Item No. 01 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 83/2019(WZ)
(I.A. No. 129/2019)

Tanaji Balasaheb Gambhire — Applicant

Versus

Union of India & Ors. — Respondent(s)

Date of hearing: 12.01.2021
Date of uploading of order: 18.01.2021

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

ORDER

1. Prayer in this Application is to demolish illegal structure of a housing complex set up by M/s Sai Baba Sales Private Limited, Pune. According to the applicant, the project involves more than 20,000 sq. mtrs. built up area which attracts the requirement of prior Environmental Clearance in terms of EIA Notification dated 14.09.2006, issued by the MoEF&CC under the Environment (Protection) Act, 1986 and in absence thereof the same is illegal.

2. According to the applicant, construction of 29,000 sq. mtrs. has already taken place and there is a proposal to increase the capacity to 49012 sq. mtrs. Apart from not obtaining EC and other approvals, there is violation of environmental norms on account of non-installation of pollution control devices, non-plantation of trees, illegal ground water extraction, illegal operation of DG Sets at site, Podium on 10% recreational space and RG Space is not developed as per norms. No soil preservation,

soil and ground water test, use of eco-friendly building material for construction etc. has taken place. There are constructions in Blue flood line and dumping of construction waste in the water body, connecting the river. The project proponent is thus liable to stop the violations and take compensation on 'Polluter Pays' principle. According to the applicant, there is adverse carbon foot print impact to the extent of Rs. 150 crores due to illegal construction activities.

3. The matter came up for hearing on 09.07.2020 when the Tribunal constituted a three-member Committee comprising the SEIAA, Maharashtra, the State PCB and the Municipal Commissioner, Pune to give a report about the factual position.

4. Accordingly, a report was filed on 24.08.2020 after site visit with following observations:-

"

1. *The building construction project Sari Exotica is in construction process on land of area 19005.76 Sq. M. on the aforementioned address.*
2. *The land is contoured, sloping from the highest level 104.82 M. and the lowest level 90.50 M. towards river Indrayani. The lower floors of the buildings are having the sloping ground around.*
3. ***Except the OWC no construction is found in the flood zone. Some part of the Recreation Open Space is in this zone, but the clubhouse in it is outside the flood zone.***
4. *No construction debris or dumping of any material from the project is found in the river stream.*
5. *PP had obtained First CC on 14.5.2013 followed by various Revised CCs obtained from PCMC (Details are mentioned in Annexure-I). Accordingly, PP has started construction activity on 10.2.2014. PP had obtained the approval for revised plan in 2017 for BUA – 16593.40 sq. mtrs vide sanction BP/chikhali/17/2017 dated 23.05.2017.*
6. *PP has obtained the EC on 28.11.2017 for the total built-up area 49012.15 Sq.M from PCMC (Annexure-I).*
7. ***As per Architect certificate, the construction activity carried out before EC is 14132.51 Sq.M and as on date construction carried out is 22930.17 Sq.M (Annexure-II) as against the BUA of 490.15 Sq.M as per the EC.***
8. ***PP obtained Consent to Establish from the MPPCB on 04.05.2019 for total built-up area 49,012.15 Sq.M***

followed by Consent to Operate on 08.07.2020 for BUA 23,266.86 Sq,M (Annexure-III).

9. During the visit, it is observed that, PP has completed construction work of total built-up area 22930.17 Sq. m. for Building No. A,E,B,D and Club House.

10. STP of capacity 250 CMD has been provided and found operational.

11. OWC has been provided for the treatment of wet waste in the flood zone, hence the PP is directed by the committee to shift at other location.

12. PP is proposing to build one of the UGT in the flood zone and has been directed to relocate the same.

13. Rainwater harvesting has been provided. PP had bored 3 bore wells (report by PCMC authority) which were found non-operational; hence they are converted into recharge pits. PP has taken commercial water connection from PCMC Water Department during the construction. Presently PP is not using any ground water but the water from tankers (Water Tanker Bills-Annexure-IV).

14. As the EC to this project is given by the Environment Cell of the PCMC, the internal report is sought from PCMC. Accordingly, the Executive Engineer, Building Proposal Department PCMC, Pune under the instructions of the Joint Director WPC-MPCB, Mumbai has visited the project site on 11.08.2020 and prepared an internal report on compliance of EC conditions. This report, henceforth referred as internal report is attached herewith. (Annexure-I)

15. This report is an outcome of the scrutiny of the said internal report and the factual observations during the site visit by the committee (Annexure-I)."

5. On, 17.11.2020, the Tribunal considered the matter as follows:-

"6. Learned counsel for the applicant submitted that the impugned constructions are patently in violation of mandate of EIA notification requiring prior Environmental Clearance from SEIAA which is not a formality but involves assessment of impact of such project on the environment and limited resources in terms of air, water and open spaces. Thus, apart from compliance of environmental norms, the project proponent has to be required to take remedial action to enforce the law either by demolishing the illegally raised construction or to pay compensation for restoration of the environment. Constructions raised without prior impact assessment. ***It is submitted that the Municipal Corporation granted EC on 28.11.2017 but the authority to grant EC is SEIAA as per Notification dated 14.09.2006. The EC from the MC Pune cannot be relied upon. Reliance has been placed on judgment of this Tribunal dated 08.12.2017 in OA No. 677/2016, Society for Protection of Environment and Biodiversity vs. Union of India and Ors. Therein, the Tribunal held that there was no justification for exemption of building constructions from EIA as per notification dated 9.12.2016. Such constructions put tremendous pressure on limited natural resources. Environment impact assessment for each project was necessary on 'Precautionary' principle. Similarly, consent to***

