

(2020) 03 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 8459, 15351 Of 2019 In Civil Writ
Petition No. 2067, 4342 Of 2019

State Of Himachal Pradesh & Ors

APPELLANT

Vs

Bhag Singh & Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Water (Prevention And Control Of Pollution) Act, 1974 — Section 18, 28, 33B, 33B(a)
National Green Tribunal Act, 2010 — Section 14, 15, 16, 16(a), 16(f), 29
Air (Prevention And Control Of Pollution) Act, 1981 — Section 31, 31B
Administrative Tribunals Act, 1985 — Section 14, 28
Telecom Regulatory Authority Of India Act, 1997 — Section 14(b)
Environment (Protection) Act, 1986 — Section 5
Constitution Of India, 1950 — Article 32, 136, 136(2), 226, 226(1), 226(2), 227(4),
323A, 323B, 323A(2)(d)

Citation : (2020) 03 SHI CK 0016

Hon'ble Judges : Dharam Chand Chaudhary, J;Anoop Chitkara, J

Bench : Division Bench

Advocate : Ashok Sharma, Ashwani K. Sharma, R.R. Rahi, Yudhbir Singh
Thakur, Lokender Paul Thakur, Maan Singh

Judgement

,,,,

Anoop Chitkara, J",,,,,

CMP No. 8459 of 2019 in CWP No. 2067 of 2019,,,,

1. As a sequel to order dated Jan 3, 2020, the present order is confined to the jurisdiction of the Division Bench of this Court under Article 226 of the",,,,,

Constitution of India over the order passed by the Ld. National Green Tribunal and modification of the interim order passed in this matter by this Court,,,,

on Aug 29, 2019 (wrongly typed as 29.08.2018). Given this, no other aspect, of this writ petition, at this stage, is required to be gone through, and any",,,,,

observations made in this order shall be confined only to the above two issues.,,,, JURISDICTION OF HIGH COURTS UNDER ARTICLE 226 OF THE CONSTITUTION OVER THE ORDERS PASSED BY THE LD.,,,,

NATIONAL GREEN TRIBUNAL.,,,,

2. The issue is no more res integra in view of the pronouncement of the Honâ??ble Supreme Court in Tamil Nadu Pollution Control Board vs. Sterlite.,,,,

Industries (I) Ltd. & others, 2019 (3) SCALE 721, [Judgment dated Feb 18, 2019 in Civil Appeal Nos. 4763-4764 of 2013] where in paragraphs No.".,,,,

31, 40 and 42 the Court observed as follows:".,,,,

â??31. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain",,,,

prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to.,,,,

the NGT only under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or",,,,

decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31B of the Air Act read with Section 16(f) of the.,,,,

NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal",,,,

against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with",,,,

Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate",,,,

authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate",,,,

authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers",,,,

conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.".,,,,

..',,,,

40. Shri Sundaram then argued that this Court in L. Chandra Kumar (supra) made it clear that Tribunals that are set up, generally have the power of",,,,

judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly",,,,

upon paragraphs 90 and 93 of the judgment in L. Chandra Kumar (supra). It is

important to notice that L. Chandra Kumar (supra) pertained to a,,,,
Tribunal that was set up under Article 323A of the Constitution of India. Under
Article 323A(2)(d), the Administrative Tribunal so set up would be",,,,,
able to exercise the jurisdiction of all courts except the jurisdiction of the
Supreme Court under Article 136 of the Constitution. This would mean that,,,,
the Administrative Tribunal so set up could exercise the jurisdiction of all High
Courts when it came to the matters specified in Article 323A. This is,,,,
further made clear by a conjoint reading of Section 14 and Section 28 of the
Administrative Tribunals Act, 1985, which read as follows:",,,,
14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-(1)
Save as otherwise expressly provided in this Act, the Central",,,,,
Administrative Tribunal shall exercise, on and from the appointed day, all the
jurisdiction, powers and authority exercisable immediately before that day",,,,,
by all courts (except the Supreme Court) in relation to-,,,,
(a) recruitment, and matters concerning recruitment, to any All-India Service or
to any civil service of the Union or a civil post under the Union or to a",,,,,
post connected with defence or in the defence services, being, in either case, a
post filled by a civilian;",,,,
(b) all service matters concerning-,,,,
(i) a member of any All-India Service; or,,,,
(ii) a person not being a member of an All-India Service or a person referred to
in clause (c) appointed to any civil service of the Union or any civil,,,,
post under the Union; or,,,,
(iii) a civilian not being a member of an All-India Service or a person referred to
in clause (c) appointed to any defence services or a post connected,,,,
with defence, and pertaining to the service of such member, person or civilian, in
connection with the affairs of the Union or of any State or of any",,,,,
local or other authority within the territory of India or under the control of the
Government of India or of any corporation or society owned or,,,,
controlled by the Government;,,,,
(c) all service matters pertaining to service in connection with the affairs of the
Union concerning a person appointed to any service or post referred to,,,,
in sub-clause (ii) or subclause (iii) of clause (b), being a person whose services
have been placed by a State Government or any local or other",,,,,

