

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
MISC. APPLICATION No. 37/2013**

CORAM:

**Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A.Deshpande
(Expert Member)**

B E T W E E N:

Mr. Vitthal Gopichand Bhungase,
Age 22 years
Occ : Fishing, R/ at Dusalgaon,
Taluka Gangakhed,
District Parbhani.

.....**Original
Applicant**

A N D

- 1. The Gangakhed Sugar and Energy Ltd.,**
At Vijaynagar, Makhani,
TalukaGangakhed,
District Parbhani
- 2. Ratnakar Manikrao Gutte**
Chairman of the Gangakhed Sugar and Energy Ltd.,
At Vijaynagar, Makhani,
TalukaGangakhed,
District Parbhani
- 3. The State of Maharashtra**
Through the Ministry of Environment & Forests,
Government of Maharashtra
Mantralaya, Mumbai-400 032.
- 4. The Secretary,**
Ministry of Animal Husbandry Dairy
Business and Fisheries,
Govt. of Maharashtra,
Mantrayala, Mumbai-400 032.

- 5. The Collector,**
Collectorate Campus, Parbhani,
District Parbhani.
- 6. The Mah.Pollution Control Board,**
Through the Regional Officer, Pune,
At Jog Centre, 3rd Floor, Mumbai Pune road
Wakadewadi, Pune-411 003.
- 7. The Executive Engineer,**
Mazalgaon-Jaikwadi Irrigation Project,
Section-2, Parali Vaijanath,
Tal. Parali, District-Beed.

.....**Original
Respondents**

Counsel for Original Applicant

Mr. Asim Sarode
Mr. Vikas Shinde

Counsel for Original Respondent(s):

Mr. Subhash Gandhi/Mr. Kisan Wagai
for Respondent No.1 & 2
Mr.D.M.Gupte/Ms, Supriya Dangre,
Mr. V.V.Mundhe, Field Officer, for R-3,6 & 7.

Date: December 20, 2013

J U D G M E N T

1. This Application is filed by original Respondent No.1, raising preliminary objections about maintainability of the main Application, filed by Godavari Magasvargiya Matsya Vyavasai Sahakari Sanstha Maryadit, which is now amended and is filed in the name of the Applicant Vitthal Gopichand Bhungase, in his personal capacity.

2. The main Application is filed under Sections 14, 15 and 17 of the National Green Tribunal Act, 2010. The Application is of composite nature. Originally, Applicant No.1 claimed that 'Mannath Lake' was leased

out to its society for the purpose of fishing rights. According to the Original Applicant, the Respondent No.1, (Gangakhed Sugar and Energy Ltd) (Herein after referred to as 'Gangakhed Sugar Factory'), is continuously discharging toxic effluents in 'Mannath' lake, situated in Gangakhed Taluka. With the result, there is continuous damage to the environment and ecology. Toxic discharge of effluents from the outlet of distillery run by the Gangakhed Sugar Factory in 'Mannath' lake, has caused loss of aquatic life and at a times dead fishes were found floating on the surface of lake's water. The Applicants made number of complaints to various authorities. Still, however, the Gangakhed Sugar Factory, did not stop releasing of industrial wastes, molasses and chemicals. The effluent discharge has caused pollution of the water not only of the lake but in the surrounding areas which has affected health of the villagers in the vicinity.

3. Though, the Respondent No.1-the Gangakhed Sugar Factory has not filed a detailed reply affidavit yet, has filed the present Application, taking exception to maintainability of the main Application. The objection raised by the Gangakhed Sugar Factory, is that the Application is barred by limitation, in as much as, it is not filed within period of six (6) months, as required under Section 14(3) of the National Green Tribunal Act, 2010. The Tribunal has no power to condone the delay of

more than sixty (60) days and therefore, the main Application filed after period of eight (8) months, is clearly barred by limitation. The next submission of the Applicant-(Gangakhed Sugar Factory), is that the original Application is basically in respect of civil dispute relating to legal right, in which implementation of enactments specified in Scheduled-I, as enumerated in Section 14 (1) of the National Green Tribunal Act, 2010, is required to be dealt with and, therefore, the Application cannot be segregated for the purpose of reliefs under Section 15 and 17 of the National Green Tribunal Act. The relevant objection in this context is stated as ground 'd', which may be reproduced as follows:

d) It is submitted that as the main adjudication u/s 14 is not in limitation therefore the Application for seeking damages u/s 17 or otherwise is also barred by limitation or otherwise and the Applicant cannot take the advantage of Sec. 15 (3). Therefore on these count also the present application is required to be dismissed with heavy exemplary cost.

