

(2016) 04 MAD CK 0036

In the Madras High Court

Case No : W.P. No. 13433 of 1996, W.P.M.P. No. 11 of 2015 in W.P. No. 39722 of 2005 and W.P. No. 23291 of 2006.

Vellore Citizens Welfare Forums through its President
Murugandi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Environment (Protection) Act, 1986 — Section 3, 5
National Greens Tribunal Act, 2010 — Section 26, 27, 28

Citation : (2016) 4 MLJ 25

Hon'ble Judges : V. Ramasubramanian; N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : Sriram Panchu, S.C. For Kurian Associates, R. Margabandhu, Advocate and G. Rajagopalan, Additional Solicitor General, for the Appellant; N.G.R. Prasad, Advocate, T. Mohan and Nagasaila, Advocates, AR.L. Sundaresan, S.C. and K.M. Santhanagopalan, S.C. and

Final Decision : Disposed Off

Judgement

V. Ramasubramanian, J. - On a writ petition filed under Article 32 of the Constitution, directly on the file of the Supreme Court by the Vellore Citizens Welfare Forum, seeking appropriate reliefs for the prevention, control and abolition of pollution caused in the Palar river bed by industries, the Supreme Court passed an order on 28.8.1996 (reported in 1996 (5) SCC 647), directing the Central Government to constitute an Authority under Section 3(3) of the Environment (Protection) Act, 1986.

2. In accordance with the said direction, the Central Government constituted an Authority known as the Loss of Ecology Authority. For the past 20 years, this Authority has been functioning on and off, entertaining the claim petitions from the farmers seeking compensation for the damage caused to their agricultural fields. The main writ petition W.P.(Civil) No.914 of 1991, in which the Supreme Court passed the above order, now stands transferred to this Court in W.P. No.

13433 of 1996.

3. It is pertinent to note here that the National Green Tribunal was constituted by the Central Government, under the provisions of the National Green Tribunals Act, 2010. But since there was no clarity as to whether the functions of the Loss of Ecology Authority have also been taken over by the National Green Tribunal, the Loss of Ecology Authority continues to function, albeit certain hiccups.

4. Many of the awards passed by the Loss of Ecology Authority came to be challenged before this Court either by the farmers complaining of inadequacy of compensation or by the Industries challenging the award.

5. One such writ petition in W.P. No. 39722 of 2005 filed by a person owning agricultural lands, challenging the award of the Loss of Ecology Authority, came up for final hearing before the First Bench of this Court on 3.12.2014. It was pointed out at that time that the Loss of Ecology Authority had almost become dysfunctional, due to the unwillingness of its only long time Chairman to continue. The Court was also informed that there were about 28,000 claim petitions pending on the file of the Loss of Ecology Authority and that by virtue of a judgment of the Division Bench of this Court in K.K. Subramaniam v. Loss of Ecology Authority [(2010) 3 MLJ 1087], the Authority was obliged to adjudicate each claim independently.

6. Taking note of the above, the First Bench of this Court disposed of W.P. No. 39722 of 2005, directing the Union of India to nominate a Chairman for the Loss of Ecology Authority within one month and also to provide it necessary facilities to make it functional.

7. After the disposal of W.P. No. 39722 of 2005 by the aforesaid order dated 3.12.2014 by the First Bench, the Union of India moved a Miscellaneous Petition in W.P.M.P. No. 11 of 2015 seeking a modification of the said order. According to the Union of India, there is neither a necessity, nor is it feasible to continue the Loss of Ecology Authority after the constitution of the National Green Tribunal. Therefore, the Union of India wants the order dated 3.12.2014 to be suitably modified so that all pending matters can be transferred from the Loss of Ecology Authority to the National Green Tribunal, together with even staff of the Authority.