establish and consent to operate under the Water Act and Air Act could not be dispensed with. It is submitted that the said judgement has attained finality and is binding. It is further pointed out that in Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors., (2020) SCC OnLine SC 347, the Hon'ble Supreme upheld the view that requirement of prior EC could not be dispensed with by a circular as there is no mechanism to determine how detrimental effect on the environment will be taken care of if EIA requirement is to be dispensed with. The concept of ex post facto EC was against fundamental principle of environmental jurisprudence (Paras 24, 26). *The Hon'ble Supreme Court held that environmental degradation cannot be left unattended by legal consequences. However, in the said case, EC was granted ex-post facto in accordance with circular issued by the MoEF&CC and having regard to the fact situation, the three units were required to pay compensation at rate of Rs. 10 crores, each even in absence of specific proof of violations (Para 49). In (2020) 2 SCC 66, Keystone Realtors Private Limited v. Anil V. Tharthare and Ors., amendment to EC for expansion of the project, without conducting impact assessment was held to be invalid. The Hon'ble Supreme Court upheld award of Rs. 1 Crore as environmental compensation, apart from requiring the environment impact ex-post facto. In M/s Goel Ganga Developers India Pvt. Ltd. v. Union of India, (2018) 18 SCC 257, para 64, it was held that project set up without prior EC may be demolished but in a given fact situation, alternative of requiring payment of compensation may be accepted. Compensation should normally be 5% of project cost but if violations are serious, it can go up.*

7. From the facts noted above, it is clear that construction of more than 20,000 sq. mtrs. has been already completed in violation of the EIA Notification dated 14.09.2006. The illegal construction has either to be demolished or subject to compliance of all environmental norms, compensation has to be recovered. We find from the letter of consent to establish dated 04.05.2019 issued by the State PCB that the proposed capital investment of the project is Rs. 82 crores. The proposed construction is about 49000 sq. mtrs. approx. out of which the project has been completed to the extent of 23000 sq. mtrs. approx.

8. In view of above, we constitute a joint Committee comprising the CPCB, the SEIAA and the State PCB to take further remedial action by way of removing the illegal construction and/or recovering compensations for the violations, following due process of law. The State PCB will be the nodal agency for compliance and coordination. The joint Committee may complete its action in exercise of statutory powers available under the EP Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 within three months and furnish an action taken report before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. Applying the ratio of Goel Ganga to the facts of the present case, we direct the project proponent to deposit interim compensation of Rs. 2 crores within two months with the State PCB failing which the State PCB will be at liberty to take coercive measures. We further direct that the Committee may ensure that no

further construction takes place without compliance of statutory norms. ***Needless to say that the statutory authorities, in exercise of their statutory powers, will afford opportunity of hearing to the project proponent."***

6. Against the above order, the Project Proponent filed *Civil Appeal No(s). 3893/2020, M/s Sai Baba Sales Pvt. Ltd. v. Union of India & Ors.* before the Hon'ble Supreme Court which has been allowed on 11.12.2020 as follows:-

"The O.A. No.83/2019 (WZ) (in I.A.No.129/2019) has been filed before the National Green Tribunal, Principal Bench, New Delhi for demolition of an illegal structure set up by M/s Sai Baba Sales Private Limited, Pune.

According to the applicant, construction of 29,000 sq. mtrs. have already been taken place and there is a proposal to increase the capacity to 49012 sq. mtrs.

The Tribunal by its order dated 09.07.2020 constituted a three-member Committee comprising the SEIAA. Maharashtra, the State PCB and the Municipal Commissioner, Pune to submit a report about the factual position. The Committee submitted its report on 24.08.2020.

After considering the report of the Committee, the Tribunal directed remedial steps to be taken in accordance with the recommendation.

The Tribunal imposed interim compensation of Rs. 2 crores to be deposited within two months with the State PCB with further direction that no further construction shall take place without compliance of statutory norms.

Mr. Huzefa Ahmadi, learned Senior Advocate appearing for the appellant submits that the appellant was not served with notice and was not given an opportunity to make its submissions on the report of the Committee.

We set aside the order dated 17.11.2020 and remit the matter back to the Tribunal with a direction to give an opportunity of hearing to the appellant and pass appropriate order afresh.

Mr. Ahmadi submitted that the appellant shall not proceed with the construction without complying with statutory norms.

Parties are directed to appear before the Tribunal in the Second Week of January, 2021.

With the aforesaid direction, the appeal is allowed accordingly."

7. Accordingly, the respondent no. 10 has filed reply on 31.12.2020. It has raised objections to jurisdiction of this Tribunal as well as raised plea of the Application being beyond prescribed limitation. It is submitted that the application has been filed on 04.10.2019, six years after the accrual of the cause of action and two years after the grant of EC. Limitation is five years of the accrual of the cause of action. The application mentions that the cause of action arose on 23.05.2017 when the Project Proponent (PP) exceeded the threshold limit of 20000 sq. mts., requiring EC which is not legally tenable. The limitation starts from the date when the cause of action first arose in view of the judgement of the Hon'ble Supreme Court in *L.C. Hanumanthappa v. H.B. Shivakumar,* (2016) 1 SCC 332. The cause of action is not the date of knowledge but the action by which a party is aggrieved. Further contention is that the EC was granted on 28.11.2017 against which statutory appeal is provided for which limitation is 30 days. The application is indirectly an appeal and is beyond the limitation for the same. The PP has already sold flats to third parties and the said third parties have not been impleaded. The PP purchased the site on 09.09.2011 and sought building permission on 14.05.2013 for construction on a plot of 19000 sq. mts. Proposed construction was 15000 sq. mts. which was less than 20000 sq. mts. and thus, EC was not required. Commencement certificate was granted on 14.05.2013. On 17.11.2016, application was filed for development certificate. On 09.12.2016, the MoEF&CC incorporated provision for composite plans. On 21.12.2016, OA No. 677/2016 was filed challenging the same but no stay was granted. However, it was directed on 15.02.2017 that all actions will be subject to final orders. Pune Municipal Corporation (PMC) granted sanction plan on

23.05.2017. The applicant gave legal notice dated 28.06.2017 that construction was in violation of EIA Notification. Even though the built-up area was more than 20000 sq. mts., the PP filed application for EC on 10.07.2017 to the PMC. The Environment Committee of the Municipal Corporation considered the application and issued the environmental conditions on 28.11.2017 in accordance with the amendment dated 09.12.2016 read with Notification of the State dated 13.04.2017.

