

**BEFORE THE NATIONAL GREEN TRIBUNAL
(PRINCIPAL BENCH), NEW DELHI**

**Appeal No. 43 (T_{HC})/2013
(W.P. No. 15441/2010 of Calcutta HC)**

And

**Appeal No. 44 (T_{HC})/2013
(W.P. No. 20645/2010 of Calcutta HC)**

And

**Appeal No. 45 (T_{HC})/2013
(W.P. No. 2655/2007 of Calcutta HC)**

And

**Appeal No. 52 (T_{HC})/2013
(W.P. No. 11626/2011 of Calcutta HC)**

And

**Appeal No. 53 (T_{HC})/2013
(W.P. No. 11626/2011 of Calcutta HC)**

21ST AUGUST, 2013

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. G.K. Pandey
(Expert Member)**
- 3. Hon'ble Prof. A. R. Yousuf
(Expert Member)**
- 4. Hon'ble Shri B.S. Sajwan
(Expert Member)**
- 5. Hon'ble Dr. R.C. Trivedi
(Expert Member)**

**Appeal No. 43 (T_{HC})/2013
(W.P. No. 15441/2010 of Calcutta HC)**

**Biswanath Mondal
V/s
State of West Bengal & Ors.**

B E T W E E N:

1. Biswanath Mondal,
son of Naren Mondal,
Residing at Village and Post Office
Naridana, P.S. – Baruipur,
South 24 (Parganas), West Bengal

....Appellant

A N D

1. The State of West Bengal
through the Principal Secretary,
Department of Environment,
having his Office at
“ Writers’ Building”,
Kolkata- 700 001.
2. Chief Environment Officer,
Department of Environment,
Government of West Bengal,
Blok- G, 2nd Floor, Writers’ Building,
Kolkata- 700 001.
3. West Bengal Pollution Control Board,
“ Paribesh Bhawan”, 10A,
Block-LA, Sector-III
Salt lake, Kolkata- 700 098
4. Commissioner of Police, Kolkata,
Having its office at Kolkata Police
Head Quarter at Lalbazar, Kolkata.

.....Respondents

AND

**Appeal No. 44 (T_{HC})/2013
(W.P. No. 20645/2010 of Calcutta HC)**

**International Marwari Association & Anr.
V/s
West Bengal Pollution Control Board & Ors.**

B E T W E E N:

1. The International Marwari Association

Office at 8, Ho Chi Minh Sarani,
Kolkata 700071.

2. Indra Mohan Nemani

Residing at 8, Ho Chi Minh Sarani,
Kolkata 00071.

.....Appellants

AND

1. The West Bengal Pollution Control Board

Office at Pribesh Bhavan, 10A,
Block LA, Sector III, Salt Lake,
Kolkata 700098

2. The State of West Bengal

Through the Principal Secretary,
Department of Environment,
Office at Pribesh Bhavan, 10A,
Block LA, Sector III, Salt Lake,
Kolkata 700098

3. The Chief Environment Officer

Through the Principal Secretary,
Department of Environment,

Block "G", 2nd floor, Writers Building
Kolkata 700001

4. The Member Secretary

West Bengal Pollution Control Board
Through the Principal Secretary,
Department of Environment,
Office at Pribesh Bhavan, 10A,
Block LA, Sector III, Salt Lake,
Kolkata 700098

5. Commissioner of Police

Office at Kolkata Police head Quarter
at Lalbazar, Kolkata 700001

.....Respondents

AND

**Appeal No. 45 (T_{HC})/2013
(W.P. No. 2655/2007 of Calcutta HC)**

**Pradesh Atasbazi Byabsae Samity & Anr.
V/s
West Bengal Pollution Control Board & Ors.**

B E T W E E N:

1. Pradesh Atasbazi Byabsae Samity,
A Society registered under the
West Bengal Societies
Registration Act 1961 and
having its registered office at
Village: Gobourjhuree (Natun Pole), PO:
Buita, PS: Budge Budge District:
South 24 Parganas, Pin- 700137;

2. Yeakub Kazi, The Secretary,
Pradesh Atasbazi Byabsae Samity
Having his office at Village:
Gobourjhuree (Natun Pole), PO:
Buita, PS: Budge Budge District:
South 24 Parganas, Pin- 700137;

.....Appellants

AND

1. West Bengal Pollution Control Board,
“Paribesh Bhawan”, 10 A, Block – LA,
Sector-III, Salt Lake, Kolkata –
700098;
2. The Senior Environmental Engineer,
West Bengal Pollution Control Board,
“Paribesh Bhawan”, 10 A, Block – LA,
Sector-III, Salt Lake, Kolkata –
700098;
3. The Senior Law Officer,
West Bengal Pollution Control Board,
“Paribesh Bhawan”, 10 A, Block – LA,
Sector-III, Salt Lake, Kolkata –
700098;
4. Chief Environment Officer,
Department Of Environment,
Government of West Bengal,
Block – G, 2nd floor, Writers
Buildings, Kolkata – 700001;

5. The Member Secretary,

West Bengal Pollution Control Board

“Paribesh Bhawan”, 10 A, Block – LA,

Sector-III, Salt Lake, Kolkata –

700098;

6. Joint Chief Controller Explosives,

East Circle, Department of Explosives,

Kolkata having his office at 8,

Esplanade East, Kolkata – 700069;

.....Respondents

AND

**Appeal No. 52 (T_{HC})/2013
(W.P. No. 11626/2011 of Calcutta HC)**

**Pradesh Atasbazi Byabsae Samity & Anr.
V/s
State of West Bengal & Ors.**

B E T W E E N:

1. Pradesh Atasbazi Byabsae Samity,

A Society registered under the

West Bengal Societies

Registration Act 1961 and

having its registered office at

Village: Gobourjhuree (Natun Pole), PO:

Buita, PS: Budge Budge District:

South 24 Parganas, Pin- 700137;

2. Yeakub Kazi, The Secretary,

Pradesh Atasbazi Byabsae Samity

Having his office at Village:

Gobourjhuree (Natun Pole), PO:
Buita, PS: Budge Budge District:
South 24 Parganas, Pin- 700137;