8. Even during the pendency of W.P. No. 39722 of 2005, yet another writ petition came to be filed by the Vellore Citizens Welfare Forum seeking a mandamus to direct the Union of India to make the Loss of Ecology Authority as a permanent body. This writ petition was necessitated, since in pursuance of the original order of the Supreme Court dated 28.8.1996, the Loss of Ecology Authority was constituted initially for a period of two years. Many times the term of the Authority was extended under orders of Court or otherwise, for spells of one year each. Therefore, there was no continuity, leaving not only the fate of the members constituting the Authority and the staff working therein, but also the fate of the claimants in the lurch. This is why, W.P.No.23291 of 2006 was filed by the Vellore Citizens Welfare Forum seeking a direction to constitute the Authority

as a permanent body.

9. As a matter of fact, the Vellore Citizens Forum could have sought such a prayer even by way of a Miscellaneous Petition in W.P.No.13433 of 1996, which was the writ petition filed by them directly before the Supreme Court and which got transferred to this Court eventually. But for some reason they chose to file fresh writ petition.

10. Since - (i) the prayer in W.P. No. 23291 of 2006 is for constituting the Loss of Ecology Authority as a permanent body; (ii) since W.P.M.P. No. 11 of 2015 in W.P. No. 39722 of 2005 is by the Union of India for a prayer that runs contrary to the same and (iii) since the LoEA was constituted pursuant to the orders of the Supreme court in a writ petition that now stands transferred to this court as W.P.13433 of 1996, we have taken up all these petitions together.

11. We have heard Mr. G. Rajagopalan, learned Additional Solicitor General, appearing for the Union of India, opposing the continuation of the Loss of Ecology Authority and seeking a transfer of all pending cases to the National Green Tribunal. His submissions drew support from Mr. K.M. Santhanagopalan, learned senior counsel, Mr. V. Raghavachari, Mr. M.C. Ramesh, learned counsel appearing for some of the farmers. We have also heard M/s. T. Mohan, Nagasila, R. Margabandu, learned counsel and Mr. AR.L. Sundaresan, learned senior counsel appearing either for farmers, or for the Vellore Citizens Forum, seeking the constitution of the Loss of Ecology Authority as a permanent body. Mr. N.G.R. Prasad, learned counsel appearing for the staff working in the Loss of Ecology Authority also advanced arguments, primarily for regularising the services of the staff of the Authority and incidentally for continuation of the Authority as a permanent body.

12. From the pleadings and rival contentions, the only question that arises for consideration before us is as to whether the Loss of Ecology Authority should be constituted as a permanent body or whether the functions and powers of the said Authority can be transferred to National Green Tribunal, along with the pending claim petitions and the staff.

Prelude (Birth of the LoEA)

13. Since the LoEA was created by an order passed by the Supreme court, it would be appropriate to take note of the said order. The operative portion of the order of the Supreme court in Vellore Citizens Welfare Forum v. Union of India [1996 (5) SCC 647] reads as follows:

"25. Keeping in view the scenario discussed by us in this judgment, we order and direct as Under:-

1. The Central Government shall constitute an Authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said Authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The Authority shall be

headed by a retired judge of the High Court and it may have other members-preferably with expertise in the field of pollution control and environment protection to be appointed by the Central Government. The Central Government shall confer on the said Authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in Clause (v), (vi) (vii) (viii) (ix) (x) and (xii) of Sub-Section (2) of Section 3. The Central Government shall constitute the Authority before September 30, 1996.

2. The Authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The Authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology\\environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The Authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority shall lay down just and fair procedure for completing the exercise.

3. The Authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from who the amount is to be recovered, the amount to be recovered from each polluter, the persons to who the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrates of the area concerned. The Collector\\District magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the Authority to be affected persons/families.

4. The Authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. This shall be in addition to the recovery from his as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rs. 10,000/- each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to

the recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

7. The Authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment protection fund" and from other sources provided by the state Government and the Central Government.

8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

9. We direct the Superintendent of Police and the Collector/district Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the Authority permits them to do so. It would be open to the Authority to close such tanneries permanently or to direct their relocation.

10. The Government Order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure-I to the Notification shall be permitted to be set up within the prohibited area. The Authority shall review the case of all the industries which are already operating in the prohibited area and it would be open to Authority to direct the relocation of any of such industries.