4. Another limb of objection raised by the Gangakhed Sugar Factory, is that Original Applicant No.1, Co-operative society does not exist, because Administrator has been appointed to manage the affairs thereof. Thus, legal entity of Magasvargiya Matsya Vyavasai Sahakari

Sanstha Maryadit, is no more in existence. That Co-operative society had no locus standi to file the Application as on the date of presentation of the main Application. So also, the Application filed by Vitthal Gopichand Bhungase, is not maintainable, in as much as, he is not the Chairman of the Co-operative society and has no individual right to file such Application. On these preliminary grounds, the Original Respondent No.1 (Gangakhed Sugar Factory) urged to frame preliminary issues of jurisdiction, limitation and locus standi and based upon such objections urged to dismiss the main Application.

5. We have heard Learned Counsel Shri. Asim Sarode for Applicant Vitthal. We have also heard Learned Counsel for contesting Respondent Nos.1 and 2. The Counsel for the Gangakhed Sugar Factory, vehemently argued that the Application is liable to be dismissed, because it has been filed by incompetent person. It is argued that the Application is barred by limitation, in view of the Section 14 (3) of the National Green Tribunal Act,2010. It is further contended that the subsequent act of amendment of the Application by Vitthal Gopichand Bhungase, will not change the fact situation, regarding absence of legal entity of the Co-operative society to file such Application as on the date of presentation thereof. It is argued that, therefore, that main Application is liable

to be dismissed on the ground of absence of locus standi, as well as for the reason that same is barred by limitation. It is contended that preliminary issues, in this context, may be framed and decided before going to the merits of the main Application.

6. On the other hand, Learned Counsel Shri. Asim Sarode, submits that the Applicant is entitled to invoke the jurisdiction of this Tribunal, when there exists a reasonable case to infer pollution caused on account of discharge of effluents by the Distillery Unit and the Gangakhed Sugar Factory, in the water body of 'Mannath' lake. He pointed out that Applicant Vitthal, has sought compensation for and on behalf of the fishermen, as well as restitution of the environment. So, it is his contention that the Application may be entertained under Sections 15 and 17 of the National Green Tribunal Act, 2010, even if, it is held that the same is barred by limitation u/s 14(3). According to him, since there is continuity in cause of action, the main Application can be filed under Section 14(3) of the National Green Tribunal Act, 2010, too. In any case, it can be entertained under Sections 15 and 17 and, therefore, there is no merit in the preliminary objections raised by the Gangakhed Sugar Factory. He submits that the issues of environmental damage and pollution caused to water of 'Mannath' lake, could be brought to the notice of the Tribunal by any 'aggrieved

person' notwithstanding the fact that such person may not be affected one. He submits that such a person may be 'aggrieved' due to loss caused to environment, though said person may not be the victim of loss caused due to pollution or damage, caused to the environment. Consequently, he sought dismissal of the Application filed by the Gangakhed Sugar Factory in *limine*.

7. We have also heard Learned Counsel for the contesting parties on the question of interim relief, which we propose to consider, in view of the peculiar facts, which are apparent from face of the record. In case of litigation involving environmental disputes, one cannot be oblivious of the settled legal position that such a litigation is not adversarial in nature. It is rather quasi adversarial, quasi investigative and quasi inquisitive in nature. Such a litigation is not cabined and cribbed within strict procedural framework of the Rules of the Code of Civil Procedure, 1908.

8. There is no legal bar in claiming more than one remedy. We may reproduce Rule-14, of the National Green Tribunal (Practices & Procedure) Rules, 2011.

14.Plural Remedies.

“An Application or Appeal, as the case may be shall be based upon a single cause of action and may seek one or more relief, provided that they are consequential to one another.

9. Perusal of Rule 14, will make it clear that filing of a composite Application, seeking more than one relief, is permissible, notwithstanding the fact that the cause of action for such remedies, may be the same one. It is obvious that the limitation period available for the relief, as that may be available of maximum duration, will cover the Application for such plural remedies.