.....Appellants

AND

1. The State of West Bengal

Through the Principal Secretary,
Department of Environment,
Office at Writers Building, B.B.D. Bag,
Kolkata 700001

2. West Bengal Pollution Control Board,
“Paribesh Bhawan”, 10 A, Block – LA,
Sector-III, Salt Lake, Kolkata –700098;

3. Chief Environment Officer,
Department Of Environment,
Government of West Bengal,
Block – G, 2nd floor, Writers
Buildings, Kolkata – 700001;

4. Commissioner of Police, Kolkata
Office at Kolkata Police head Quarter
at Lalbazar, Kolkata 700001

.....Respondents

AND

**Appeal No. 53 (T_{HC})/2013
(W.P. No. 11626/2011 of Calcutta HC)**

**International Marwari Association & Anr.
V/s
West Bengal Pollution Control Board & Ors.**

B E T W E E N:

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Office at 8, Ho Chi Minh Sarani,

Kolkata 700071.

2. Indra Mohan Nemani

Residing at 8, Ho Chi Minh Sarani,

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A N D

1. The West Bengal Pollution Control Board

Office at Pribesh Bhavan, 10A,

Block LA, Sector III, Salt Lake,

Kolkata 700098

2. The State of West Bengal

Through the Principal Secretary,

Department of Environment,

Office at Pribesh Bhavan, 10A,

Block LA, Sector III, Salt Lake,

Kolkata 700098

3. The Chief Environment Officer

Department of Environment,

Government of West Bengal

Block "G", 2nd floor, Writers Building

Kolkata 700001

4. The Member Secretary

West Bengal Pollution Control Board

Office at Pribesh Bhavan, 10A,

Block LA, Sector III, Salt Lake,

Kolkata 700098

5. Commissioner of Police

Office at Kolkata Police head Quarter

at Lalbazar, Kolkata 700001

.....Respondents

Advocates appeared:

Applicant / Appellant : Mr. U. Hazarika, Sr. Advocate along with Mr. Subhasish Bhowmick, Advocate for the Appellants

Respondent No. 1,2&4 : Mr. Bikas Kar Gupta, Adv. (in Appeal No. 43(T_{HC})/2013)

Respondent No. 2,3&5 : Mr. Bikas Kar Gupta, Adv. (in Appeal No. 44(T_{HC})/2013)

Respondent No. 4 : Mr. Bikas Kar Gupta, Adv. (in Appeal No. 45(T_{HC})/2013)

Respondent No. 1 &4 : Mr. Bikas Kar Gupta, Adv. (in Appeal No. 52(T_{HC})/2013)

Respondent No. 2,3 &5 : Mr. Bikas Kar Gupta, Adv. (in Appeal No. 53(T_{HC})/2013)

Respondent No. 3 : Mr. Amit Agrawal, Adv. (in Appeal No. 43(T_{HC})/2013)

Respondent No. 4 : Mr. Amit Agrawal, Adv. (in Appeal No. 44(T_{HC})/2013)

Respondent No. 1,3,5 : Mr. Amit Agrawal, Adv. along With Asha Nayar Basu, Adv. (in Appeal No. 45(T_{HC})/2013)

Respondent No. 2 : Mr. Amit Agrawal, Adv. (in Appeal No. 52(T_{HC})/2013)

Respondent No. 1,4 : Mr. Amit Agrawal, Adv. (in Appeal No. 53(T_{HC})/2013)

COMMON J U D G M E N T

By this common judgment, bunch of above noted Original Applications (though erroneously registered as appeals) is being decided together. All the above noted Applications are of similar nature and the *lis* is the same one. Therefore, in order to avoid overlapping discussion, findings and repetitions, by consent of the Learned Counsel for the parties, all of them were clubbed together and Appeal No. 53(THC)/2013 was treated as the leading case.

2. The Applicants filed separate Petitions under Article 226 of the Constitution in the Hon'ble High Court at Calcutta in its constitutional writ jurisdiction. They mainly challenged fixation of lower noise level impulse at 90 dB(A) at 5 meters from source for manufacturing and sale of firecrackers instead at 125 dB(A) at 4 meters from source which is prescribed by the Ministry of Environment & Forests (MoEF) vide Notification dated 05.10.1999. They further sought more liberally fixed standards of noise level for firecrackers in keeping with the maximum limit provided at serial no. 89 of Schedule -1 appended to Environment (Protection) Rules, 1986. They challenged West Bengal Pollution Control Board's Order dated 03.10.1997 as well as the Notification of the MoEF [No. EN/3346/T-IV-6/001/2007(Pt. II)] issued on 29.12.2009. Incidentally, they also sought injunction restraining the WBPCB and others from giving effect to the impugned Notifications. However, the incidental relief sought by them is not now the

subject matter of controversy for the purpose of adjudication of the questions involved in the present Applications, since it has been given go by for the present inasmuch as the Counsel did not insist for such a relief.

3. The litigation, as projected through the bunch of the applications, has got a chequered history, which goes back to 1985. The Applicants in the leading case is Association of traders and some manufactures, dealing in manufacturing firecrackers in the State of West Bengal. Respondent No. 1 is West Bengal Pollution Control Board (for short, WBPCB). Respondent No. 2 is the State of West Bengal (for short, State). Respondents No. 3 to 5 are officials of the State attached to the Department of Environment, Government of West Bengal and Police Commissioner's Office.