11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

26. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a special Bench "Green bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions

issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We Direct the Registry of this Court to send the records to the registry of the Madras High matter as a petition under Article 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary."

14. In pursuance of the aforesaid order, the Government of India, Ministry of Environment and Forests issued a Notification in S.O.671(E) dated 30.9.1996, constituting the Loss of Ecology (Prevention and Payments of Compensation) Authority. The salient features of the said Notification were:-

(i) The Authority was constituted only for the State of Tamil Nadu

(ii) It was constituted in exercise of the power conferred by Section 3(3) of the Environment (Protection) Act, 1986.

(iii) The Authority was constituted for a period of two years, as there was no indication in the aforesaid order of the Supreme Court as to whether it was intended to be a permanent body or intended to be a stop gap arrangement.

15. The powers to be exercised and the functions to be performed by the Authority was indicated in paragraph 2 of the Notification dated 30.9.1996, as follows:-

"(i) Exercise of powers under section 5 of the said Act, for issuing directions and for taking measures with respect to matter referred to in Clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-section 2 of Section 3 of the said Act;

(ii) To assess the loss to the ecology and environment in the affected areas and also identify the individuals and families who have suffered because of the pollution and assess the compensation to be paid to the said individuals and families;

(iii) To determine the compensation to be recovered from the polluters as cost of reversing the damaged environment;

(iv) To lay down the procedure for actions to be taken under (i) to (iii) above;

(v) To compute the compensation under two heads, namely, for reversing the ecology and for payments to individuals;

(vi) To direct the closure of any industry or class of industries owned or managed by a polluter in case of evasion a refusal to pay the compensation awarded against the polluter. This shall be in addition to the recovery from the polluter as arrears of land revenue;

(vii) To frame scheme or schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu in consultation with expert bodies like National Environmental Engineering Research Institute, Central Pollution Control Board, etc. These schemes shall be executed by the

State Government of Tamil Nadu under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from the other sources provided by the State Government and the Central Government;

(viii) To review the causes of all the industries which already operating in the prohibited areas and direct the relocation of any of such industries;

(ix) To close the tanneries permanently or direct their relocation, which have not provided adequate treatment facilities and not having valid certificate from the Tamil Nadu State Pollution Control Board;

(x) To comply with the orders issued by the Madras High Court and the Supreme Court from time to time;

(xi) To deal with any other relevant environment issues pertaining to the State of Tamil Nadu, including those which may be referred to it by the Central Government in the Ministry of Environment and Forests."

16. Paragraph 3 of the Notification dated 30.9.1996, also indicated the method of recovery of the compensation awarded by the Authority. Para 3 reads as follows:-

"3. In exercise of its powers as defined in paragraph 2 above, the Authority shall prepare a statement showing the total amount to be recovered from the polluters mentioning therein the names of the polluters from when the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them. The statement shall be forwarded to the Collector/District Magistrate of the area concerned who shall recover the amount from the polluters, if necessary, as arrears of land revenue and shall disburse the compensation awarded by the Authority to the affected persons and families."

17. Though the Authority was given the colour of a quasi-judicial Authority, the Notification nevertheless treated the Authority as subordinate to the Ministry. This can be seen from paragraphs 4 and 6 of the Notification which read as follows:-

"4. The Authority shall furnish a progress report about its activities at least once in two months to the Central Government in the Ministry of Environment and Forests.

6. The terms and conditions of appointment of the Chairpersons and Members shall be as determined by the Central Government from time to time."

18. Thus the LoEA came into existence on and from 30.9.1996. But since its term was limited only to 2 years, the Central Government had to pass orders periodically once in 2 years. Sometimes the Government was generous enough to pass orders by itself, but many times they had to pass orders at the instance of the court extending the term of the Authority.

Genesis of the Present Litigation

19. As we have indicated earlier, the awards passed by LoEA, invariably came to be challenged, either at the instance of those affected by pollution or at the instance of the industries, before this court. Therefore, as per the directions of the Supreme Court issued on 28.8.1996, these matters were posted before a Special Bench of two Hon'ble Judges, functioning as Green Bench. Whenever these writ petitions came up for hearing, and whenever it was found that there was a case for remanding the matter back to the LoEA for a fresh consideration, this court found on several occasions that the LoEA had become dysfunctional. On all those occasions, this court used to direct the Central Government to extend the term of LoEA, before remanding the matter back to them.