10. Now, we shall examine the scope of Section 19 of the National Green Tribunal Act, 2010. Section 19, gives sufficient flexibility to the working of the Tribunal in conducting trial of the Applications. It would be useful to reproduce Section 19 for ready reference :

19. Procedure and powers of Tribunal :-

- (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.
- (2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.
- (3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872)
- (4) The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1972 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;

- (f) reviewing its decisions;
 - (g) dismissing an application for default or deciding its ex parte;
 - (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
 - (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
 - (j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule-I,;
 - (k) any other matter which may be prescribed.
- (5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193,219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

11. We are much concerned with Sub-section (2) of Section 19, which categorically states that the Tribunal shall have power to regulate its own procedure. Needless to say, there is no inherent right available to Gangakhed Sugar Factory, to urge this Tribunal to frame the preliminary issues as sought. In other words, Applicant-Gangakhed Sugar Factory, cannot insist that without framing such preliminary issues, the main Application shall not be proceeded with. It is the discretion of this Tribunal to either frame preliminary issues or to call upon the parties to go ahead with the trial of the matter for final adjudication. For, the Law itself has set out limitation of six (6) months as expected duration for disposal of such Application. The intention of Legislature,

therefore, clearly is to avoid procedural impediments and to ensure expeditious final decision in such matters. In this view of the matter, we find it difficult to entertain the request of the Applicant-Gangakhed Sugar Factory, for framing of preliminary issues, as sought and only thereafter calling upon the Original Respondent Nos.1 and 2, to submit their detailed reply affidavits.

12. We may assume for a moment that Applicant Vitthal was not Chairperson of original Applicant No.1- Godavari Magas Vargiya Matsya Vavasai Sahakari Sanstha Maryadit, as on date of filing of the Application. Even so it hardly makes any difference. The locus of a person in environmental dispute is not according to his legal rights. Such a person may not have any personal interest or may not be a stake holder, yet may be competent to file the Application. In case of “Vimal Bhai and others v. MoEF and other” (Appeal No.5 of 2011), a co-ordinate Bench of this Tribunal elaborately dealt with legal aspects of the relevant subject. It is observed :

“It is further very apt to note the relevant provisions of the Constitution of India which reads as under:

“Article 48A – Protection and improvement of environment and safeguarding of forests and wild life: *The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.*”

“Article 51A - Fundamental Duties: It shall be the duty of every citizen of India:

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

From the above it is clear that the State shall endeavor and safeguard the environment and wild life and it is the fundamental duty of the citizen to improve the natural environment including forests, lakes, rivers, and wildlife and also to have compassion for living creatures. Once, the protection and improving the natural environment is the fundamental duty of a citizen, any person can approach this Tribunal and agitate his grievance as to protection and improvement of the natural environment”.

13. As stated before, it is not necessary to consider the request of the Respondent No.1, to frame the preliminary issues at this juncture. Still, however, it may be stated that the issue of jurisdiction will not and cannot even *prima facie* arise in this matter. The Application involves substantial dispute pertaining to environmental issues. The constitution of the National Green Tribunal, is for the purpose of protecting the environment and natural resources. We may also have to take note of the Preamble and Section 20 of the National Green Tribunal Act, 2010, which reads as under :

“ Preamble of NGT Act 2010 – “An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.”

Section 20 : “Tribunal to apply certain principles–The Tribunal shall, while passing any order or decision or

award, apply the principles of sustainable development, the precautionary principle and the polluter pay principle.”

A combined reading of the Preamble and Section 20 of the NGT Act, 2010, would reveal that this Tribunal has got vast jurisdiction to decide the environmental disputes such as enforcement of legal rights relating to environment, compensation, damages to persons and property, and matters connected therewith and incidental thereto including conservation of natural resources.

14. Considering the foregoing discussion, it is difficult to accept the argument regarding absence of jurisdiction to this Tribunal to deal with issues raised in the Application. Needless to say, the issue of jurisdiction is not required to be framed as sought by the Respondent Nos.1 and 2.