4. The case put forth by the Applicants may be stated in the following way:

The Applicants and a large number of public members celebrate "Diwali" festival with lights and firecrackers. It is also traditional that there is celebration of Durga Pooja, Kali Pooja and other festivals. Those are also celebrated by using firecrackers. In "*Om Birangana Religions Society Versus the State of West Bengal &Ors.*" **WP (CO)No. 4303 9W0 of 1995**, certain restrictions were imposed by the Hon'ble High Court of Calcutta on the use of loudspeakers, firecrackers, etc. The Hon'ble High Court directed that WBPCB shall take suitable measures to stop creating sound pollution means, other than the

microphones, such as use of electric air horns of public vehicles, fireworks and other sources of sound nuisance. On further request, by order dated 23.05.1997, the Hon'ble High Court of Calcutta modified its earlier order and permitted manufacturing of firecrackers which were meant for sale outside the State of West Bengal. At the same time, the Hon'ble High Court clarified that in case of violation of the order, the police authorities may seize and confiscate the fireworks and raw material used in the manufacture of such firecrackers. It was further re-iterated by the Hon'ble High Court vide order dated 10.06.1997 that the fireworks (crackers) which were banned should not be permitted to be used in any part of the State of West Bengal. Though, they could be sold or dispatched to other states where there is no restriction for use thereof. Thus, the fireworks generating ambient noise over and above 65 dB(A) was declared as unfit for manufacturing, trading and use. A memo dated 28.10.1996 was accordingly issued by the Member Secretary of WBPCB.

5. The matter did not stop at that place. Subsequently, Burabazar Dealers Association filed a writ petition bearing WP No. 2725/1996. The Hon'ble High Court of Calcutta gave certain directions including a direction that maximum permissible noise level of the firecrackers at the time of bursting shall be 90 dB(A) impulse noise at 5 meters from the source. In pursuance to such directions, WBPCB passed impugned order dated 03.10.1997 bearing Memo No. 721(1).-13/WPB-Q/96. The relevant part of the impugned order is as follows:

“(i). The maximum permissible noise level of the fireworks at the time of bursting is fixed upto 90 dB(A) impulse noise at 5 meters from the source.

“(ii). All the fireworks which produce or create noise at the time of bursting more than 90 dB(A) impulse noise at 5 meters from the source should not be allowed to be used or sold within the State of West Bengal.”

6. In *“M/s Mohan fire Works and Another Versus State of West Bengal &Ors.”* the Hon’ble Supreme Court of India dealt with issue of said directions of the Hon’ble High Court in *“Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.”* That SLP No. 19169 of 1997 came to be dismissed. It is pertinent to mention here that while dismissing that SLP, Hon’ble Supreme Court observed : *“we approve the view taken by the Calcutta High Court in the impugned judgment and the directions given therein regarding fixing of the noise limit. The special leave petition is dismissed.”*

7. Needless to say, the challenges made by various traders and a society of the traders, including Burrabazar Association, had failed. Subsequently, by order dated 27.09.2001, Hon’ble Supreme Court allowed use of the firecrackers generating the noise level upto 125dB(A-I) or 145 dB(C)pk at 4 meters distance from the point of bursting and prohibited any use of firecrackers beyond the above limit of decibels. However, it was by way of interim order dated 27.09.2001 in WP (C) No. 72/1998 that such interim directions

were given by the Hon'ble Supreme Court. However, the Apex Court disposed of that SLP with observations that the issue may be re-examined by the Hon'ble High Court.

8. Reverting to the earlier writ Petitions decided by the Hon'ble High Court of Calcutta vide order dated 26.09.1997 (Annex P-2), it will be useful to reproduce relevant direction given by the Hon'ble High Court.

It was directed:-

“Accordingly we direct the West Bengal Pollution Control Board with the expert committee already appointed, to take a decision on this question after considering all the aspects of the matter including the suggestions and the recommendations made by the National Committee on Noise Pollution Control and after giving hearing to the Applicants”

,..... “And also after considering the view of the experts and views of Dr. Abirlal Mukherjee, shall pass an order fixing the sound level of fireworks in the State of West Bengal.”

(Emphasis Supplied)

9. As stated before, taking cue from the above directions, the WBPCB passed impugned order dated 03.10.1997 whereby maximum noise level from fire crackers was fixed at 90 dB(A-I) at 5 meters distance from the point of bursting. The manufacturing of firecrackers which would produce sound of more than 90 dB(A-I) was thus banned. The restrictions were clamped on the

Applicants for manufacturing and sale of the firecrackers which created sound of 90dB(A-I) at 5 meters from the point of bursting. It appears that National Committee on Noise Pollution Control had conducted four meetings for dealing with the issue of Noise caused by firecrackers. In the fourth (4th) meeting dated 18.09.1998, the National Committee on Noise Pollution Control (NCNPC) discussed various study reports on the noise level of firecrackers. The National Committee on Noise Pollution Control recommended that maximum noise level upto 125dB(A-I) at 4 meters from the point of bursting may be proper. The recommendations of the National Committee on Noise Pollution Control, ultimately, were approved. Therefore, Notification dated 05.10.1999 was issued by the MoEF in exercise of its powers under Section 6 and Section 25 of the Environment (Protection) Act, 1986. The matter did not stop there. The order dated 03.10.1997 and the Notification dated 05.10.1999 were again subjected to challenge in I.A. Nos. 57-58 and 60-61 in W.P. No. 72/1998 which was pending before the Hon'ble Supreme Court. By order dated 13.09.2010, the Hon'ble Supreme Court held that the order dated 03.10.1997 issued by the WBPCB and the Notification issued by the MoEF under provisions of the Environment (Protection) Act, 1986 need to be reconciled. It was observed:-

“If the two are irreconcilable, then the effect shall be decided by the High Court. Accordingly, we direct the Petitioners – Applicant(s) to move the High Court under Article 226 of the Constitution, if so advised.”

10. Advised so were they and as such the bunch of writ petitions had been filed by them in the High Court of Calcutta. Those petitions are transferred to this Tribunal.

11. According to the Applicants, ambient air quality standards do not apply to firecrackers and pollution in the context thereof. The impugned order is without any logical basis and the Notification issued by the MoEF is without application of mind. No research and empirical study was conducted by the WBPCB for fixing noise level at 90dB(A-I). The WBPCB failed to consider the import of the earlier orders for various Hon'ble High Courts. Though, in the fourth (4th) meeting, the National Committee came to the common conclusion that standard for firecrackers could be 125 dB(A-I) with impulse level of 4 meters from the source, yet, without considering such decision, the WBPCB simply stuck to the order of the Hon'ble High Court of Calcutta dated 26.09.1997. Though the Hon'ble High Court and the Apex Court permitted flexibility in the noise level for firecrackers. The Applicants have come out with a case that the Members of the WBPCB did not ascribe tangible reasons, founded on scientific study reports, to lower down the noise level of firecrackers at 90dB(A-I) impulse at 5 meters distance from the source. The reasons stated in the minutes of the meeting are generic in nature and are not backed up by any scientific study. It is for such reason that the impugned order of the WBPCB is invalid and liable to be quashed. So also, the Notification issued by the MoEF is illegal and deserves interference because it also

does not indicate basis for fixing of the standards as enumerated therein.