20. It was on one such occasion, that the Hon'ble First Bench of this Court passed the order dated 3.12.2014, directing the Central Government to nominate a Chairman and constitute the LoEA. But the Central Government, which was simply complying with the orders for extending the term of office of the LoEA, without asking any questions, has suddenly woken up to find that they should have a rethinking on the continuation of the Authority, in the light of the constitution of the National Green Tribunal. Therefore, the Central Government came up with a miscellaneous petition for modification and this is how the issue has now received our attention.

Contentions of the Central Government

21. The stand taken by Mr. G. Rajagopalan, learned Additional Solicitor General is:

- (i) That after the constitution of the National Green Tribunal, it is not necessary to continue the Loss of Ecology Authority, as the functions and powers of the said Authority can be discharged effectively by the Tribunal.
- (ii) That the Tribunal, being a statutory creation, would have more powers under various provisions of the Act and
- (iii) That after the decision of this Court in K.K. Subramaniam, it is impossible for the Loss of Ecology Authority to deal with such a huge volume. He also submitted on instructions that the Union of India is prepared to create an additional Bench of the National Green Tribunal at Chennai, so as to handle the volume of work that will arise after the transfer of the claim petitions pending before the Loss of Ecology Authority to the Tribunal.

Submissions of the Environmentalists

22. The stand of the Central Government is opposed by Mr. T. Mohan and other learned counsel on the ground inter alia (i) that since the LoEA was created by an order of the Supreme Court, it is not permissible to make it redundant; (ii) that despite the fact that the National Green Tribunals Act was enacted in 2010, long after the creation of LoEA, the Act did not repeal LoEA either expressly or

impliedly and hence the Parliament should be deemed to have realised the importance of continuance of the LoEA; (iii) that there are lot of distinguishing features between the National Green Tribunal and the LoEA, including the existence of a suo motu power on the part of the LoEA, which is absent for the National Green Tribunal; (iv) that before the Loss of Ecology Authority a class action in tort is permissible, while before the National Green Tribunal, one has to file an application along with a prescribed court fee and that too within a period of limitation prescribed by the Act; and (v) that the Loss of Ecology Authority was directed to be constituted, taking into account the fact that Tamil Nadu is the third largest industrialised State and it happens to be the largest polluted State and hence such specialised authorities constituted in several States for specific purposes, should not be abolished contrary to public interest.

23. In support of the above contentions, the learned counsel advocating the continuance of the Loss of Ecology Authority have also given a tabulation containing the distinction between the Loss of Ecology Authority and the National Green Tribunal. This tabulation reads as follows:-

Sl. No Loss of Ecology (P and PC) Authority National Green Tribunal

1. Suo-motu cognizance of any environment degradation in an area or areas in the State of Tamil Nadu and award compensation to the affected individuals/families or on application by an affected individual/association. Not conferred with suo-motu powers.
2. No ad volerum Court fee is levied Court fee to be levied
3. Competent to take samples of water, soil etc., and analyse the same at the spot itself in the presence of the affected individual and the polluter and determine the pollution load. No such power conferred under the statute.
4. Presence of the affected individual is not necessary at the time of the enquiry since the Authority will arrive at a tentative compensation by scientific methods and issue notice to the polluter and after hearing the polluter, determine the compensation and pass award and send it to the respective District Collector to operate Environment Protection fund for collection from polluter and disburse the compensation to affected individuals as per the Award. Necessary. Environment Relief Fund is created under the statute.
5. No limitation period to exercise and "legal right and "relating to environment. No application shall be entertained after 6 months from the date of cause action as per section 14(3) of the NGT Act.
6. No limitation period for claiming compensation. Within 5 years
7. Reversal fund should be met by polluter, State Govt. and amp; Central Govt. Expenses towards reversal schemes should be met by the polluter alone.
8. Sec.3(2).V restriction of areas in which any industries, operations or processes or class of industries, operation or processes shall not be carried out or shall be

carries out subject to certain safeguards. No such power.