authority or any corporation or society or other body, at the disposal of the Central Government for such appointment." , , , ,

Explanation.-For the removal of doubts, it is hereby declared that references to ""Union"" in this sub-section shall be construed as including references" , , , ,

also to a Union Territory. , , , ,

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section" , , , ,

(3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or , , , ,

controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:" , , , ,

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this , , , ,

Act, different dates may be so specified under this subsection in respect of different classes of, or different categories under any class of, local or" , , , ,

other authorities or corporations or societies. , , , ,

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from" , , , ,

which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority" , , , ,

exercisable immediately before that date by all courts (except the Supreme Court) in relation to- , , , ,

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation" , , , ,

or society; and , , , ,

(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or , , , ,

post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection , , , ,

with such affairs. """" , , , ,

xxx xxx xxx , , , ,

28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.-On and from the date from which any" , , , ,

jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to" , , , ,

any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except-" ,,,,

(a) the Supreme Court; or, ,,,,

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being" ,,,,

in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such" ,,,,

recruitment or matters concerning such recruitment or such service matters." " ,,,,

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by sub-clause (2) thereof. Suffice it, ,,,,

to say that the NGT is not a Tribunal set up either under Article 323A or Article 323B of the Constitution, but is a statutory Tribunal set up under the" ,,,,

NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the, ,,,,

NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and" ,,,,

Section 28 of the Administrative Tribunal Act, 1985.â?? â?| â?|" ,,,,

â??42. â?| â?| ,,,,

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of" ,,,,

India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It" ,,,,

is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act." ,,,,

Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers" ,,,,

under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction, ,,,,

that was, in the felicitous language of Gajendragadkar, C.J., in Re: Special Reference, (1965) 1 SCR 413, made in the following words:" ,,,,

â??We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety of reasonableness of the, ,,,,

exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its" ,,,,

jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction." ,,,,

â??Prima facieâ??. says Halsbury, â??no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while" ,,,,

nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the ,,,,

cognizance of the particular court [Halsburyâ??s Laws of England, vol. 9, p. 349]â??" ,,,,

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any" ,,,,

appeal under Section 16 of the NGT Act, cannot be â??judicially reviewedâ?? by the NGT. Following the judgment in BSNL (supra), we are of the" ,,,,

view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High ,,,,

Courts of this country. Shri Sundaramâ??s strong reliance on the NGT judgment dated 17.07.2014 in Wilfred vs. Ministry of Environment and ,,,,

Forests must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and" ,,,,

therefore, rejected.â??" ,,,,

3. In M/s. Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & others, 2019 (17) SCALE 37 [Judgment dated Dec 3, 2019 in Civil" ,,,,

Appeal No. 9170 of 2019] the larger Bench of the Honâ??ble Supreme Court holds as follows: ,,,,

â??Jurisdiction and the powers of the High Court under Article 226 ,,,,

13. What is recognized by Article 226(1) is the power of every High Court to issue (i) directions, (ii) orders or (iii) writs. They can be issued to (i) any" ,,,,

person or (ii) authority including the Government. They may be issued (i) for the enforcement of any of the rights conferred by Part III and (ii) for any ,,,,

other purpose. But the exercise of the power recognized by Clause (1) of Article 226, is restricted by the territorial jurisdiction of the High Court," ,,,,

determined either by its geographical location or by the place where the cause of action, in whole or in part, arose. While the nature of the power" ,,,,

exercised by the High Court is delineated in Clause (1) of Article 226, the jurisdiction of the High Court for the exercise of such power, is spelt out in" ,,,,

both Clauses (1) and (2) of Article 226.â??" ,,,,

4. Another Constitution Bench of the Hon'ble Supreme Court in *Rojer Mathew vs. South Indian Bank Ltd. & others*, 2019 (15) SCALE 615",,,,