12. According to the Applicants, it was necessary for the WBPCB to examine whether the impugned order dated 03.10.1997 ought to be reconciled in the light of MoEF Notification dated 05.10.1999 and accordingly it should have been amended by issuing a fresh Notification in keeping with the required higher norms of 125dB(A-I). It is further alleged that the impugned order of the WBPCB is arbitrary. It is pointed out that Dr. Abirlal Mukherjee represented the State of West Bengal as an expert and gave his opinion in the meetings of the National Committee. His opinion was also not taken into account by the WBPCB. The Hon'ble Supreme Court has fixed noise standards of 125dB(A-I) with impulse level at 4 meters from the source vide the interim order dated 27.09.2001 (Annex-P-9). In spite of clear directions of the Hon'ble Supreme Court, the WBPCB has not withdrawn the illegal order nor the MoEF has revised its impugned Notification. Feeling aggrieved by cracking of whip on manufacturing and trading of firecrackers, the Applicants again had approached the Hon'ble High Court. As stated before, the Writ Petitions are transferred to this Tribunal.

13. The WBPCB and the other Respondents denied all the material averments made by the Applicants. It is the stand of the WBPCB that in accordance with the Rule-3(2) of the Environment (Protection) Rules, 1986, it has power for providing stringent standards from those provided in the Schedules (I) to

(IV) in respect of any specific industry, operation or process. It is averred that sufficient reasons have been recorded as to why the WBPCB desired to specify more “stringent standards” for the firecrackers in the State of West Bengal. The WBPCB submitted that lower standards of noise level in context of the firecrackers is desirable in view of thickly populated areas of Kolkata. The WBPCB supported the order dated 03.10.1997 on the basis of observations made by the Hon’ble High Court of Calcutta in W.P. No. 2725/1996 (*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*) and WP No. 4303(W) of 1995 (*OM Birangana Religious Society Vs. The State of West Bengal & Ors.*). The MoEF supported its Notification dated 05.10.1999 as being legal and proper in view of the powers available to the authority under Section 6 and Section 25 of the Environment (Protection) Act, 1986.

14. It is urged that under Section 3(2) of the Environment (Protection) Act, 1986 such standards for emission or discharge of environmental pollutants from various sources may be fixed by the Government in order to prevent environmental pollution. It is pointed out that sound is included under the Air (Prevention and Control of Pollution) Act and, therefore, the control of excessive limit of such pollutant is within powers of the SPCB under Section 17 of the Air Act, 1981.

15. It is averred that the WBPCB duly considered all the reasons in its meeting dated 02.11.1999 for the purpose of

reconciliation of the orders of the Hon'ble High Court and the MoEF Notification. The WBPCB held as follows:-

“Therefore, taking all the above factors into account the Board is pleased in exercise of its powers under Rule 3(2) of Environment (Protection) Rules, 1986 to ban sale or use of firecrackers generating noise level exceeding 90 dB(A) impulse at a distance of 5 meters from the source and so specifically ban sale or use of the following firecrackers generating noise level exceeding 90 dB(A) impulse at a distance of 5 meters from the source and to specifically ban sale or use of the following firecrackers which have been tested by the Board and found to exceed the said noise level:-

- i. Chocolate Bomb*
- ii. Chain cracker*
- iii. Loose cracker*
- iv. Kali Patka*
- v. Dhani Patka*
- vi. Dodoma*
- vii. Seven shot*
- viii. Rocket Bomb*

and similar noise making fire cracker by any other name.”

Thus, the Respondents supported the impugned order of the WBPCB on the basis of directions of the Hon'ble Calcutta High Court. In this view of the matter, they sought dismissal of the Applications.

16. On behalf of the Appellants, Learned Senior Counsel Mr. U. Hazarika argued that the limit of 90dB(A-I) for firecrackers only for State of West Bengal is impermissible having regard to national norms of 125dB(A-I). He further argued that the State of West Bengal could not have given goby

to the ultimate decision arrived at in the fourth (4th) meeting of the NCNPC and the State Boards. He points out that expert representative of State of West Bengal was present in the relevant meetings and therefore, according to him, the State of West Bengal is stopped from fixing the lower limit of decibels for firecrackers. His further contention is that Rule 3(2) of the Environment (Protection) Rules, 1986 is not strictly followed by the WBPCB. According to the Learned Senior Counsel, Rule 3(2) is enabling provision but it may be invoked only when appropriate reasons are recorded, depending upon the quality of the recipient system. But that exercise is not undertaken by the WBPCB. He, therefore, submits that the impugned order is arbitrary, improper and illegal. He invited our attention to the observations of the Hon'ble High Court of Calcutta in "*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*" case. He pointed out that prior to the impugned decision of the WBPCB, it was necessary to examine all the aspects of the matter including suggestions and recommendations given by the National Committee on Noise Pollution Control and after giving due hearing to the Applicants. So also, the views of Dr. Abirlal Mukherjee, who represented the State of West Bengal as an expert in the meetings of the National Committee and his recommendation also were required to be considered. In other words, chief bone of his contention is that the impugned order of the WBPCB is not in keeping with directions of the Hon'ble High

Court of Calcutta nor it is justifiable for want of due compliances of Rule 3(2) of the Environment (Protection) Rules, 1986.