8. The applicant has filed response to the reply of the PP by way of written submission to the effect that EIA Notification dated 14.09.2006 is mandatory and prohibits construction of a project beyond 20000 sq. mts., without prior EC. The PP obtained sanction from the PMC on 14.05.2013 which is more than 20000 sq. mts. In the application dated 29.04.2013, it was mentioned that there were three borewells on the site. In the order of the Collector dated 11.11.2013, permitting change of land use of agricultural land for non-agricultural purposes, condition of prior EC from SEIAA was laid down. The PMC imposed fine of approx. Rs. 62 lacs for regularizing the illegal constructions which was paid. In the sanction of the layout plan, by the PMC, vide letter dated 28.11.2016 requirement of EC from SEIAA was again mentioned. The project was for approx. 49000 sq. mts. By order dated 15.02.2017, the NGT specifically mentioned that actions taken under the Notification dated 09.12.2016 will be subject to final orders of the NGT. Condition for prior EC from SEIAA was again imposed in the commencement certificate dated 23.05.2017 by the PMC. EC granted by the PMC on 28.11.2017 was without jurisdiction and beyond the mandatory EIA Notification dated 14.09.2006. The effect of the NGT order declaring amendment Notification dated 09.12.2016 is that the said notification never existed. The application filed on 04.10.2019 was within five years from EC granted on 28.11.2017. Constructions without

requisite EC could be subject matter of challenge by an application and no appeal was required to be filed against the EC granted without any jurisdiction beyond the terms of EIA Notification dated 14.09.2006. The judgment in *Alembic*, supra, has clearly held that prior EC requirement as per notification dated 14.9.2006 cannot be dispensed with. Construction of STP, OWC, rain water harvesting, solar system, RG Area, underground tanks, covered parking complex, tree plantation, borewells etc. in the blue flood line was illegal. Construction of 29000 sq. mts. with 236 flats and proposed expansion of capacity upto 49012 sq. mts. with additional 160 flats is in violation of EIA Notification. Carbon foot print of the project is to the tune of Rs. 150 crores. The "Precautionary" and "Sustainable Development" principles need to be invoked.

9. We have heard learned counsel for the parties and considered the rival contentions. The points for consideration are:

A) Whether the application is liable to be rejected on account of bar of jurisdiction or limitation?

B) Whether construction beyond 20000 sq mts is not permissible in view of EIA notification dated 14.9.2006?

C) Whether the impugned Project stands exempted from notification dated 14.9.2006 on account of EC granted on 28.11.2017 by the Pune Municipal Corporation?

Re: A) Jurisdiction and Limitation

10. Though during hearing no argument has been addressed on these issues by learned Counsel for the PP, we deal with the plea in the reply. It is submitted that the limitation commences from 14.5.2013 when permission for construction was granted while the application has been filed on 4.10.2019 which is beyond the limitation of five years under

section 15 of the NGT Act. As against this, the plea of the applicant is that the cause of action first arose on 23.5.2017 when threshold of more than 20000 sq mt construction was exceeded without EC and then on 28.11.2017 when the EC was taken from the PCMC instead of SEIAA as required under the EIA notification dated 14.9.2006. Further, the PCMC itself had laid down the requirement of EC from SEIAA which was violated only when construction exceeded 20000 sq mt on 23.5.2017. We thus do not find any merit that the limitation commenced on 14.5.2013 and the application is barred by limitation.

As regards the plea that the application is in substance appeal against order dated 28.11.2017 by PCMC beyond prescribed limitation of 30 days, we find that the cause of action pleaded by the Applicant is that the construction beyond 20000 sq mts is not legally permissible without impact assessment in terms of statutory requirement under notification dated 14.9.2006. Thus, there is no merit in the objection. Plea of jurisdiction is on same basis and can also not be accepted.

Re: **B) Permissibility of construction beyond 20000 sq mt without impact assessment under EIA notification dated 14.9.2006**

11. The project in question admittedly falls under entry 8(a) of the Schedule to the EIA notification dated 14.9.2006 which mandatorily requires prior EC. It has been held that prior EC by the specified authority is essential to enforce sustainable and precautionary principles which are part of life and to be statutorily enforced under section 20 read with section 15 of the NGT Act, 2010. The same cannot be replaced or relaxed except in accordance with the procedure under the EP Act and without due justification. In ***Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors.,*** (2020) SCC OnLine SC 347, it was observed:

"… For an action of the Central government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient ***"for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution".*** *The circular dated 14 May 2002 infact does quite the contrary. It purported to allow an extension of time for industrial units to comply with the requirement of an EC. The EIA notification dated 27 January 1994 mandated that an EC has to be obtained before embarking on a new project or expanding or modernising an existing one. The EIA notification of 1994 has been issued under the provisions of the Environment Protection Act 1986 and the Environment Protection Rules 1986, with the object of imposing restrictions and prohibitions on setting up of new projects or expansion or modernisation of existing project.* ***The measures are based on the precautionary principle and aim to protect the interests of the environment.*** *The circular dated 14 May 2002 allowed defaulting industrial units who had commenced activities without an EC to cure the default by an ex post facto clearance.* ***Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment.*** *The circular notes that there were defaulting units which had failed to comply with the requirement of obtaining an EC as mandated. The circular provided for an extension of time and inexplicably introduced the notion of an ex post facto clearance.* ***In effect, it impacted the obligation of the industrial units to be in compliance with the law****. The concept of ex post facto clearance is fundamentally at odds with the EIA notification dated 27 January 1994.* ***The EIA notification of 1994 contained a stipulation that any expansion or modernisation of an activity or setting up of a new project listed in Schedule – I"shall not be undertaken in any part of India unless it has been accorded environmental clearance". The language of the notification is as clear as it can be to indicate that the requirement is of a prior EC. A mandatory provision requires complete compliance. The words "shall not be undertaken" read in conjunction with the expression "unless" can only have one meaning: before undertaking a new project or expanding or modernising an existing one, an EC must be obtained. When the EIA notification of 1994 mandates a prior EC, it proscribes a post activity approval or an ex post facto permission. What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC****. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994.* ***The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section***

3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires."

