry into the accident revealed that in an open cast coal mine, overburden had been kept dumped against the free face of OB bench, 12 No, first row of holes were left uncharged because of spontaneous heating in the seam below, 17 holes of 150mm 6.5m Depth dolled in 7m x 5m Pattern (spacing & burden) charged with 75 kg/hole and 42 holes of 6.5m depth 250mm dia drilled in 6m x 6m pattern charged with 130 kg/hole were blasted. The projectiles ejected due to blasting travelled for a distance of about 412m in the reverse direction away from the free face and hit a mechanical supervisor. The enquiry further revealed that the deceased had taken proper shelter in a blasting shelter out had come out of the shelter

immediately on hearing to the sound of blast and was subsequently hit by the projectiles

Over years there had been refinement of blasting practices as well as development in explosives and accessories, whereby it is possible to control the throw and prevent ejection of flying fragments within a safe distance with relative ease There is, therefore, no reason why such type of accident should continue to occur.

The matter is brought to your attention so that following connective measures are taken in case similar conditions exists in any mine under your control

(1) In the interest of safety to treat all the places within a radius of 500m of the place of firing as the danger zone, allpersons who are required to remain within the danger zone at the time of blasting should take protection in substantially built shelter

(2) Formulate a code of practice for controlled blasting Technique with mili-second delay detonators/ electric shock tubes/ cord relays or use of sequential blasting machines or by adequately muffling of holes including precautions to be taken during blasting operation until all dear signal given by blaster.

(3) Training of persons and their helpers engaged in such blasting operation."

54. The matter came into consideration before the Principal Bench of the Tribunal vide order dated 28.02.2020 in Original Application no. 304/2019 and the Tribunal observed as follows :-

1. Issue for consideration is the safeguards in operation of stone quarries close to residence and public roads. At present, the Kerala State PCB has permitted the stone quarry beyond 50 mtrs. from residence and public roads. This Tribunal vide order dated 09.10.2019 considered the matter and observed:

"3. We find that the environmental norms require

assessment of impact of such activities and mere distance of 50 mtrs. By itself is not enough to dispense with such norms. In absence of any study, any stone quarry near the residence and public road is bound to cause air and noise pollution even beyond 50 mtrs. In this regard, reference may be made of observations in the judgments of the Hon'ble Supreme Court in M.C. Mehta v. Union of India, (1996) 8 SCC 496 and Mohammed Haroon Ansari v. District Collector, Ranga Reddy District, (2004) 1 SCC 491. In granting EC, this consideration has to be kept in mind in view of the fact that clean and safe environment is a part of right to life.

4. Accordingly, we direct State PCB to revisit the existing criteria based on an appropriate study. CPCB may give its view in the matter to the State PCB within two weeks in light of available expert studies on the subject. The State PCB may furnish its action taken report in the matter by e-mail at judigical-ngt@gov.in before the next date."

2. *Accordingly, a report has been filed by the Kerala State PCB on 17.12.2019 retreating the distance criteria of 50 mtrs. and mentioning that no study is available with the CPCB.*
3. *We are of the view, as earlier observed that the distance of 50 mtrs. for stone quarry, particularly when blasts are involved, is highly inadequate and can have deleterious effect on noise and air pollution, environment and public health.*

4. *In view of above, we direct the CPCB to examine and lay down more stringent conditions and appropriately longer distance within one month and convey the same to the State Boards. The State Board may take further action accordingly. Compliance reports be filed before the next date by email at judicial-ngt@gov.in."*

55. The perusal of the above order shows that the Tribunal has already directed the CPCB to examine and lay down more stringent conditions and appropriately longer distance so that the deleterious effect on noise and air pollution environment and public health should be protected.

56. However, distance from the forest area does not find any mention in the sitting criteria developed by the CPCB or different State regulations. Mining is a non-forestry activity and is restricted in forest area unless permitted under Forest (Conservation) Act 1980. Mining around wildlife Sanctuary and National Parks are prohibited in terms of Eco-Sensitive Zones defined under Environment (Protection) Act 1986. The impact of mining would certainly be deleterious on the flora and fauna of the adjacent forests and therefore a prohibitory distance from the forest for mining operations along with mitigation measures and precautions are required to be explicitly defined.