17. He argued that the impugned order dated 03.10.1997 passed by the WBPCB is practically “non-speaking order”. He pointed out that the recommendations of NCNPC and Dr. Abirlal Mukharjee were not considered and evaluated prior to fixing 90dB(A-I) as benchmark for the firecrackers manufacturing and sale in the State of West Bengal. According to Learned Senior Counsel, the unanimous decisions arrived at by the National Committee on Noise Pollution Control (NCNPC) ought to have been adopted by the State of West Bengal inasmuch as it is founded on detailed studies and due examination of the material available before the said Committee. So also, when representative of the West Bengal was one of the member of the NCNPC and signed the minutes of fourth (4th) meeting held on 18.09.1998, the WBPCB should have amended the benchmark equivalent to the National standard. He argued that the standard fixed by the impugned order passed by the WBPCB is lowest, as compared to other States. Therefore, the State of West Bengal is singled out and discriminated in this context. With the result, manufacturing and trading in firecrackers at Shivkashi and other places will be given booster dose whereas the local poor people, who are employed in the factories, manufacturing fireworks, are likely to be seriously affected. Consequently, he urged to quash the impugned order of the WBPCB.

18. *Per contra*, it is argued on behalf of the Respondents that the impugned order is issued by the WBPCB in view of enabling powers available under Rule 3(2) of the Environment (Protection), Rules, 1986. It is further argued that the excessive noise of the firecrackers is serious threat to the environment. Counsel argued that the impugned order is based upon the observations of the Expert Committee consisting of scientists. It is contended that when the Apex Court confirmed the Judgment of High Court of Calcutta in “*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*” case, the limited question that was kept open, pertained to examination of issue as to whether the Notification dated 05.10.1999 issued by the MoEF and the impugned order of the WBPCB could be reconciled. It is argued that the impugned order of the WBPCB could not be reconciled with the said Notification inasmuch as the impugned order is based on special circumstances like population density and number of festivals in the State of West Bengal. It is argued that since the impugned order dated 03.10.1997 is issued in compliance with judgment of the Hon’ble High Court of Calcutta in “Burrabazar Fire Works Dealers Association’s” case, and, therefore, no illegality is committed by the WBPCB. The Counsel invited our attention to the minutes of the meeting held on 03.10.1997 in the office of the WBPCB. It is pointed out that due reasons have been ascribed during course of the discussions in that meeting for lowering of the benchmark to 90dB(A-I) (impulse)noise at 5 meters from the source of use of the firecrackers. He argued

that the subsequent formal order issued by the WBPCB on 03.10.1997 is founded on reasons discussed in the 102nd Board's meeting held on 03.10.1997. So, it cannot be termed as "non-speaking order". In this view of the matter, the Counsel for the Respondents sought dismissal of the Applications.

19. Having heard Counsel for the parties, we deem it proper to formulate following points for determination :-

(i) Whether in the facts and circumstances of the present case, the WBPCB could legally and validly exercise the powers available under Rule 3(2) of the Environment (Protection) Rules, 1986 and as such, the impugned order issued by it is immune from challenge?

(ii) Whether in the facts and circumstances of the present case, the Notification issued by the MoEF can be held as valid and will supersede the impugned order of the WBPCB due to its issuance under main provisions of the Environment (Protection) Act, 1986?

(iii) Whether in the facts and circumstances of the present case, the Applicants are entitled to claim fixation of higher standards for manufacturing of noise over and above the limits prescribed by the MoEF Notification dated 05.10.1999?

20. We have carefully gone through the record. We have also perused the Judgment delivered by the Hon'ble High Court of Calcutta on 03.09.1996 which is the main foundation of the impugned order passed by the WBPCB. We have considered the

minutes of the four (4) meetings which have been referred to by the Applicants.

21. Before we proceed to examine the rival contentions put forth by the Learned Counsel for the parties, it would be useful to mention that subsequent judgment of the Apex Court in “*Noise Pollution (V), in RE: with Forum Prevention of Environmental and Sound Pollution Vs. UOI and Anr.*” **(2005) 5SCC 733**, impacts all the points involved in the present bunch of Applications. The judgment of the Apex Court, in fact, covers a large area with detailed consideration of various issues. The subject of “Noise Pollution” is dealt with from various angles. However, so far as, noise pollution in the special context of firecrackers is concerned, the Apex Court observed:

“46. Fireworks are used all over the world to celebrate special occasions. In India, fireworks are bursted on festivals like Dussehra, Diwali and on special occasions like social gatherings, marriages, Independence day, Republic day, New Year day, etc. In other countries of the world, fireworks are generally burst either on the New Year day or on the birthday of their respective countries. However, bursting of firecrackers is a health hazard since it is responsible for both air pollution and noise pollution.

47. The use of fireworks has led to air pollution in the form of noise and smoke. Their excessive use has started to be a public hazard and violation of their fundamental rights as enshrined in the Constitution.

48. It has been held in the case of “Om Birangana Religious Society Vs. State” that the

“Freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India includes, by necessary implication, freedom not to listen and/or to remain silent. A citizen has a right to leisure, right to sleep, right not to hear and right to remain silent. He also has the right to read and speak with others.”

Because of the tremendous sound and noise, the citizens cannot exercise all these fundamental rights.

49. It has been seen that firecracker noise is an impulsive noise and is hazardous. Bursting of a firecracker near the ear can lead sometimes to non-recoverable hearing loss.

50. Diwali is the most important festival of India. The bursting of firecrackers during this period is a widespread practice. The unpredictable, intermittent and impulsive noise produced by bursting of crackers all around, turns the festival of lights into a cacophony of noise. People are unable to even sleep due to this excessive noise pollution. Several people are injured due to the noise produced by firecrackers every year.

51. Firecrackers not only increase the ambient noise level but also contribute significantly in increasing the air pollution by means of toxic gases and particles due to their blast wave resulting from a rapid release of energy.

52. In order to assess the situation of noise pollution caused by firecrackers at the time of Diwali, the Central Pollution Control Board (CPCB) has been conducting ambient noise level monitoring

during Diwali festival regularly at various locations in Delhi since 1993, to find increased ambient noise level caused by intensive burning of crackers. As in the past, the noise and air-quality monitoring have been carried out in the years 1999, 2000, 2001 and 2002. The noise monitoring locations have been selected to cover almost all areas of Delhi.

53. An analysis of the reports prepared in the years 1999, 2000, 2001 and 2002 reveals that the ambient noise level on Diwali day exceeded the limit at almost all the places during these years. The noise level was higher during Diwali – 2000 as compared to the values recorded during Diwali festival in the years 1999, 2001 and 2002.