[Judgment dated Nov 13, 2019 in Civil Appeal No. 8588 of 2019] holds:",,,,

â??220. It is hence clear post *L Chandrakumar* (supra) that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or,,,

by implication against military or armed forces disputes. The limited ouster made by Article 227 (4) only operates qua administrative supervision by the,,,

High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of armed forces tribunals, but",,,,

would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226.,,,,

221. However, it is essential that High Courts use such powers of judicial review restrictively and on limited grounds, similar to the concept of",,,,

â??regulatory deferenceâ?? which has evolved in the United States. Such a need was also noted by a nine-judge bench in *Mafatlal Industries Ltd.*,,,,

vs. Union of India (1997) 5 SCC 536 which held that:",,,,

â??â?| While the jurisdiction of the High Courts under Article 226 â?" and of this Court under Article 32 â?" cannot be circumscribed by the,,,

provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would",,,,

exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in,,,

accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of,,,

law and not for abrogating it.â?,,,

222. The jurisdiction under Article 226, being part of the basis structure, can neither be tampered with nor diluted. Instead, it has to be zealously",,,,

protected and cannot be circumscribed by the provisions of any enactment, even if it be formulated for expeditious disposal and early finality of",,,,

disputes. Further, High Courts are conscious enough to understand that such power must be exercised sparingly by them to ensure that they do not",,,,

become alternate forums of appeal. A five-judge bench in *Sangram Singh vs. Election Tribunal*, (1955) 2 SCR 1 whilst reiterating that jurisdiction",,,,

under Article 226 could not be ousted, laid down certain guidelines for exercise of such power:",,,,

13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see, , , ,

whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act, , , ,

illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or, , , ,

conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally, , , ,

determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is, , , ,

vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior, , , ,

tribunal can do is to reach a tentative conclusion which is subject to review under articles 226 and 136. Therefore, the jurisdiction of the High Courts" , , , ,

under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.â??, , , ,

223. It is apparent that the Legislature has not been provided with desired assistance so that it may rectify the anomalies which arise from provisions, , , ,

of direct appeal to the Supreme Court. Considering that such direct appeals have become serious impediments in the discharge of Constitutional, , , ,

functions by this Court and also affects access to justice for citizens, it is high time that the Union of India, in consultation with either the Law" , , , ,

Commission or any other expert body, revisit such provisions under various enactments providing for direct appeals to the Supreme Court against" , , , ,

orders of Tribunals, and instead provide appeals to Division Benches of High Courts, if at all necessary. Doing so would have myriad benefits. In" , , , ,

addition to increasing affordability of justice and more effective Constitutional adjudication by this Court, it would also provide an avenue for High" , , , ,

Courts Judges to keep pace with contemporaneous evolutions in law, and hence enrich them with adequate experience before they come to this Court." , , , ,

We direct that the Union undertake such an exercise expeditiously, preferably within a period of six months at the maximum and place the findings" , , , ,

before Parliament for appropriate action as may be deemed fit.â??, , , ,

5. In *Madras Bar Association vs. Union of India & another*, (2014) 10 SCC 1, the Honâ??ble Supreme Court holds as follows:" , , , ,

175. It is well settled that an appeal is a creature of statute and can be done away by statute. The question posed here is completely different and,

the answer to that question is fundamental to our jurisprudence: that a jurisdiction to decide substantial questions of law vests under our constitution,

only with the High Courts and the Supreme Court, and cannot be vested in any other body as a core constitutional value would be impaired thereby.

6. In view of the above judicial precedents, this Court has jurisdiction to adjudicate the next issue which is jurisdiction of this Court to pass interim

order dated Aug 29, 2019 and to modify such order.

7. Interim order dated Aug 29, 2019 passed by the Principal Bench of this Court reads as follows:

Notice. Mr. Rajesh K. Sharma, learned Assistant Solicitor General of India, takes notice for respondent No. 2/Union of India. Issue notice to

respondents No. 1,3 and 4, returnable in two weeks, on taking steps within two days. Personal notice permitted.