15. We may consider that the issue regarding limitation has to be examined in particular facts and circumstances. According to the Applicant, the act of pollution caused by the Respondent No.1, is continuous and therefore the cause of action is recurring. Secondly, the Application is also for relief of compensation and restitution and therefore it can be filed within period of five (5) years as enumerated in Section 15(3) of the National Green Tribunal Act, 2010. Both these contentions stated in the Application require adjudication. We cannot make haste in finally adjudicating these issues without closely examining the facts and analyzing the relevant provisions. We will have

to consider Sub-Section (3) of Section 14, with reference to the nature of the Application. We cannot simply dislodge the contentions raised by the Applicant on the ground that cause of action had arisen six (6) months before the date of filing of the Application, simply because, certain complaints were made to the Authorities since 2011. The expression 'Cause of Action' comprises of bundle of facts including not only the fact about discharge of effluents by the Respondent No.1 in 'Mannath lake', but the knowledge regarding the impact of such effluents discharged affecting the aquatic life and ecology. According to the Applicant, the adverse results of the testing of the water sample and mud sample (Ex-E1 & Ex-E-2), were received on or after June, 2013 and thereafter the complaints were filed. So, the Limitation started running from June, 2013, and as such the Application is within period of Limitation. Whereas, according to the Respondent Nos.1 and 2, effluent is being discharged since long back and, in any case, the complaints were being made much prior to July, 2010 and hence, the Application is barred by Limitation. We deem it proper to keep the argument open and decide such issue at the stage of final hearing. We cannot overlook the fact that, in any case, if the Application is considered under Section 15, irrespective of the fact that it may be barred by under Section 14 of the National Green Tribunal Act,

then also in view of Sub-Section (3) of Section 15 of the National Green Tribunal Act, 2010, it cannot be *prima facie* deemed as barred by Limitation.

16. We have discussed these issues peripherally in order to demonstrate that framing of these issues at the preliminary stage may not be essential. It will not be appropriate to frame these issues and decide the Application on the basis of such preliminary issues, when there is arguable case made out by the Applicant, which requires in-depth examination. We accordingly deem it proper to dismiss the present Application for framing of the preliminary issues. We cannot refrain ourselves from observing that the Application is filed with malafide intention to delay the hearing of the main proceedings. We indicated in our Order dated 4th December, 2013, that we may pass interim order in view of the 'available record', notwithstanding the fact that the Collector, Parbhani, was directed to constitute a Committee to look into grievances of the fishermen. It is, therefore, necessary to examine the available record, in order to locate whether the Applicant has made out a *prima facie* case, for grant of compensation.

17. Perusal of the record, *prima facie*, reveals that there were various complaints made by the fishermen, including Applicant Vitthal Bhungase to the Collector, Director of Fisheries and others. The main grievance of

the fishermen was that due to discharge of untreated and contaminated effluents from the Distillery of the Respondent Nos.1 and 2, the aquatic life of 'Mannath lake' is endangered. On many occasions, a stock of fishes was found dead and floating on the surface of water. The record shows that visits were paid by the Authorities to the site of 'Mannath lake'. It is pertinent to note that the visits were paid when the Sugar Factory was not in operation. Obviously, the effluents discharge could not be verified and tested during of such visits.

18. The Applicant has filed test reports of Food, Hygiene- and Health Laboratory (Ex E-1 and Exh E-2), which go to show that the water sample collected from the 'Mannath lake ' and mud sample collected from the said lake were found contaminated. The Laboratory reports indicate that aquatic life may not survive in such water, due to contamination. The mud sample was found to bear particles of toxic metals. A joint survey was conducted by the Tahasildar and the Regional Officer etc. on 12-9-2013. Their joint visit report (Ex-F) is of no much use. The report itself shows that the Distillery and the Sugar Factory were not functional at the relevant time. The report shows that ETP was being installed and zero discharge of effluent was being ensured through the Multiple Effect Evaporator (MEE). The joint visit report also shows that effluent discharged from the Sugar

Factory and the Distillery is likely to be drifted up to the 'Mannath Tank'. The location of Mannath Tank is at a distance about 2-3 kms from the Sugar Factory at the bottom of natural slope. The fishermen informed the members of the team of the Authorities that during sugarcane crushing season the effluents are discharged from the Sugar Factory and the Distillery, which are drifted to 'Akoli' canal and reach to 'Mannath Tank' which resulted into contamination of the water.

19. A letter communication addressed to the Deputy Secretary (Fisheries) Mantralaya (Ex.G), by the Commissioner of Fisheries Industry, on 14-12-2012, reveals that the Parbhani District office of the fisheries did not agree with the contention of the Respondent Nos. 1 and 2, and found that the water of Mannath Tank' was being contaminated due to the discharge of effluents from the Distillery and the Sugar Factory of the Respondent Nos.1 and 2. Similarly, a letter communication dated 15-11-2011 (Ex.-J), issued by the Deputy Commissioner , Parbhani, to the Chairman of the Sugar Factory of the Respondent Nos.1 and 2, goes to show that the effluents discharge from the Sugar Factory, shall be stopped, in order to arrest the pollution of 'Mannath Tank'. No action was taken by the Sugar Factory after receiving the said communication.