9. Sec.3(2).VI Laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents. No such power

10. Sec. 3(2).VII Laying down procedures and safeguards for the handling of hazardous substances. No such power

11. Sec. 3(2).VIII Examination of such manufacturing processes, material and substances are likely to cause environmental pollution. No such power

12. Sec. 3(2).IX carrying out and sponsoring investigations and research relating to problems of environmental pollution. No such power

13. Sec. 3(2).X Inspection of any premises, plant, equipment, machinery manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities officers or persons as it may consider necessary to take steps for the prevention control and abatement of environmental pollution. No such power

14. Sec. 3(2).XII Collection and determination of information in respect of matters relating to environmental pollution. No such power

15. The award of compensation LoEA will be credited to and quot;Environment Protection Fund and quot;as per the directions of the Supreme Court to be operated by respective District Collector. The Authority is Monitoring Fund. There is no power in NGT Act to transfer it to environment relief fund. No rules have been framed under section 35(i) of NGT Act. The award of compensation amount of NGT will be credited to and quot;Environment Relief Fund and quot;.

16. LoEA can take Suo-motu cognizance and frame the reversal schemes and send the same to the State Government for implementation under the supervision of the Central Government. Expenses should be met by in polluter, the State Government and Central Government. NGT cannot frame the schemes.

17. Jurisdiction confined to State of Tamil Nadu alone. Jurisdiction extended to States of Karnataka, Andhra Pradesh, Kerala, Tamil Nadu, Pondicherry and Andaman and Nicobar Islands. Civil Courts are ousted from entertaining suits in respect of environmental issues.

24. In paragraph 8 of the additional counter affidavit, the parties have also furnished the number of claims allegedly pending on the file of the Loss of Ecology Authority.

25. In paragraph 21 of the additional counter affidavit they have furnished the details of the awards so far passed by the LoEA. Which reads as follows:-

Loss of Ecology (P and amp;Pc) Authority Award Details Up To 02.06.2015

Sl. No Particulars Beneficiaries Area in H.A Amount in Rs.

1 Vellore District Award I and II 30570 16345.92 29,73,04,606
 2 Vellore District Left out Cases 1813 1615.62 2,80,53,472
 3 Dindigul 6863 2005.14 3,93,38,568
 4 Noyyal River Basin (Tirupur) 28596 28,449.816 24,79,98,548
 5 Noyyal River Basin (Encashment) 8,30,247
 6 Noyyal River Basin (Tirupur Left out case) 1 4,120 1,48,320
 7 Amaravathi Basin 18,290 14164.00 6,37,21,568
 8 Telungupalayam and Kumarapalayam 3835 5825.00 76,42,612
 9 Neyveli 5 5.835 1,25,325
 10 Theni-Karuppa Devar 1 2.815 8,58,325
 11 Hosur 3 15.35 58,54,853
 12 S.S.M. Fine 33 17.155 16,45,524
 - Total 90,010 684,50.771 69,35,21,662

26. In para 22 of the additional counter affidavit, they have furnished the details of reversal claims passed by the Authority in the past 15 years. Which reads as follows:

Details of Reversal Scheme Passed by the Loss Ecology (P and amp;PC)

Authority from 2001 to Jun 2015

S. No. Name of the District Total Schemes in Crores

1. Vellore Award 07.03.2001 122
2. Madhavaram (Thiruvallur District 17.08.2011 1.03
3. Dindigul 27.09.2001 35.5
4. Pammal-Pallavaram (Kancheepuram District) 27.09.2001 5.79
5. Trichy District Dated 10.07.2001 0.24
6. Erode District Dated 10.07.2001 0.67
7. Odai, Odaikattukullam Pond, Varapalayam Village, Perundurai Taluk, Erode District Date 25.04.2011. 0.4

Total 165.63

Scheme of the National Green Tribunal Act, 2010

27. Before testing the correctness of the rival contentions, it may be necessary to take a look at the scheme of the National Green Tribunal Act, 2010. The

preamble to the Act reads as follows:

"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environment protection and conservation of forest 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.