In the meanwhile, there will be a limited interim order to the effect that this prohibition of 100 meters, may not be applied to non perennial rivulets.

Post on 12.9.2019.

8. This Court had passed this order in CMP No. 8459 of 2019 (in CWP No. 2067 of 2019). The prayer clause of CMP No. 8459 of 2019 reads as

follows:

It is, therefore, in view of the submission made herein above, most respectfully prayed that the present application may kindly be allowed and the

operation & execution of impugned orders dated 29.10.2018 and 10.7.2019 passed by the Ld. NGT, Principal Bench New Delhi in O.A. No. 358 of

2016 may very kindly be stayed and Respondent No. 3 i.e. Himachal Pradesh Pollution Control Board may be restrained from taking any action in

pursuance to said orders, in the interest of justice and fair play.

9. Impugned order dated Oct 29, 2018 (Annexure P-5), reads as follows:

1. This is the second round of proceedings on the issue of legality of operations of the stone crushers in State of Himachal Pradesh. The objection

of the applicant is that the stone crushers are in the forest area and located very close to water bodies, thereby affecting the ecology. Distance of

location of crushers from water bodies is said to be less than 100 meters. It is also alleged that there is violation of the Environment (Protection) Act,

1986, the Water (Prevention and Control of Pollution) Act, 1974, and Air (Prevention and Control of Pollution) Act, 1981 and the Forest Conservation Act, 1980.",,,,

2. Vide order dated 13.01.2015 in Original Application No. 27/2014, Prem Chand Guleria vs. Union of India, the question of operation of stone",,,,

crushers as well as mining operations was examined. The area in question in this particular application is Village Parchhu, P.O. Sajaopiplu, Tehsil",,,,

Sarkaghat, District Mandi, Himachal Pradesh. There are other similar cases where location is different in different districts in Himachal Pradesh. The",,,,

Tribunal noticed that stone crushers were operating without the requisite consents and illegal mining was also taking place. Accordingly, the Tribunal",,,,

directed a joint inspection to verify whether there was any valid and operative consent for operation of the stone crushers, whether any valid mining",,,,

lease has been given and whether location of the stone crushers was within permissible sites.,,,,

3. This application was filed on 13.07.2016 alleging that M/s Ruma Stone Crusher is continuing illegal mining and operating illegal stone crusher. The",,,,

stone crusher has damaged the entire river/Khad â??Balyanaâ??. Mining area is adjacent to cremation ground and a temple. There is a bridge 300",,,,

meter down stream and 100 meter upstream of the mining lease area on National Highway-17. No mining is allowed within 200 meter upstream and",,,,

200 to 500 meters down stream. The stone crusher was being operating without any valid permission. Notice was given by the Mining Department to",,,,

M/s Ruma Stone Crusher requiring payment of outstanding amount of Rs. 2,22,48,155/- (Rupees Two crore Twenty Two Lac Forty Eight Thousand",,,,

One Hundred Fifty Five only). The mining officer also wrote a letter dated 01.06.2016 that the stone crusher was being run without registration and",,,,

consent to operate. Accordingly, the applicant seeks directions to stop the stone crusher on Khasra No. 752/3 Mahal Lougni Tehsil Sarkaghat, District",,,,

Mandi.,,,,

4. The applicant has relied upon a report of the Special Committee dated 04.04.2015 in respect of M/s Ruma Stone Crusher to the effect that the",,,,

crusher unit had obtained consent to establish but did not have a valid renewal. Mining lease was operative upto 09.03.2025 but there was no",,,,

environmental clearance. Forest Clearance expired on 23.10.2013. Notice for

penalty for illegal mining was issued.,,,,

â??Sr.

No.",Criteria,"Distance norms for existing stone crushers (crow flight, distance in meters) set up prior to year 2004","Distance norms for existing stone crushers (crow flight, distance in meters) set up after year 2004 to May, 2014","Distance for the stone crusher to be set up in future, (crow flight, distance in meters) from the issuance of Notification.

8., "a. Minimum distance from spring, canal, functional water supply scheme including its reservoir.",100,-,100 (excluding spring canal)â??