12. It is for the same reasoning that this Tribunal vide judgment dated 8.12.2017 in OA No. 677/2016, *Society for Protection of Environment vs. Union of India & Ors.* held that the exemption notification dated 9.12.2016 could not be given effect to. By interim orders dated 21.12.2016 and 15.02.2017, it was made clear that actions under notification dated 9.12.2016 will be subject to final orders. The PCMC had also imposed condition of compliance with EIA notification dated 14.9.2006 for the project. Thus, the requirement of EC for the project is applicable. We will discuss the matter further in the later part of the order.

Re C): Whether the impugned Project stands exempted from notification dated 14.9.2006 on account of EC granted on 28.11.2017 by the Pune Municipal Corporation?

13. Learned Counsel for the PP submitted that since notification dated 9.12.2016 exempting requirement of consent to establish and EC in terms of notification dated 14.9.2006 was set aside by this Tribunal on 08.12.2017 and before that the applicant had already taken EC from the Pune Municipal Corporation on 28.11.2017, in terms of notification dated 9.12.2016, which has never been challenged, construction cannot be held to be illegal. Even the remaining construction cannot be stopped. Reliance has been placed on the Judgment of the Hon'ble Supreme Court in *Goan Real Estate and Construction Limited and Others v. Union of India through Secretary, Ministry of Environment and Others*, (2010) 5 Supreme Court Cases 388, as follows:-

"38. The contention raised on behalf of the respondents that the construction already completed would not be affected in any manner by decision of this Court tin Indian Council for Enviro-Legal Action[1] but incomplete construction cannot be permitted to be completed is

[1] (1996) 5 SCC 281

devoid of merits. ***Two amendments made in the year 1994 were declared to be illegal vide judgment dated 18-4-1996 [(1996) 5 SCC 281]. Till then, its operation was neither stayed by this Court nor by the Government. Therefore, a citizen was entitled to act as per the said notification. This Court finds that the rights of the parties were crystallised by the amending notification till part of the same was declared to be illegal by this Court. Therefore, notwithstanding the fact that part of the amending notification was declared illegal by this Court, all orders passed under the said notification and actions taken pursuant to the said notification would not be affected in any manner whatsoever."***

14. As against the above, learned counsel for the Applicant points out that interim orders passed by the Tribunal dated 21.12.2016 and 15.02.2017 in OA No. 677/2016, *Society for Protection of Environment vs. Union of India & Ors.* were operative which provided that any steps taken will be subject to further orders of the Tribunal. Further, as per ratio of the law laid down by the Hon'ble Supreme Court in *Alembic*, supra, requirement of EC dated 14.9.2006, could not have been dispensed with.

15. We have given due consideration to the rival submissions and find that the judgement relied upon by the project proponent is distinguishable. The law laid down by a Court is deemed to be the law even for past unless so stated by the judgement. We may refer to the legal position enunciated on this aspect in some judgements. In ***Suresh Chandra Verma (Dr) v. Chancellor, Nagpur University,*** **(1990) 4 SCC 55, at page 64, it was observed:**

"It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise"

Again**, in M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 at page 520**, it was observed:

"Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is

assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law……"

To the same effect is the judgement in *PV George v. State of Kerala* (2007) 3 SCC 557.

16. We may now consider the applicability of judgement in Goan Real Estate, supra relied upon by learned counsel for the PP. We may quote the discussion therein which is as follows:

"30. The tenor of the judgment indicates that this Court intended to give prospective effect to the judgment dated 18-4-1996 rendered in Indian Council for Enviro-Legal Action. *It is to be noted that this Court in its judgment dated 18-4-1996 had not specifically directed demolition of existing structures. It is also pertinent to note that this Court had not stated as to what will be the fate of ongoing constructions which were coming up or ongoing as per sanctions during the period when the said amending Notification dated 16-8-1994 was valid and in force. In view of the circumstances, now it has become essential to understand the real intention of this Court ingrained in the judgment dated 18-4-1996.*

31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. *A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved.* ***Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification****.*

32. *In para 39 of the judgment in Indian Council for Enviro-Legal Action, this Court considered the argument proposed by the learned Additional Solicitor General that construction has already taken place along such rivers, creeks, etc. at a distance of 50 metres and more. This plea was specifically answered by observing that even if this be so, such reduction would permit new constructions to take place and this reduction could not be regarded as a protection only to the existing structures.* ***Thus, on perusal of the above statement, it is clear that this Court had***

quashed the amendment because the amendment would permit new constructions to take place which was contrary to the provisions of the Environment (Protection) Act, 1986 and not because of the reason that there was evidence before the Court that constructions already made or ongoing pursuant to the plans sanctioned on the basis of the Notification of 1994 had, in fact, frustrated the object of the Act. Thus, para 39 clearly reflects intention of this Court that the Court wanted to give the judgment prospective effect. *On perusal of the judgment in entirety, it is abundantly clear that the judgment is in form of directions to the Central Government and other authorities formed within the purview of the Envvironment (Protection) Act, 1986 and those directions are to be followed in future.*

33. *While interpreting the judgment in Indian Council for Enviro-Legal Action, it is important to take into consideration the view expressed over the matter in controversy by various governmental authorities formed under the purview of the Environment (Protection) Act, 1986 to implement the provisions of the Environment (Protection) Act, 1986 although such view or opinion is not binding on the Court. By communications dated 24-1-2007, 13-2-2007 and 16-5-2007 issued by the Additional Director of Ministry of Environment and Forests and decision of the National Coastal Zone Management Authority dated 30-10-2007,* ***it is brought on record that all the authorities unanimously opined that judgment of this Court dated 18-4-1996 will operate prospectively*** *and further clarified that any developmental activity which has been initiated between 16-8-1994 and 18-4-1996 after obtaining all requisite clearances from the agencies concerned including the Town and Country Planning Authority should be construed as ongoing projects and are not hit by the judgment of this Court dated 18-4-1996.*