20. We have carefully gone through the available record. We have noticed that the Sub Divisional Officer of Sub-division-3, Gangakhed, district Parbhani, informed the Respondent Nos.1 and 2, that the water of the canal was contaminated and polluted due to discharge of effluents without proper treatment. It was informed that adequate (Effluent Treatment Plant) ETP was not installed by the Sugar Factory. We have further noted that the response to the complaints of the fishermen was rather strange, because, the Respondent Nos. 1 and 2, alleged that the fishermen had thrown some dead stock of fishes on the bank of 'Mannath Tank' in order to make false allegations against the Sugar Factory. We find that such a response is nothing but adding fuel to the fire. The number of complaints made by the fishermen were not properly looked into and addressed by the Authorities. There were criminal cases filed by each other. The 'Mannath lake' and the water canal connected to it, are not private properties of the Gangakhed Sugar Factory. The material on record reveals *prima facie* that aquatic life in the 'Mannath lake' is being lost and the water is being contaminated, polluted and degraded due to the acts of the Respondent Nos.1 and 2. MPCB has already made a statement on 4-12-2013, that the Sugar Factory of the Respondent Nos.1 and 2, falls in the catchment area of the pond and there is no other Industry of which

effluent is collected to the said pond. We deem it proper, therefore, to grant interim relief, in view of the peculiar circumstances of the present case.

21. We may state here that this Tribunal is required to apply ‘Polluter Pay’s ‘Principle’ as contemplated under Section 20 of the National Green Tribunal Act, 2010. The Tribunal has power to pass an interim order under Section 19(4) (i). It will be useful to reproduce the relevant provisions for ready reference:

“19.Procedure and powers of Tribunal:-

- (1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.
- (2) xxx xxx xxx xxx
- (3) xxx xxx xxx xxx
- (4) xxx xxx xxx xxx
 - (a) xxx xxx xxx
 - (b) xxx xxx xxx
 - (c) xxx xxx xxx
 - (d) xxx xxx xxx
 - (e) xxx xxx xxx
 - (f) xxx xxx xxx
 - (g) xxx xxx xxx
 - (h) xxx xxx xxx
 - (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;”

22. We may further make it clear that this Tribunal may take aid of provisions of the Civil Procedure Code, for the purpose of conducting the proceedings. Therefore, for granting interim relief, the power available under Section 94 (e) of the Civil Procedure Code, may be invoked along

with inherent powers available under Section 151 of the Civil Procedure Code. We may reproduce Section 94 (e) of the Civil Procedure Code as under :

“ 94. Supplemental Proceedings- In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed.

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) Xxx xxx xxx
- (e) Make such interlocutory orders as may appear to the Court to be just and convenient. “

23. Considering above available record, we are of the opinion that it would be appropriate to direct the Respondent Nos. 1 and 2, to deposit an amount of Rs.50,00,000/- (Rs. Fifty Lac) with the office of the Collector, Parbhani, so that such amount will be available for disbursement, if the Application will be allowed after final hearing and the fishermen are required to be compensated or that any compliance is required to be made by the Respondent No.1. The amount of Rs.50,00,000/- (Rs. Fifty Lac) is arrived at having regard to the fact that the loss of stock of fish is already noticed and to some extent quantified by the concerned Authorities. The Applicant has produced on record the copy of the assessment of such loss on average basis, in tabular form (Ex-K-1). A question may arise as to why the amount may be deposited with the Collector, Parbhani. In our opinion, the procedure for disbursement of relief or

compensation or restitution of the property damaged as envisaged under Rule 36 (1) (2) and (3) of the National Green Tribunal (Practices and Procedure) Rules, 2011, contemplates that the District Collector having local jurisdiction, is responsible for such disbursement of compensation under Section 15 of the National Green Tribunal Act. It is for such a reason that we deem it proper to direct the Respondent Nos.1 and 2 to tentatively deposit amount of Rs.50,00,000/- (Rs. Fifty Lac) with the Collector, Parbhani, which will be subject to the further orders of disbursement or refund, as the case may be.