, "b. Minimum distance from a percolation well, sewerage treatment plant, water infiltration galleries.",-,-,100

9., "Minimum distance from lakes, wetlands and reservoir of irrigation scheme, hydro power projects.",500,500,500

10., "Minimum distance from natural water spring",- ,500,100 (as at Sr. No. 8(a)

14., "Minimum distance from the canal and perennial revulets", (100 for canal),- ,100

7. Accordingly, a report dated 19.06.2019 has been filed before this Tribunal suggesting that the distance of 100 meters prescribed for location of",,,,

stone crushers should be uniformly applied to all the streams irrespective of perennality. It will be appropriate to quote relevant observations which are,,,, as follows:,,,,

â??i) The Joint Expert Committee is of the opinion that the distance norm of 100 m prescribed for locating crushers should be uniformly applied to all,,,,

the streams irrespective of perennality. As these areas are zones of water flow,

any changes to or dumping of crusher waste is likely to badly impact",,,,,

the quality of water for the downstream stream reaches during monsoon season.â??,,,,

8. The Committee also observed:,,,,

â??It was observed and understood that the first order streams are very small streams having very steep slope, abundant flora and fauna and are",,,,,

non-perennial in nature. These streams feed the larger streams during monsoon period. Some of these streams may have springs with very low to low,,,,

discharge. These headwater streams flow swiftly down steep slopes with narrow V-shaped valleys eroding the stream beds and banks, in the process",,,,,

incurring loss of natural resources in terms of forest and fertile soil along with fauna, while providing eroded material to the depositional environments",,,,,

found downstream. Ecological balance may be maintained by conserving such ephemeral, mostly first order streams.",,,,

Material Eroded from the hilly areas i.e. from headwork zone carried by the first and second order streams are transferred to the deposition zone,,,,

where the slope of stream is gentle. This zone is suitable and sustainable for scientific mining of river bed material.â??,,,,

Recommendations of the Joint Expert Committee:,,,,

In the light of the above observations, the views and recommendations of the Joint Expert Committee are as follows:",,,,

i) The Joint Expert Committee is of the opinion that the distance norm of 100 m prescribed for locating crushers should be uniformly applied to all the,,,,

streams irrespective of perenniality. As these areas are zones of water flow, any changes to or dumping of crusher waste is likely to badly impact the",,,,,

quality of water for the downstream stream reaches during monsoon season.

ii) No mining/extraction activities should be carried out on first order non-perennial streams and they should be conserved with appropriate measures.

iii) However, if small first order streams having steep gradients are levelling out on upstream side of proposed site (Plate 6) for stone crusher units,",,,,

such units may be exempted from the 100 m distance norm, subject to having additional precautionary measures in place to tackle air pollution. Due to",,,,,

topography of the area, effluents may not enter the stream pre-empting water pollution of stream. The suggested additional precautionary measures in",,,,,

such cases are: i) The stone crusher units should be installed in the covered shed

with proper air emission suppressing system ii) Liability of application,,,,

of soil conservation measures should be with stone crusher unit holder. Sample site for demonstration of the above explanation is shown in Plate 6.,,,,

iv) The Expert Committee is of the opinion that, in general, the following additional precautions may be taken to ensure minimal impact of operating",,,,

stone crushing units irrespective of location of Stone Crusher Unitsâ? near perennial or nonperennial streams,,,,

a) Area near deposition zone i.e. near third order stream or tail end of the second order stream should be considered for installation of stone crusher,,,,

unit.,,,,

b) Effluent generated by the unit should be clarified in lined stilling chambers constructed with in the premises of unit. The recovered silty effluent,,,,

needs to be disposed off regularly at suitable site and at a safe distance to prevent its entry in the nearby streams. This material may be used for filling,,,,

up of depressions, filling of pits for plantation or for dispersal in agriculture fields.",,,,

c) Location of crushers must be decided after a detailed study covering hydrological, soil & water conservation environmental aspects to avoid",,,,

sensitive locations, since impact of crushers is likely to affect air, water, flora and fauna.",,,,

d) The material in streams is received from the upstream catchment area and depends on the catchment characteristics, flow pattern, rainfall",,,,

distribution, and land use. Hence each river is unique in its feature and quantum of material that can be extracted will vary year to year and",,,,

river/stream to stream. The committee is therefore of the opinion that distance restriction should not be the only criteria for granting the permission for,,,,

locating crushers. The quantum and nature of river bed material should also be assessed for availability pre and post monsoon and quantity restriction,,,,

should be applied to the identified river beds to pre-empt overexploitation for short-term economic benefit.â??,,,,