34. It is pertinent to note that while interpreting the judgment, public interest should be taken into consideration. In ECIL v. B. Karunakar this Court considered the factors which are to be taken into consideration while giving prospective operation to a judgment*. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the administration, ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise.*

35. The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the

judgment. *The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation.*

36. *It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. Taking into consideration all these factors, this Court refuses to interpret the 1996 judgment in a manner which would give it a retrospective effect. It is clear from the tenor of the judgment and from other background circumstances, more importantly in view of decisions of NCZMA which is a statutory body that the three-Judge Bench decision in 1996 case[1] intended to give it prospective effect.*

37. *The contention of Mr K.K. Venugopal, learned Senior Counsel for the respondents that decision should not have been taken by NCZMA on 30-10-2007 stating that all the properties and assets constructed or under construction during the period between 16-8-1994 and 18-4-1996 when the setback line stood changed from 100 metres to 50 metres, is valid and the said Authority should have directed the parties to approach the High Court for appropriate orders, cannot be accepted. As observed earlier, the whole matter was reconsidered by NCZMA pursuant to the order passed by the Division Bench of the Bombay High Court. It is well to remember that the said order was never challenged by the respondents before higher forum and by their conduct, the respondents had permitted the said order to attain finality."*

17. It is clear from the highlighted parts that the judgement does not lay down an absolute rule that if requirement of prior EC was once invalidly exempted, there is a vested right to avail such exemption. It depends on text and context of the judgment. The judgment relied upon is in a particular context, which is different from the situation at hand. Thus, the same is distinguishable and not applicable to the present scenario. Impact assessment cannot be dispensed with. It has to be carried out as per norms by the designated authority. As already observed, general principle is to apply a judgement retrospectively. Limiting its effect to future is only to avoid undue hardship and not as a principle. In the present case, except for considering hardship in moulding relief, we do not find any justification to hold that requirement of prior EC as per EIA notification dated 14.9.2006 is not applicable even for further constructions.

18. From tenor of judgment dated 08.12.2017, it is difficult to say that the judgment was meant to apply only for future. Reference may be made to the relevant extracts from the judgement to determine whether the same is intended not to be retrospective as per stand of the PP:

> ***"33. 1 xxx xxx xxx***
>
> ***2 ...(i) clause 14.8 (ii) the provisions relating to exclusion of Consent to Operate and Consent to Establish under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 in clause 14 of the impugned notification; (iii) Appendix – XVI relating to constitution and functioning of Environmental Cell, cannot be sustained and are liable to be quashed for the reasons afore-stated. Thus, we direct MoEF&CC to re-examine its Notification dated 9th December, 2016 and take appropriate steps to delete, amend and rectify the clauses of the said notification in light of this judgment.***
>
> ***3 ..... the byelaws amended by the DDA vide its Notification dated 22nd March, 2016 as amended in April 2017 can also not be given effect to, unless the Gazette Notification no. SO 3999 (E) dated 09th December, 2016 is amended in terms of this judgment."***

19. In the course of the judgment, the Tribunal inter-alia observed as follows:

> ***"DISCUSISON ON MERITS OF THE CONTENTIONS RELATING TO VALIDITY OF THE NOTIFICATION***
>
> *14. The draft Notification dated 29th April, 2016 was published by the Respondent inviting objections and suggestions thereto. After considering the objections/ suggestions received by the MoEF&CC, it had issued the final Notification dated 9th December, 2016. According to the Applicant, not only the Notification dated 9th December, 2016 but also the entire process of finalizing the Notification suffers from factual and legal infirmities. It is also the contention that it defeats the very object and purpose of the Act of 1986, EIA Notification of 2006 and is also opposed to the federal scheme under the Constitution of India. The detailed objections raised by the Applicant has already been noticed by us in paragraph no. 4 of the judgment (supra). According to the respondent, the notification does not suffer from any error much less legal infirmity or validity. The contentions of the respondents have also been noticed above. And within the ambit of the contentions raised before us, now, we will proceed to deliberate on these issues. First and foremost, we may refer to the comparative study of the existing and proposed regime in terms of the Notifications dated 14th September, 2006 and 9th December, 2016. The useful reference can be made to the following chart:*

Sl. No.	***Particulars***	***EIA Notification dated 14 September, 2006***	***EIA Notification dated 09 December, 2016***
1	*Consent to Establish & Operate*	*• Prior to the actual construction activities, the project proponent has to obtain Consent to Establish from the Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981for all construction projects having BUA above 20,000 m^2* *• After completion of the construction activity, the proponent has to obtain Consent to Operate from the Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981for all construction projects having BUA above 20,000 m^2.*	*• No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters*
2	*Construction projects having built up area below 20,000 m^2*	*• Projects having built up area below 20,000 m^2 not require prior environmental clearance from MoEF*	*• BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters) ¬ A Self declaration Form to comply with the environmental conditions (Appendix XIV– attached below) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts ¬ Thereafter, the local authority shall issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application ¬ After completion of the construction of the building, the project proponent may update*

			Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. ¬ Any noncompliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism
3	*Construction Projects having built up area above 20,000 m²*	*• An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant.*	*• The project proponent to submit online application in Form 1 A along with specified fee for environmental appraisal and additional fee for building permission ¬ the fee for environmental appraisal will be deposited in a separate account.* *• The Environment Cell will process the application and present it in the meeting of the Committee headed by the authority competent to give building permission in that local authority ¬The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission ¬After recommendations of the Committee, the building permission and environmental clearance will be issued in an integrated format by the local authority ¬The project proponent to submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters; 1.Energy Use (including all*

			energy sources) 2.Energy generated on site from onsite Renewable energy sources 3.Water use and waste water generated, treated and reused on site 4.Waste Segregated and Treated on site 5.Tree plantation and maintenance ¬ After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report ¬The State Governments may enact the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters ¬The Cell shall recommend financial penalty, as applicable under relevant State laws for noncompliance of conditions or parameters to the local authority. *• On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws ¬The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.*
4	*Built up Area considered for EC*	*• The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service area, which are proposed in the buildings and construction projects.*	*• The term "built up area" for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the buildings and construction projects*
5	*Monitoring of environmental compliances*	*• It was mandatory for the project proponent to submit compliance report every six months.*	*• Project proponent shall submit performance data & certificate of continued compliance of the project for the environmental conditions after completion*

			of construction every five years.
6	*Process of granting permission for construction and building projects*	*• Under 2006 notification prior Environment clearance from SEIAA was mandatorily required even before starting of the construction work or preparation of land. SEIAA was to screen scope and appraise projects before granting of environment clearance.* *• The environmental clearance process before SEIAA comprises of four stages, all of which may not apply to particular cases as set forth. These four stages in sequential order are:-* *• Stage (1) Screening (Only for Category 'B' projects and activities)* *• Stage (2) Scoping* *•Stage (3) Public Consultation* *• Stage (4) Appraisal*	*• Under 2016 notification Environmental conditions are to be imposed by Environmental cell at the level of local authority. The cell will then process the application and place it before the committee headed by the authority competent to give building permissions. The committee will then appraise the project and stipulate environmental conditions without any provisions of public consultation which is an integral part of 2006 notification.* *• Therefore, the environmental cells work under the building permit issuing authority therefore not a independent authority to impose environmental conditions. Moreover building permit authority is not a scientifically sound body as SEIAA or SEAC.*
7	*Environment Clearance Authority concerning Building and Construction projects*	*• Clearance was given after screening and appraising of the projects by government constituted bodies' i.e. SEIAA or SEAC who are independent bodies.*	*• Imposition of environmental conditions by local authority on the basis of assessment and certification by Qualified Building Environment Auditors (QBEAs) which could be a firm /Organization or an individual expert accredited by the accreditation authority.*
8	*Violation of environmental conditions*	*• Violation of environmental conditions and parameters are dealt under section 15 and section 19 of EPA, Act 1986.*	*• The state Government may enact suitable laws for imposing penalties for non compliance. The local Authorities shall impose penalties based on the recommendation of environmental cell of local body.*
9	*Qualification of Experts*	*• Multi sectoral / Multi disciplinary experts in SEAC.* *• Qualification as per the Appendix VI of the current EIA notification.*	*• Experts of limited sectors like Water, Air, Solid Waste, Energy and transport in environmental cell.*

From the above comparative study of the two regimes, it is clear that the regime in terms of the Notification dated 9th December, 2016 would considerably dilute the environmental safeguards provided not only under the Regulation of 2006 but even under the Act of 1986. The Applicants have rightly placed reliance on the Principle of Nonregression. Under the International law, the doctrine of Nonregression is an accepted norm. It is founded on the idea that environmental law should not be modified to the detriment of environmental protection. This principle needs to be brought into play because today environmental law is facing a number of threats such as deregulation, a movement to simplify and at the same time diminish, environmental legislation perceived as too complex and an economic climate which favours development at the expense of protection of environment. The draft amendment of the existing environmental laws should be done with least impact on environment protection that was available under the existing law or regime. The present amendment in the Notification particularly few clauses that we will refer hereinafter can lead to severe environmental impacts.

15. ***The Precautionary Principle as propounded by the Hon'ble Apex Court is a cornerstone of environmental jurisprudence in the country as the environmental conditions imposed are not comprehensive enough and are only a tick-box exercise taken by the project proponent without any prior environment assessment process especially its impact on ecologically sensitive area and other environmental vulnerable area.***

The impugned notification, takes away the power of the Pollution Control Boards and Committee to grant/refuse Consent to Establish and Consent to Operate for building and construction projects up to an area of 1,50,000 sq meter. It further dilutes the entire environmental assessment framework under the EIA notification 2006, which has been periodically strengthened and amended by the numerous orders of this Hon'ble Tribunal. The impugned notification has several deficiencies that go against the basic letter and spirit of EP Act, 1986 and the EIA notification issued there under. Power under Section 3 read with Rule 5 of Environment (Protection) Act, 1986 can only be exercised by the central government or the authorities constituted by it. Whereas the impugned notification gives power to the State Government for constitution of an authority to exercise and perform such of the powers and functions as provide under Environment Protection Act, 1986, which Includes assessment and granting of environment clearance to the projects. This would be apparently in conflict with the provisions of the Act of 1986. *In this regard reference can also be made to the judgement of the constitutional bench of the Hon'ble Supreme Court in the case of LIC v. Escorts Ltd., (1986) 1 SCC 264, where the Hon'ble Supreme Court held that it may be open to a subordinate legislating body to make appropriate rules and regulations to regulate the exercise of a power which the Parliament has vested in it, or as to carry out the purposes of the legislation, but it cannot divest itself of the power.*

It is further stated that these conditions fall substantially below the prior environmental assessment procedure which was much detailed and brought within EIA framework after the direction of the Hon'ble Supreme Court in the Maily Yamuna Case (W.P.C No. 725 of 1994).

16. The impugned notification provides that the local authorities such as the development authorities and Municipal Corporation may certify compliance of Environmental Conditions prior to issuance of completion certificate based on recommendations of the Environmental Cell to be constituted in the local authority. Further, the purpose of notification regarding integration of environmental conditions, the MoEF&CC through competent agencies would accredit Qualified Building Environmental Auditor (QBEA's) to assess and certify the building projects. It is clear from the above that the entire assessment procedure has been replaced over which the MoEF&CC has no control.