54. The percentage of violation in Leq^{32} noise level varied from 2 to 49% in the year 2002, 12 to 55% in the year 2001, 11 to 58% in the year 2000 and 22 to 47% in the year 1999 with respect to the daytime standards at all the areas.

55. The ambient noise level during the years 1999 to 2002 on Diwali festival, exceeded the limit at all places in every year and the percentage of violation varies from 2% to 58%. Thus, the study does reveal that the noise levels that have been measured on all these occasions have been more than the prescribed norms. This is a point of worry as it has been discussed that noise pollution does tend to have adverse effects on a person. Thus, immediate steps in this direction need to be taken.

56. The problem of noise pollution due to firecrackers is not only limited to India. Similar problems are being experienced in other countries as well. In fact, in the United Kingdom, in Nottingham

the “Be Safe Not Sorry” campaign was launched after the post was inundated with letters from readers to the newspaper saying they were fed up with the noise, nuisance and the distress that fireworks cause.”

22. It is pertinent to note that the sound level for the firecrackers is fixed by the MoEF under Entry No. 89 of Schedule –I appended to the Environment (Protection) Rules, 1986. The benchmark is as shown below:

“Entry 89. Noise standards for firecrackers:-

A. (i) The manufacture, sale or use of firecrackers generating noise level exceeding 125 dB(AI) or 145 dB(C) pk at 4 meters distance from the point of bursting shall be prohibited.

(ii) For individual firecracker constituting the series (joined firecrackers), the above mentioned limit be reduced by $5 \log_{10}(N)$ dB, where N=number of crackers joined together.”

This entry was introduced by G.S.R. 682 (E) dated 05.10.1999.

23. In fact, the benchmark fixed by the MoEF has been approved by the Apex Court in “Noise Pollution (V), in RE: with Forum Prevention of Environmental and Sound Pollution Vs. UOI and Anr.” **(2005) 5 SCC 733.**

It is held:

“At present the maximum permissible sound level for firecrackers as per the noise standard is provided by Item 89, Schedule I, Table 1.5 of the Environment (Protection) Rules, 1986:

“89. Noise standards for firecrackers

A. (i) The manufacture, sale or use of firecrackers generating noise level exceeding 125 dB(AI) or 145 dB(C) pk at 4 meters distance from the point of bursting shall be prohibited.

(ii) For individual firecracker constituting the series (joined firecrackers), the abovementioned limit be reduced by $5 \log_{10}(N)$ dB, where N = number of crackers joined together.”

“..... Keeping all these submissions in mind it does seem that the present noise standards as prescribed in India by the Government of India, are correct and do not need to be altered at the moment. However, if the Government is of the opinion that this sound level needs to be increased or reduced at a later date it is free to do so.”

24. In the face of the Judgment of the Apex Court, it does not stand to reason that the benchmark fixed by the MoEF could have been changed by the WBPCB. Conversely, in compliance to the order dated 13.09.2010 passed by the Hon'ble Supreme Court in I.A. Nos. 57-58 and 60-61 (Civil) No. 72 of 1998, the WBPCB ought to have reconciled the impugned order dated 03.10.1997 in tune with the MoEF's Notification dated 05.10.1999 and only if both i.e. Order of the WBPCB dated 03.10.1997 and the Notification of the MoEF dated 05.10.1999, are not reconciled, the Applicants were directed by the Apex Court to move the High Court under Article 226 of the Constitution, if so advised. That they have already done. Those writ petitions are now transferred to this Tribunal and as such it is necessary to broadly examine whether the stand of the WBPCB to stickup to the impugned order dated 03.10.1997 is legal and proper.

25. While examining legality of the benchmark fixed by the WBPCB under the impugned order dated 03.10.1997, it is essential to understand the nature of liberty which was given to the WBPCB by the Hon'ble High Court of Calcutta while deciding the case of "*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*"(Supra). The Hon'ble High Court of Calcutta only clarified that the WBPCB can lower down the benchmark in case of special circumstances and on basis of scientific study. The Apex Court approved findings in "*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*" (Supra) to the extent of interpretation of Article 19(1)(g) and Article 21 of the Constitution. These observations are stated in the judgment of Hon'ble Apex Court in "*Noise Pollution (V), in RE: with Forum Prevention of Environmental and Sound Pollution Vs. UOI and Anr.*" **(2005) 5 SCC 733**(Supra) as follows:

"110. In *Burrabazar Fire Works Dealers Assn. V. Commr. of Police*⁴⁴ it has been held: (AIR pp.121-22)

" Article 19(1)(g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that community's safety, health and peace.... A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by bursting out from a noisy fireworks. It may give pleasure to one or two persons who burst it but others have to be a captive listener whose fundamental rights guaranteed under Article 19(1)(a) and other provisions of the Constitution are taken away,

suspended and made meaningless.....under Article 19(1)(a), read with Article 21 of the Constitution of India, the citizens have a right of a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary ingredients of the right to life guaranteed under Article 21 of the Constitution.”

26. There cannot be duality of opinion that Article 19(i)(g) does not give free license or fundamental right to carry on any trade or business which creates pollution or is otherwise hazardous. Nobody can be deprived of right to expect reasonable silence surrounding him. Once it is found that the limit of 125 dB(A-I) fixed as maximum permissible limit is approved by the Apex Court in paragraph 143 of the judgment in Noise Pollution (V) in RE: (Supra) then it does not stand to reason that the WBPCB could deviate from such benchmark by sticking itself to the order dated 03.10.1997. One cannot be oblivious of the fact that when Hon'ble High Court of Calcutta passed order dated 26.09.1997 in WP No. 2725/1996 (*Burrabazar Fire Works Dealers Association & Ors. Vs. Commissioner of Police, Calcutta & Ors.*), the WBPCB was called upon to take a decision by fixing the benchmark with the help of Expert Committee appointed by the Hon'ble High Court. Immediately, thereafter, the WBPCB took the decision in the meeting dated 03.10.1997. In that meeting, the recommendations of the Expert Committee appointed by the Hon'ble High Court were immediately accepted like a gospel truth. The whole exercise was completed within 3 – 4 days. The recommendations of that Expert Committee were

not appreciated, evaluated and considered in comparison with any other material. Needless to say, such exercise was hastily done without giving proper thought to the available material as well as views of the Applicants. Though, it was directed by the Hon'ble High Court of Calcutta that views of expert, namely, Dr. Abirlal Mukherjee also should be considered. Yet impugned order does not show compliances of this part of the Hon'ble High Court's order. For this reason too, it is unsustainable in the eye of law. The impugned order, therefore, is reflection of impropriety, undue haste and arbitrariness.