9. We have heard learned Advocate General for the State of Himachal Pradesh and learned Counsel for the stone crushers seeking,,,,

review/modification of order of the Tribunal dated 29.10.2018. Learned Counsel for the CPCB has opposed the said prayer. In absence of any,,,,

unimpeachable scientific material placed on record by the State of Himachal

Pradesh or the stone crushers in pursuance of order of Hon'ble Supreme,,,,,
 Court dated 15.03.2019 though a period of more than three months has gone,
 after hearing learned Advocate General for the State and for the stone",,,,,
 crushers, we are unable to review or modify the earlier view that non-perennial
 water bodies are not covered by the prohibition of location of stone",,,,,
 crushes within 100 meters of such bodies. Moreover, the expert opinion furnished
 by the Committee in pursuance of order of the Tribunal dated",,,,,
 02.04.2019 also suggests that restriction of distance for location of stone
 crushers should universally apply for "perennial" as well as "non-
 perennial" water bodies. It is not in our purview to go into the issue of
 exemption in certain situations subject to conditions as we are not sure,,,,,
 whether such conditions or their enforcement is environmentally viable at any
 particular location.,,,,,
 10. Non-perennial rivers may have different characteristics and may function
 very differently in maintaining hydrological and ecological balance. Non-
 perennial rivers is relatively sensitive to change and can easily lead to
 degradation of the river system. Degradation of such non perennial rivers,,,,,
 caused by man through development and use of the river as a water source can
 result in water scarcity and climate change. All such rivers are,,,,,
 hydrologically and ecologically sensitive and changes to their hydrological regime
 can have far reaching effects on the river flow and the biota that can,,,,,
 cause dramatic negative changes.,,,,,
 11. In the end, we may note that learned Counsel for the stone crushers relied
 upon the judgment of the Hon'ble Supreme in Tamil Nadu Pollution",,,,,
 Control Board vs. Sterlite Industries (I) Ltd. & Ors., 2019 SCC Online SC 221 to
 submit that this Tribunal has no jurisdiction to deal with the matter.",,,,,
 We do not find applicability of the said judgment in dealing with an application
 under Sections 14 and 15 of the National Green Tribunal Act, 2010.",,,,,
 This contention is rejected. We also do not find any merit in contention that the
 prohibition does not apply to the units already set up. As observed in,,,,,
 order dated 02.04.2019, in view of "Precautionary" and "Sustainable
 Development" principles of environment law and the statutory",,,,,
 scheme providing that consent to operate or consent to establish is required to
 be renewed every year in the light of situation which may prevail. It is,,,,,
 difficult to hold that a vested right to continue any activities accrues irrespective

of impact on environment. The applications are dismissed.â??, , , ,

11. What primarily weighed with the Ld. National Green Tribunal is revealed from para 10 of the order dated Jul 10, 2019, whereby the Ld. National", , , ,

Green Tribunal relying upon the study of Seely, M., Henderson, J., Heyns, P., Jacobson, P., Nakale, T., Nantanga, K. and Schachtschneider, K. 2002, ", , , ,

Ephemeral and endorheic river systems: Their relevance and management challenges. Determining the water quality ecological Reserve for non-, , , ,

perennial rivers: A prototype environmental water Assessment methodology, available at <https://pdfs.semanticscholar.org/9dbf/e35a37671873a1db404c>", , , ,

dda475927 3706b3e .pdf, has observed as follows:", , , ,

â??10. Non-perennial rivers may have different characteristics and may function very differently in maintaining hydrological and ecological balance., , , ,

Non- perennial rivers is relatively sensitive to change and can easily lead to degradation of the river system. Degradation of such non perennial rivers, , , ,

caused by man through development and use of the river as a water source can result in water scarcity and climate change. All such rivers are, , , ,

hydrologically and ecologically sensitive and changes to their hydrological regime can have far reaching effects on the river flow and the biota that can, , , ,

cause dramatic negative changes., , , ,

12. Mr. Ashok Sharma, learned Advocate General, appearing for the writ petitioner contends that the main petition filed before the Ld. National Green", , , ,