17. ***The MoEF&CC has failed to produce any study, literature, evaluation of the reason for taking such a retrograde decision to go back to a pre-2004 situation wherein the failure of the local bodies was considered to be the primary reason for bringing building and constructions activity within the EIA framework. In pre-2004 the position was that the construction sector projects were only regulated through Bye Laws and no Environmental Clearance was required.***

18. The proposal for exemption of Environmental Clearance for construction and building project with built-up area to 1,50,000 Sq mtrs. is baseless as there is no study that indicates any improvement in environment quality with regard to all environmental facets/ availability of natural resources, following which there can be a consideration for relaxation of current norms.

The said amendment notification is only a ploy to circumvent the provisions of environmental assessment under the EIA Notification, 2006 in the name of 'ease of doing responsible business' and there is no mechanism laid down under the amendment notification for evaluation, assessment or monitoring of the environment impact of the building and construction activity. The construction industry consumes enormous resources and has a significant energy footprint; the sector emits 22 per cent of India's total annual carbon-dioxide emission. *The Hon'ble Tribunal in the matter of S.P. Muthuraman vs. Union of India & Anr. (supra) Observed:*

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

In this scenario, it is necessary to critically assess the utilization of natural resources in these activities."

19. ***The very purpose of including the construction projects in the EIA Notification was the failure of the local bodies to ensure compliance with environmental norms. The ULB's/DA's have always had specific stipulation on environmental concerns. However, such conditions were never adhered to or made a pre-requisite to such sanction. It was therefore the case of MoEF&CC that the local body have been approving new construction projects without adhering to environmental norms. Now, the MoEF&CC itself is taking a step in backward direction without there being any changes brought about in the capacity and technical competence of the local body to assess, evaluate and monitor the environmental norms or to ensure compliance****.*

20. The EIA Notification, 2006, has a comprehensive process for evaluating the impact on environment which will not be the case after the said notification. For instance, the EIA Notification, 2006 provides Expert Appraisal Committee at the Centre and the State Expert Appraisal Committee at the State level. The composition of these committees comprises as per Appendix-VI to EIA Notification, 2006 of independent experts, such as, Environment Quality Expert, Sectoral Expert in Project Management etc. But as per the amendment notification the same local body which is responsible for the stipulation of the condition would be responsible for ensuring the compliance of the same with the help of Environmental cell and QBEAs. This is in contravention of the principle of nemo judex in sua causa, which is a principle of natural justice, meaning that a person cannot be judge of his own cause. Also, there is no technical expertise or competence within the local bodies to either evaluate impact or to ensure compliance of environmental conditions.

As per the EIA Notification 2006, clause 1.3 states "what are the likely impacts of the proposed activity on the existing facilities adjacent to the proposed site? (Such as open spaces, community facilities). But as per the amended notification of 2016, no such provision is laid down.

21. This Hon'ble Tribunal in O.A. No. 171 of 2013 (NGT Bar Association vs. MoEF) vide Order dated 13.01.2015 stated "We direct Secretary, MoEF along with such experts and the States Afore referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels to ensure easy accessibility to encourage the mine holders to take EC". Similarly, the O.M. dated 19.06.2013 states that "In case of a large pendency case the concerned state Government feels that there is need for another SEAC, the State Government may accordingly send the proposal to MoEF&CC for setting up/notifying another SEAC and MoEF may consider the same". However instead of adhering to their own O.M.'s and the categorical judgement of this Tribunal, they have chosen to completely dilute EC process and violate the EIA Notification, 2006 and thereby Act of 1986.

22. ***A bare perusal of amendment notification would show that there is complete dilution of the norms as provided under the EIA Notification, 2006. For instance, totality of issues related to conservation of water is completely ignored for building of built-up area up to 2000 sq.mtr. There is no sewage treatment or municipal solid waste processing facilities stipulated within the premises for building up to 2000 sq. mtr. of built up area.***

23. The MoEF&CC has failed to fulfil its statutory responsibilities. By transferring the powers to ULBs/ Development Authority, it has created a situation of conflict of interest as all the powers have been vested with the same authority. National documents (CAG Report, 2016) also discourage such an integration of environment condition to the sanctioning authority under the urban local bodies instead of independent assessment by environmental experts of building and construction projects. Thus, for example, the report by Comptroller and Auditor General of India (CAG Report, 2016) clearly states that urban local bodies have not been performing on environmental parameters. In most compliance audit, the environmental parameters including MSW, Waste minimisation, e-waste etc have been grossly violated.

It is submitted that on para wise comparison of the draft notification and final notification are entirely different. The main addition which were not part of draft notification but found place in the final notification are as follows:

- *Consent to establish and Consent to Operate under Water Pollution Act, 1974 and Air Pollution Act, 1981 will not be required from SPCB for residential buildings up to 1,50,000 sq.m.*
- *Stripping of building construction projects of built up area of 20,000 sq.m upto 1,50,000 sq.m. from the purview of EPA Act, 1986 and bringing under the concerned State Laws.*
- *The draft Notification specifically mentions that the exclusion/amendments mentioned in the draft notification are not intended for hospitals whereas the final notification clearly excludes hospitals also from the purview of EIA Notification and EPA Act, 1986.*
- *Addition of Appendix-XV, Accreditation of Environmental Auditors. (qualified Building Auditors).*
- *Addition of Appendix-XVI, Environmental Cell at the level of Local Authority.*

When the residential building construction projects of built up area more than 20,000 sq. m up to 1,50,000 sq.m are excluded from the requirement of "Consent to Establish" or "Consent to Operate" then these building construction projects will be out of the purview of these statutes, what will be the relevance of CPCB norms and this will encourage indiscriminate discharge of untreated sewage into river and drains.

24. In the said notification, there is no definition of "Area". In the absence of such a definition, the "Area" can be for the whole of the State or District or Region. In this connection, attention is brought to

the EIA Notification, 2006 wherein the word "area" was introduced. There was no definition of "built up area" in the impugned Notification and which leads to confusion in the building construction sector.