27. No doubt, WBPCB has powers to lower down the benchmark of the decibels for firecrackers under Rule 3(2) of the Environment (Protection) Rules, 1986. Still, however, the stringency of standards must be based upon sufficient reasons depending upon the quality of recipient system. It cannot be done arbitrarily and hastily without conducting scientific study of the impact of the firecrackers on recipient system.

28. Rules 3(1)&(2) of the Environment (Protection) Rules, 1986 reads as follows:-

3. *“Standards for emission or discharge of environmental pollutants:- (1) For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in (Schedules I to IV).*

(2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standard from those provided in (Schedules I to IV) in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons, therefor, in writing."

(Emphasis Supplied)

29. It is imperative that more stringent standards may be provided by the Central Board or State Board having regard to the quality of the recipient system and after recording reasons, therefor, in writing. The impugned order dated 03.10.1997 does not indicate as to how the quality of recipient system was found incompatible to the benchmark fixed by the National Committee in its fourth (4th) meeting. We have noticed that minutes of the meeting held on 03.10.1997 (102nd meeting of the Board) also give only generic views of the Members which do not adequately address the issue pertaining to quality of recipient system. In our opinion, the impugned order is hurriedly passed without due consideration of the experts opinion comparable with other material and the views of other experts.

30. Now, for the sake of argument, even if it is accepted that the impugned order dated 03.10.1997 is in accordance with the Rule 3(2) of Environment (Protection) Rules, 1986 then also it is difficult to countenance the same. First, the MoEF Notification dated 05.10.1999 has been issued in the exercise of powers conferred vide Section 6 and Section 25 of the

Environment (Protection) Act, 1986. Section 6 of the Environment (Protection) Act, 1986 may be reproduced for ready reference.

“6. Rules to regulate environmental pollution. – (1) *The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.*

(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) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.”

31. We are concerned here with Section 6(2)(b). The Central Government has the authority to make rules by issuing Notification and may fix maximum allowable limit of concentration of various environmental pollutants including noise for different areas; the MoEF Notification dated 05.10.1999 has been issued, in the exercise of powers available under Section 6 of the Environment (Protection) Act, 1986. The Environment (Protection) Rules, 1986 is a subordinate legislation. The MoEF Notification issued by invoking powers under main sections i.e. Section 6 and Section 25 of the

Environment (Protection) Act, 1986 will have to be given precedence over the subordinate legislation. The powers to make subordinate legislation are derived from enabling provisions of the main provisions of the concerned Act and hence the delegatee on whom such power is conferred has to act within limits of the authority conferred upon it by the Act. This legal position is explicit from Judgment in “*Hukam Chand Etc, Vs. Union of India& Ors*” 1972 **(1973) SCR(1)896@1972)SCC(2)601**.

It is observed:

“The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with S.40 of the Act. The act of the Central Government in laying the rules before Parliament would not prevent the Courts from scrutinizing the validity of the rules and holding them to be ultra vires. [902D] Caries on Statute Law, Sixth Edition, pp. 304-306 referred to.”

32. It follows, therefore, that the subsequent MoEF Notification will override the impugned order dated 03.10.1997 passed by the WBPCB. Precisely, the benchmark fixed by the MoEF as uniform standard for all States, though it is termed as maximum limit, could not have been lowered down by the WBPCB on the ground that such power is available under Rule 3(2) of the Environment (Protection) Rules, 1986. The Notification issued under the main provisions of the Act should be respected and abided by the State Boards. The Rules must sub-serve the provisions of the Act. This is also one of the

reasons as to why the impugned order of the WBPCB is unsustainable in the eye of law.

33. We have noticed that the impugned Notification issued by the WBPCB is said to have been issued under provisions of the Air (Prevention and Control of Pollution) Act, 1981, the directions of the Hon'ble Calcutta High Court and under provisions of the Environment (Protection) Act. We have further noticed that WBPCB has not specified any particular provision of the Air (Prevention and Control of Pollution) Act, 1981 or that of the Environment (Protection) Act under which the impugned Notification has been issued. Coming to the provisions of Section 19 of the Air (Prevention and Control of Pollution) Act, 1981, the subject of power to declare air pollution control areas is within the domain of the State Government. The power to issue directions or notification by the State Board is governed by Section 17 of the Air (Prevention and Control of Pollution) Act, 1981. It is important to consider the nature of functions of the State Board as enumerated in Section 17. For the present purpose, it would suffice to reproduce Section 17(g) of the said Act. It reads as follows:

*“17. **Functions of State Boards.** – (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State Board shall be –*

(a) xxxxxxxxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxxxxxx

(d) xxxxxxxxxxxxxxxxxxxx

(e) xxxxxxxxxxxxxxxxxxxx

(f) xxxxxxxxxxxxxxxxxxxx

(g) *to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollution into the atmosphere from any other source whatsoever not being a ship or an aircraft:*

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;”

34. If the provision is read by applying golden rule of interpretation, it goes without saying that the standards for emission of air pollutants into the atmosphere from industrial plants and automobiles and for the discharge of any air pollutant are required to be provided in consultation with the Central Board. In other words, the State Board cannot take unilateral decision on such a question. For this reason too, we find that the impugned Notification issued by the WBPCB will have to be held as illegal and inoperative.