And Whereas India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of population and other environmental damage;

And Whereas in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution.

And Whereas it is considered expedient to implement the decisions taken at the aforesaid conference and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment."

28. The jurisdiction and powers of the National Green Tribunal are to be found in Sections 14 to 20. A close look at these provisions would show that the Tribunal has both original as well as appellate jurisdiction. The range of powers that the Tribunal has include -

(i) the power to adjudicate upon civil cases where a substantial question relating to environment is involved (Section 14(1));

(ii) the power to grant relief and compensation to the victims of pollution (Section 15(1)(a); and

(iii) the power to order restitution of either property damaged or of the environment (Section 15(1)(b).

29. A person in whose favour the National Green Tribunal passes an award or order, is entitled to two types of remedies, if the award or order or the decision of the National Green Tribunal is not complied with. The first is a right to seek execution of the award under Section 25 and the second is to seek the prosecution of the offenders before a criminal court under Section 26.

30. Apart from the bar of jurisdiction of civil courts under Section 29, the National Green Tribunal Act, 2010 is also conferred the overriding effect upon any other law under Section 33, which reads as follows:

"33. Act to have overriding effect - The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time

being in force or in any instrument having effect by virtue of any law other than this Act."

31. Section 38 of the National Green Tribunal Act, 2010, repeals the following enactments:

(i) National Environment Tribunal Act, 1995

(ii) National Environment Appellate Authority Act, 1997

32. Apart from repealing the above 2 enactments expressly under subsection (1), the Act also contains a provision in Sub-Section (8) of section 38 which deals with implied repeal. Sub-Section (8) of Section 38 reads as follows:-

"(8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

33. In so far as the execution of the orders of the National Green Tribunal are concerned, Section 25 confers two types of powers namely:

(a) The power to execute the award by itself, as if the award is a decree of a civil court and

(b) The power to transmit the award to a civil court for its execution.

34. As stated earlier, the failure of any person to comply with the award of the Tribunal, is also made punishable under Section 26, with imprisonment for a term that may extend to 3 years or with fine which may extend to Rs. 10 Crores or with both. Section 27 makes every company and every person directly in charge of the affairs of the company liable to prosecution. Section 28 makes even the Government Departments liable to be prosecuted and punished. Such powers are not available for the Loss of Ecology Authority.

35. Though Sub-Section (2) of Section 26 makes offences under the Act known cognisable, Section 30 (1) (b) entitles any person who has given notice of not less than 60 days in the prescribed manner, of the alleged offences and of his intention to prosecute, to file a complaint before the competent court. Interestingly, Section 30(1)(b) does not even use the expression "aggrieved person". It uses only an expression "any person".

Precursors To N.G.T.

36. The scheme of the National Green Tribunal Act, 2010 can be best understood, only if we take a look at some historical facts, relating to (a) the advent of the Environment Protection Act, 1986; (b) the advent of the National Environment Tribunal Act, 1995; (c) the advent of the National Environment Appellate Authority Act, 1997; and (d) the 186th Report of the Law Commission of India.

37. In the late 1960s, all the countries of the world woke up to the reality of

increasing pollution, decline in environmental quality and loss of biological diversity. Therefore, a Conference on Environment titled United Nations Conference on Human Environment was held in Stockholm in June, 1972. Certain decisions were taken in the said conference, as part of the implementation of which, the Parliament enacted the Environment (Protection) Act, 1986. The Act merely provided for certain measures for the prevention and control of Environmental Protection. Section 3 of the Act obliged the Central Government to take measures to protect and improve the environment. Section 3 in entirety reads as follows:-

"3. Power of Central Government to take Measures to Protect and improve Environment

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities-- (a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an Authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such Authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such Authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

38. Apart from the power conferred by Section 3 to take measures, the Central Government was also conferred with the power under Section 5 to issue directions, which included the power to close, prohibit or regulate any industry and also to stop or regulate the supply of electricity or water.