The said notification is contrary to the recommendations of the report of the committee constituted by MoEF&CC on 11.12.2012 (The Kasturirangan report) to review the provisions of EIA Notification, 2006 relating to buildings, etc which was then accepted by MoEF&CC. The MoEF&CC vide OM dated 10.11.2015, reiterated and vetted the recommendations of Kasturirangan Committee among other things. If the MoEF&CC is now changing its stand, it is duty bound to produce back-up study or research material to prove that the local bodies have concern towards environment.

25. Besides noticing the above-mentioned deficiencies in and dilutions of the existing laws by the impugned Notification, we must also notice a very strong legal infirmity in it. Admittedly, the notification has been issued by the MoEF&CC in exercise of its powers under sub-section (1) read with clause (V) of sub-section (2) of Section (3) of the Act of 1986 and clause (d) of sub-rule (3) of Rule (5) of the Environment (Protection) Rules, 1986. By the impugned Notification, paragraph 14 is sought to be inserted after paragraph 13 of the existing Notification/Regulations of 2006. The powers under these provisions can be exercised under Section 3(2)(V) of the Act of 1986 which empowers the Central Government to take measures to protect and improvement of the quality of environment in regard to restrictions of areas in which any industry/operations or process or class of industries operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In terms of section 3 (1)of the Act, this power of taking measures is to be exercised by the Central Government when it deems necessary and expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution (emphasis supplied). Rule 5 deals with the prohibition and restriction on the locations of industries and the carrying on process and operations in different areas. It gives power to the Central Government to take into consideration the factors while prohibiting or restricting the locations of industries and carrying on of process/operations in different areas. Sub-rule 3 of this Rule contemplates the procedure to be followed by the Central Government while issuing the notification for imposing prohibition or restriction as stated in Sub-rule (1) of Rule 5.

Thus, both the sections and the rule gives power for issuing of any notification and placing prohibition / restriction in their terms, subject to the conditions, i.e., while issuing notification the procedure under Rule 5 (3) should be followed and more importantly it should be exercised only for the purpose of protecting and improving the quality of the environment and preventing pollution. Once any of these essential statutory features are missing the notification issued would be liable to be interfered with. The major part of the Notification does not satisfy these ingredients.

26. The amended clause 14 while dealing with the other building category more than 20000 sq. meter also provides that no Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution)

Act, 1981 will be required from the State Pollution Control Boards for residential buildings upto 150000 sq. meter. This amendment is exfacie opposed to the above objects and in fact lacks legislative competence. While exercising powers under a subordinate legislation in furtherance to Section 3 and Rule 5, the authority cannot in exercise of its subordinate legislation exclude the operation of a substantive law that is Water Act, 1974 and Air Act, 1981 enacted by the Parliament. This would suffer from the vires of excessive legislation. It is strange that the MoEF&CC, a delegatee under the said provision could venture upon excluding the application and enforcing of a Parliament Act without even making any amendment under that act or the rules framed under that act. This action of the MoEF&CC cannot stand the scrutiny of law.

27. The Environmental Cell is to be constituted by the local authority or the State Government, whereas the implementation of the environmental law is vested with the Central Government. The Environmental Clearance is expected to be issued by the authorities in an integrated format. Any offence or violation thereto which is punishable under the Act of the Parliament, i.e., the Act of 1986 thus subordinate legislative amendment takes away that power and requires a local authority to take precedence in relation to providing punishment for such violation or offence. There is clear ambiguity and uncertainty in the Constitution of the Environmental Cell and its functions. There is no clarity as to the qualification which the Member of the Environmental Cell should possess. A Cell, primary duty of which is to protect the environment would have to work in subordination to a local authority whose primary object is to permit development. Thus, the possibility of conflicting interest arising in the functioning of the local authority and the Environmental Cell cannot be ruled out. It may arise even then thus defeating the very purpose of the amendment."

It is clear from the above that that the judgment was not intended to operate only prospectively. At best, its applicability could be excluded from the constructions already made as per the exemption notification regime if such construction is compliant with environmental norms. The Maharashtra Government clarified on 29.01.2018 that in view of judgment of the NGT dated 08.12.2017, building projects having more than 20000 sq. mts. are to be not dealt with under the EIA Notification dated 09.12.2016. The State PCB gave a notice to the PP for violation of the Water and the Air Acts for not obtaining the Consents to Establish and Operate on 01.09.2018 to which the PP gave reply. Consent to Establish was granted on 04.05.2019 but show cause notice was given on 15.06.2019 that construction without EC was illegal to which the PP gave reply that

construction having been undertaken prior to the judgment of the NGT, the same could not held to be illegal in view of the judgment of the Hon'ble Supreme Court in *Goan Real Estate and Construction Limited and Others v. Union of India through Secretary, Ministry of Environment and Others*, (2010) 5 Supreme Court Cases 388. It is, thus, not possible to hold that the judgement of the tribunal was not to apply to the projects for which EC had been issued by the Municipal Corporation as per notification dated 9.12.2016 which was set aside by this Tribunal. At best, constructions already raised can be saved. There cannot be in the circumstances right to raise further constructions without environment impact assessment. This interpretation is also supported by the ratio of judgement of the Hon'ble Supreme Court in *Alembic Pharmaceuticals Ltd,* supra.

20. Accordingly, having regard to the facts of the present case and in endeavour to balance the perceived hardship to the PP for the constructions already carried out on the one hand and the public interest of enforcing the environmental law on the other, we direct that while no coercive action may be called for in respect of construction prior to 8.12.2017 except for enforcing environmental norms, construction thereafter be permitted only after the statutory EC and other requirements as per law. The statutory authorities may proceed in the matter accordingly.

The application is disposed of.

A copy of this order be forwarded to the CPCB, State PCB, SEIAA and Pune Municipal Corporation by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

January 18, 2021
Original Application No. 83/2019(WZ)
(I.A. No. 129/2019)
SN