35. Considering the foregoing discussion, we have no hesitation in recording finding on point no. (i) as “negative”. It follows that the finding on point no. (ii) shall be recorded as “positive”. We record our finding on the point no. (iii), in the “negative” particularly, for the reason that the issue is foreclosed in view of the Dictum of the Apex Court is in “Noise Pollution (V), in RE: with Forum *Prevention of Environmental and Sound Pollution Vs. UOI and Anr.*” **(2005) 5 SCC 733**”. Accordingly, we hold that the WBPCB is required to amend the order dated 03.10.1997 and reconcile the same in keeping with the MoEF Notification dated 05.10.1999. The WBPCB shall issue amended order, accordingly, within a period of one (1) month hereafter. In the meanwhile, the benchmark fixed by the MoEF Notification dated 05.10.1999 shall continue to apply for the production and sale of firecrackers in the State of West Bengal. The impugned order of the WBPCB is hereby quashed with direction to modify the same in keeping with the discussion made hereinabove.

36. However, we cannot overlook the fact that much water has flown from under bridge due to the passage of time between the Judgment of the Apex Court and the subsequent increase in the population, attitude of the society, urbanisation, industrialisation, increase in traffic density and the health problems of the public members. Therefore, we direct the Central Pollution Control Board (CPCB)/Ministry of Environment & Forests (MoEF) to conduct a fresh study on “Noise Pollution and its Impacts” and to suggest specific norms for

manufacturing, sale and distribution of the firecrackers inter-state and intra-state. In case, it is found that the sound decibels shall be lowered down due to change in the circumstances, the Central Board/MoEF may take a decision if so needed and if so advised, may file appropriate application before the Apex Court for the purpose of vetting such decision. The Central Board/MoEF may, however, appropriately suggest the norms in keeping with the scientific study conducted with the help of experts. We deem it proper to ask the competent authority to have a fresh look in the matter because day by day the festivals are being organised like entertainment shows and “social events” which is not the real purpose of the festivities. We direct that the Central Board/MoEF shall examine the relevant issues afresh and take decision within a period of six (6) months and if so required by taking legal opinion of the Attorney General’s Office or Department of Law and Justice, Ministry of Law & Justice.

37. We make it clear that the WBPCB is at liberty to take independent decision in accordance with the powers available under the Air (Prevention & Control of Pollution) Act in consultation with the CPCB if the reduction of the noise level emanating from firecrackers is found necessary for certain specific reasons, having regard to the recipient quality thereof.

38. The Applications are accordingly partly allowed in terms of findings recorded hereinabove. The Applications are disposed of to the extent of the prayer to allow production, sale

and distribution of firecrackers as per the limit fixed vide the MoEF Notification dated 05.10.1999. No costs.

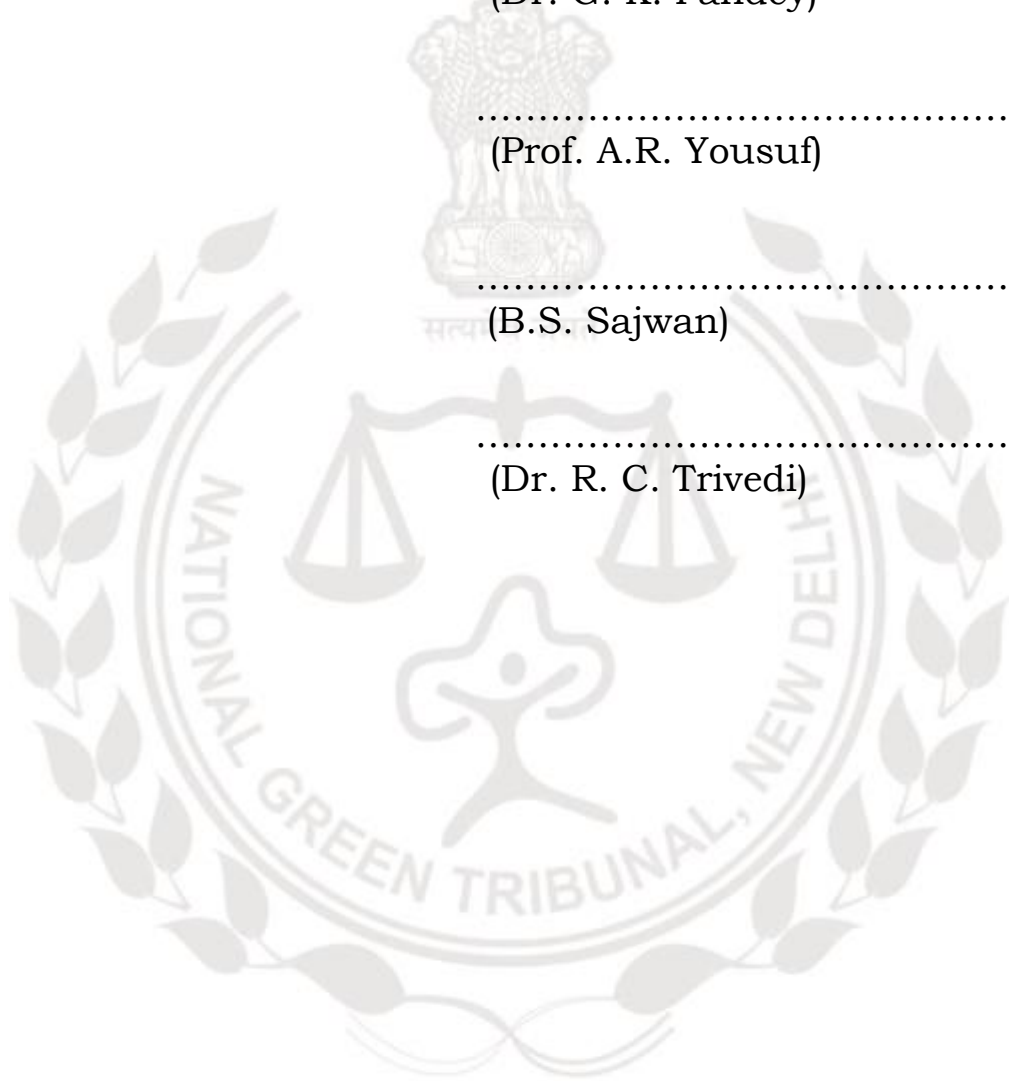
....., JM
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