Tribunal was never, in fact, a Public Interest Litigation. Still, they have sufficient information to state that such a petition was filed at the behest of the", , , ,

stone crusher units and people involved in illegal mining in the neighboring areas of Punjab. They had vested interest to file this petition because if the, , , ,

stones are not collected in Himachal Pradesh, then due to the gush of water during a torrential downpour, especially in monsoons, small stones flow", , , ,

along with the flow of water and cross the borders of Himachal Pradesh. As such, they extract it from Punjab and Haryana. Learned Advocate", , , ,

General further contended that water also carries with itself stones is apparent from bare eyes when we notice huge boulders along with river beds on, , , ,

almost the entire river length. The counsel for the Public Interest Litigant, could not place on single record evidence to confront this argument.", , , ,

13. Learned Advocate General further contended that the other evidence to prove that Bhag Singh never filed a petition in public interest but for the, , , ,

benefit of the likely beneficiaries of Punjab is revealed from the fact that if they were so much concerned with the cause in question, then they would",,,,,

have filed a similar petition in Punjab. The Counsel for the public interest litigant could not deny and refute this averment and did not place on record,,,,,

any copy of a similar writ petition filed by Bhag Singh either in Punjab, Haryana or any other place. Learned Advocate General further states that",,,,,

Himachal Pradesh is incurring revenue loss of crores of rupees and Himachal Pradesh, which is a state of stones that has to buy stones from its",,,,,

neighboring states.,,,,,

14. With this background, it would be appropriate to refer to the history of the entire controversy.",,,,,

15. The Government of Himachal Pradesh framed guidelines relating to stone crushing units, and a notification was issued on dated 10.9.2004. In 2011",,,,,

CWP No. 7949 of 2011 and CWP No. 7951 of 2011 were filed challenging the said notification and relating to the location of stone crushers. In the,,,,,

year 2012 vide judgments dated June 1, 2012, passed by this Court, the Court issued directions to the Government. In the year 2014, as a consequence",,,,,

of such guidelines, the State of Himachal Pradesh issued notification dated May 29, 2014, and it prescribed the distance of stone crushers from",,,,,

perennial riverbeds. In the year 2016, respondent Bhag Singh filed Original Application No. 358 of 2016 before the Ld. National Green Tribunal",,,,,

against the operation of the stone crusher unit of Ruma Devi in forest land without prior approval. Consequently, a joint inspection was carried out, and",,,,,

in 2018 the Joint Inspection Report was filed. After that vide impugned order, the Ld. National Green Tribunal ordered that perennial water bodies will",,,,,

include non-perennial water bodies as well and consequently quashed the consent to operate given to the stone crushers, which were within 100",,,,,

meters from non-perennial rivulets.,,,,,

16. The State has placed on record report of the Joint Committee in the Matter of M.A. No. 93/2019, M.A. No. 94/2019, M.A. No. 95/2019",,,,,

M.A. No. 96/2019 & M.A. No. 97/2019 in Original Application No. 358 of 2016; Bhag Singh vs. Union of India & Ors, in compliance of Honâ??ble",,,,,

National Green Tribunal (NGT) Order dated April 2, 2019â??. The Joint Committee gave the following recommendations:",,,,,

â??Recommendations of the Joint Expert Committee:,,,,,

In the light of the above observations, the views and recommendations of the Joint Expert Committee are as follows: ",,,,"

i) The joint expert committee is of the opinion that the distance norm of 100 m prescribed for locating crushers should be uniformly applied to all the ",,,,"

streams irrespective of perenniality. As these areas are zones of water flow, any changes to or dumping of crusher waste is likely to badly impact the ",,,,"

quality of water for the downstream reaches during monsoon season. ",,,,"

ii) No mining/extraction activities should be carried out on first order non-perennial streams and they should be conserved with appropriate measures. ",,,,"

Iii) However, if small first order streams having steep gradients are levelling out on upstream side of proposed site (Plate 6) for stone crusher units, ",,,,"

such units may be exempted from the 100m distance norm, subject to having additional precautionary measures in place to tackle air pollution. Due to ",,,,"

topography of the area, effluents may not enter the stream pre-empting water pollution of stream. The suggested additional precautionary measures in ",,,,"

such cases are : i) the stone crusher units should be installed in the covered shed with proper air emission suppressing system ii) liability of application, ",,,,"

of soil conservation measures should be with stone crusher unit holder. ",,,,"

iv) The Expert Committee is of the opinion that, in general, the following additional precautions may be taken to ensure minimal impact of operating ",,,,"