57. Learned counsel for the SEIAA has argued that the issue of the parameter of distance of mining is required to be maintained at the minimum distance, which has been specified as 100 meter does not be interpreted by way of constructing a wall that parameter can be reduce up to zero level. The regulation and notification only provides that there must be a wall of the mine to protect the forest area but it does not be interpreted to give permission of sand mining by way of constructing wall up to zero meter level.

58. It is brought to our notice that the notification dated 02.12.2021 issued by the Govt. of Rajasthan (Forest Department) in clause 3 specifies the distance/buffer zone as

500 meter. Further, in clause 6 it is specified that if the distance of mining area from the forest area is within 100 meters or it is adjacent to it, then a joint inspection with one of the officer of the Forest Department and one from Mining Department is required. Further clause 7 provides that if the area of mine is within 100 meters from the forest area then inspection should be made by Assistant conservator of Forests and for distances within 50 meters inspection should be made by Dy. Conservator of Forest. Clause 8 provides that in case if it is 100 meters then in that case there shall be construction of pakka wall. Form the circular it is clear that as the distance of mining area from the forest area decreases inspection by higher authorities is prescribed, which inter alia means scrupulous forest conservation is basic aim of the circular. However in absence of a clearly defined prohibitory distance based on scientific studies and knowledge in consistence with existing laws of the land defeats the purpose.

59. The contention of the Learned Counsel is that all the above provisions are self-contradictory and the policy of the State Forest Department cannot be interpreted against the interest of the forest in violation of the rules and the interpretation by the local authorities/ district authorities cannot be made in contravention of the rules made by the legislatures or the State Government to frustrate the policy of the State.

60. The action that it can be reduced from 100 meter to less than 50 cannot be interpreted to reduce upto zero by way of constructing a demarcating wall and if this was the idea then in that case there was no need to specify the distance or buffer

zone of 500 meters or 100 meters. The State must consider the prohibitory details of EMSSM Guidelines 2020 as given in the chapter for preparing DSR wherein it has been provided that "identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from the protected area, forest, bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area." In view of the above, it is necessary for the authorities to take a decision and further remedial measures to enforce the law of the land.

61. The SEIAA interpreting the notification dated 02.12.2021 passed an order dated 15.07.2022 in the matter of Appeal No. 20/2022 and also in the next appeal that "in view of the fact that SEIAA being of the view that it is not prudent to issue EC in such cases where the lease area is within a distance of 50 meters from the periphery of any forest area, ...decided to revoke the EC granted in this case."

Since the notification was issued by the State Government thus it is for the State Government to decide the minimum distance /buffer zone and clarify the notification issued above.

62. Having regard to seriousness of the violation which may continue without adequate check and not maintaining the buffer zone as minimum prescribed, we are of the view, that a minimum distance of buffer zone must be fixed by the State on the basis of Expert Report and should not be left to the subjective interpretation of SEIAA or any other authorities.

63. Accordingly, we direct the Chief Secretary, State of Rajasthan to oversee compliances and re-visit the notification No. 1 (20) (1)/2003, Jaipur, dated 02.12.2021 with the assistance of PCCF (HoFF), Rajasthan, Chief Wildlife Warden, Rajasthan, Rajasthan State Pollution Control Board, Representative of CPCB and Regional Officer of IRO, Jaipur of MoEF&CC within the reasonable time of 3 months to review the parameter and clarify position and prescribe minimum distance maintaining the buffer zone and notify. After the decision so taken by the Government, the SEIAA may reconsider all the ECs granted and coming within the prescribed prohibitory limit.

64. In absence of circular dated 02.12.2021, SEIAA has taken a decision not to grant EC for mining within the periphery of 50 meters of forest area in the interest of forest conservation and that has been upheld by the NGT in Appeal No. 20/2021 vide order date 13.12.2021. We are not intending to interfere in its discretion because the discretion once exercised, should not be generally interfered with again by way of another discretion. After the decision so taken by the Chief Secretary, State of Rajasthan, the appellant is at liberty to move appropriate application before SEIAA for reconsideration.

65. **Appeal Nos. 20/2022 & 21/2022** stand **disposed of** accordingly.

66. The copy of the order be forwarded to the Chief Secretary, State of Rajasthan, PCCF (HoFF) State of Rajasthan, Chief Wildlife

Warden, State of Rajasthan, IRO Jaipur of MoEF&CC, Member Secretary, CPCB and Member Secretary, Rajasthan State Pollution Control Board, by e-mail for information and compliance.

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

01st February, 2023
Appeal No. 20/2022
Appeal No. 21/2022
PN