39. But the Environment (Protection) Act, 1986, was found to be inadequate inasmuch as it did not deal with the issue of compensation. The question of compensation for the victims of pollution itself received considerable attention only at the United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992, which called upon the member-States to develop National laws regarding the liability and compensation for the victims of pollution and other environmental damage. It was around that time that the principle of strict civil liability in accident cases arising from the activities involving hazardous substances came into focus in the case of Union Carbide on account of the

Bhopal Gas Tragedy.

40. Therefore, with the experience gained out of the Bhopal Gas Tragedy and with a view to implement the decisions taken at the United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992, the Parliament enacted the National Environment Tribunal Act, 1995. But as seen from the Preamble, the National Environment Tribunal Act, was intended only for effective and expeditious disposal of cases arising from any accident occurring while handling any hazardous substance and for providing relief and compensation for damages to persons, property and the environment, on the basis of the principle of strict civil liability. As a consequence, the Tribunal proposed to be created by this Act, was intended to provide relief only to the victims of industrial accidents and disasters and that too arising out of the handling of hazardous substances. The award passed by the National Environment Tribunal could be appealed against, only before the Supreme Court under Section 24(1), and that too only on any of the grounds specified in Section 100 of the Code. But unfortunately, this Act was not notified for a full period of eight years, as highlighted in page 101 of the 186th Report of the Law Commission.

41. The above Act was closely followed by another Act known as the National Environment Appellate Authority Act, 1997, which was enacted solely for the purpose of creating an Appellate Authority against the orders granting environmental clearance in the areas in which any industries, operations, processes or class of industries, operations and processes shall or shall not be carried out.

42. Within a couple of years of the advent of the 1997 Act, the Supreme Court had an occasion in *A.P. Pollution Control Board v. M.V. Nayudu (Retd.)* [AIR 1999 SC 812], to consider the various aspects of environmental law, with particular reference to diverse scientific opinions and the difficulty posed by problems of complex technology. After referring to the tripod namely the precautionary principle, polluter-pays principle and the concept of sustainable development, which were made part of the Environmental Law of the country by the decision of the Supreme Court in *Vellore Citizens Welfare Forum*, the Supreme Court ventured in *M.V. Nayudu* to a more elaborate discussion of these principles. The Court took note of the deficiencies in the judicial system and advocated the need for providing adequate judicial and scientific inputs in the establishment of Environmental Courts, Authorities and Tribunals. The Supreme Court pointed out in *M.V. Nayudu* that the Land and Environment Court of New South Wales of Australia could be an ideal model for the creation of Environmental Courts in India, as the said court was a court of record with four Judges and nine technical and conciliation assessors. The jurisdiction of that Australian court combined appeal, judicial review and enforcement functions. The court also recalled in *M.V. Nayudu*, the suggestion made way back in 1986 in *M.C. Mehta v. Union of India* [1986 (2) SCC 176], for the constitution of Environmental Courts.

43. In a follow up judgment, in *A.P. Pollution Control Board v. M.V. Nayudu* [2001 (2) SCC 62], the Supreme Court referred to the serious differences in the constitution of Appellate Authorities under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control Pollution) Act, 1981 and opined that the Law Commission of India could examine the disparities in the constitution of the quasi-judicial bodies and to suggest a new scheme so as to attain uniformity in the structure of quasi-judicial bodies.

44. Accordingly, the Law Commission of India undertook a detailed study of the subject of Environmental Courts, examined a report submitted by Dr. Malcolm Grant in United Kingdom in the year 2000, and a Report of the Royal Commission of March 2002 and submitted its 186th Report on 23.9.2003. As could be seen from the Letter of the Chairman of the Law Commission, enclosing the 186th Report, the Law Commission proposed a comprehensive scheme for the setting up of a judicial body in the form of Environment Court at the State Level, consisting of sitting/retired Judges or members of the Bar with more than 20 years standing assisted by a statutory panel of experts in each State. The Law Commission conceived such a court to be a court of Original Jurisdiction on all Environmental issues and also an Appellate Authority under all the three Acts, namely, Water Act, Air Act and Environment Protection Act.