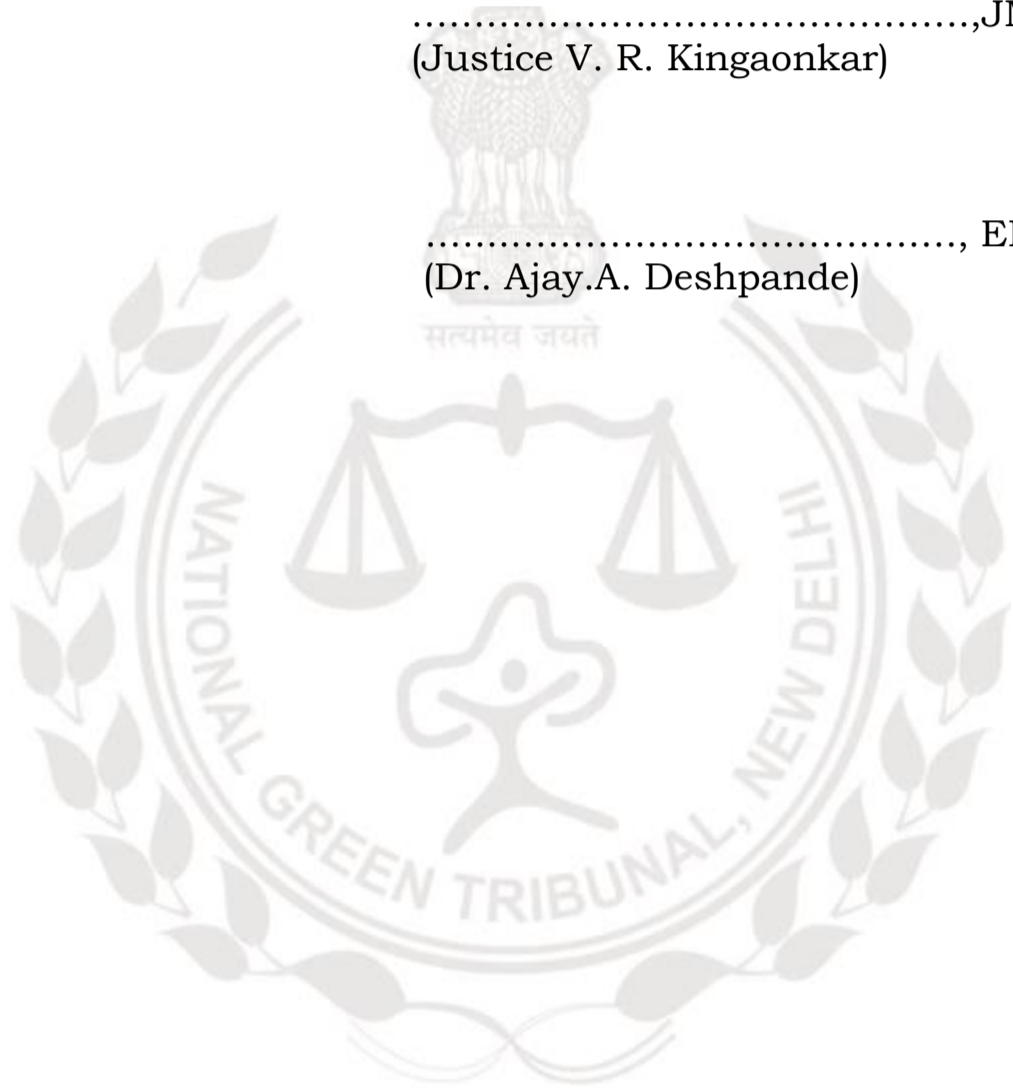
24. We accordingly dismiss the Application filed by the Respondent Nos. 1 and 2 and direct that they shall deposit amount of Rs.50,00,000/- (Rs. Fifty Lac), as tentative amount of probable compensation by way of interim relief with the Collector, Parbhani, within a period of four (4) weeks, without fail, subject to final order of this Tribunal, in the main Application. In case the Application is allowed, we may direct disbursement of such amount, as may be required, and in case the Application is dismissed, the amount will be refunded to the Respondent Nos. 1 and 2. In case the amount is not deposited within four (4) weeks, the Collector, Parbhani, shall immediately arrange for attachment of property of the Sugar Factory with stock and barrel, in order to recover such amount without waiting for any further

order and report to this Tribunal about the action taken in the matter.

Stand over to 6th January, 2014, as scheduled earlier.

.....,JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)



NGT