stone crushing units irrespective of location of Stone Crusher Units near perennial or non-perennial streams. ",,,,"

a) Area near deposition zone i.e. near third order stream or tail end of the second order stream should be considered for installation of stone crusher, ",,,,"

unit. ",,,,"

b) Effluent generated by the unit should be clarified in lined stilling chambers constructed within the premises of unit. The recovered silt the effluent, ",,,,"

needs to be disposed off regularly at suitable site and at a safe distance to prevent its entry in the nearby streams. This material may be used for filling, ",,,,"

up of depressions, filling of pits for plantation or for dispersal in agriculture fields. ",,,,"

c) Location of crushers must be decided after a detailed study covering hydrological, soil & water conservation environmental aspects to avoid ",,,,"

sensitive locations, since impact of crushers is likely to affect air, water, flora and fauna. ",,,,"

d) The material in streams is received from the upstream catchment area and depends on the catchment characteristics, flow pattern, rainfall",,,,,

distribution and land use. Hence each river is unique in its feature and quantum of material that can be extracted will vary year to year and river/,,,,

stream to stream. The committee is therefore of the opinion that distance restriction should not be the only criteria for granting the permission for,,,,

locating crushers. The quantum and nature of river bed material should also be assessed for availability pre and post monsoon and quantity restriction,,,,

should be applied to the identified river beds to pre-empt over exploitation for short term economic benefit.,,,,

17. Although the study conducted by the Committee was limited, still in the areas of identical topography, it would be quite relevant. Furthermore, the",,,,,

suggestions given by the Committee are general, which must be followed in almost every stone crusher as far as possible.",,,,,

18. After considering the matter in its entirety and keeping in view the fact that this order is confined to CMP No. 8459 of 2019, for stay, and has",,,,,

nothing to do with the disposal of the main petition, therefore, to exploit the natural resources without damaging the earth, ecology, environment and for",,,,,

overall sustainable development, the interim order dated 29.8.2019 passed in CMP No. 8459 of 2019 is made absolute subject to the following",,,,,

directions:-,,,,

(1) Area near deposition zone i.e. near third order stream or tail end of the second order stream should be considered for installation of stone crusher,,,,

unit.,,,,

(2) Effluent generated by the unit should be clarified in lined stilling chambers constructed within the premises of unit. The recovered silt the effluent,,,,

needs to be disposed off regularly at suitable site and at a safe distance to prevent its entry in the nearby streams. This material may be used for filling,,,,

up of depressions, filling of pits for plantation or for dispersal in agriculture fields.",,,,,

(3) Location of crushers must be decided after a detailed study covering hydrological, soil & water conservation environmental aspects to avoid",,,,,

sensitive locations, since impact of crushers is likely to affect air, water, flora and fauna.",,,,,

(4) The material in streams is received from the upstream catchment area and

depends on the catchment characteristics, flow pattern, rainfall" ,,,,

distribution and land use. Hence each river is unique in its feature and quantum of material that can be extracted will vary year to year and river/ ,,,,

stream to stream. Distance restriction should not be the only criteria for granting the permission for locating crushers. The quantum and nature of river, ,,,,

bed material should also be assessed for availability pre and post monsoon and quantity restriction should be applied to the identified river beds to pre- ,,,,

empt over exploitation for short term economic benefit. ,,,,

(5) Subject to the condition that all the new units adhere to the world class technology, use state of the art machinery, and the sanctioning authority" ,,,,

adhere to the international protocols relating to sanctioning and running of stone crushers. ,,,,

(6) While sanctioning the unit, the concerned official must inspect the road and its capacity to ensure that it caters to the increased traffic, and should" ,,,,

not lead to harassment to the residents of the area, flow of traffic, and must not result in traffic jams. There must be ample parking space for trucks" ,,,,

used in ferrying the material. ,,,,

19. In view of the above observations, the CMP No. 8459 of 2019 is disposed of." ,,,,

CMP No. 15351 of 2019 in CWP No. 4342 of 2019, ,,,,

20. In view of the order passed in CMP No. 8459 of 2019 in CWP No. 2067 of 2019 above, no separate order is required to be passed in this" ,,,,

application and the same is closed. ,,,,

21. In case the petitioners/applicants seeks further relief, it shall be open for them to file appropriate application in this regard." ,,,,