45. The 186th Report of the Law Commission pointed out that the Tribunal under the National Environment Tribunal Act, 1995 was not notified despite the expiry of eight years and that no Judicial Member was appointed from the year 2000 under the National Environment Appellate Authority Act, 1997. In other words, both Tribunals were found by the Law Commission to be non-functional and to have remained only on paper.

46. Some of the observations and recommendations made in the 186th Report of the Law Commission, are worth noting. Hence, they are extracted as follows:-

"As pointed out in Chapter I, Environmental Courts manned by a Judge and two experts at the regional level was advocated by the Supreme Court in *M.C. Mehta v. Union of India*, 1986 (2) SCC 176 (at 202). This was reiterated by the Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India*, 1996 (3) SCC 212. Finally, the need for such Environment Courts was referred to in *A.P. Pollution Control Board v. M.V. Naidu*, 1999 (2) SCC 718 and in the follow up case in *A.P. Pollution Control Board II v. M.V. Naidu*, 2001 (2) SCC 62, the Court required the Law Commission to go into this question.....

For the first time, when the National Environment Tribunal Act, 1995 was passed, Parliament thought that the Tribunal should be manned by a member of the superior Judiciary. Similarly, in 1997 when the National Environment Appellate Authority, 1997 was constituted, the Authority was to consist of a retired Supreme Court Judge and Members having scientific experience etc. But, these Tribunals are now non-functional.....

It is now proposed, as stated earlier, that there will be an Environment Court in

each State (or group of States) and will have appellate jurisdiction. It will have appellate jurisdiction which is now being exercised by officers of the Government under the special Acts. Pending appeals under the Water (P and CP) Act, 1974, Air (P and CP) Act, 1981 and under the Rules framed under the Environment (Protection) Act, 1986 must be transferred to the proposed Environment Court in each State and all future appeals must be filed in the said Court. Section 28 of the Water (P and CP) Act, 1974 and section 31 of the Air (P and CP) Act, 1981 must be amended, as stated earlier, stating that the appeals shall hereafter lie to the Environment Court under the proposed Act and that pending appeals shall stand transferred to the said Court. Similarly, a provision must be inserted in the Environment (Protection) Act, 1986 stating that all appeals against orders passed by the various authorities under the Rules made under that Act shall be filed in the concerned Environment Court at the level of each State (or group of States) and that pending appeals before appellate authorities constituted under the said Rules shall also stand transferred to the Environment Court. A provision may also have to be made in the proposed Environment Courts Act enabling the Central Government to issue notifications from time to time, notifying that the Environment Court will be the appellate Authority in respect of orders passed under any other Central Act and also enabling the State Governments, with the approval of the Central Government, to notify, from time to time, the Environmental Court as the appellate Court for purposes of other State Acts. The National Environment Tribunal Act, 1995 was a law intended to award compensation to those affected by hazardous substances and we propose that this relief of damages which was to be granted by the National Environment Tribunal - for injury on a strict liability basis - should be a relief which will be granted by the proposed Environment Court.

This will necessitate repeal of the National Environment Tribunal Act, 1995 and bringing those provisions into the proposed Act. It is also proposed that the relief which could have been granted by the Environment Appellate Authority under the National Environment Appellate Authority Act, 1997 should now be granted by the proposed Court, in respect of violation of safeguards under the Environment (Protection) Act, 1986 and the appellate powers contemplated by section 11 of that Act be now granted to the proposed Court. This will require repeal of the National Environment Appellate Authority Act, 1997 and transfer of those provisions into the proposed Act. We are also of the view that the appeals against awards passed by the Collector under section 8 of the Public Liability Insurance Act, 1991 (which deals with compensation payable for injury to person or property on account of hazardous substances) should lie to the proposed Environment Court. Section 8 of that Act contemplates that the compensation payable and paid under section 7 shall go in reduction of any compensation payable "under any other law". The proposed Environment Court will be entitled to pass interlocutory orders, including ad interim and ex parte orders pending the appeals. The appeals by the proposed Court must be entertained on payment of a fixed court fee of Rs. 500.

.....

Original Jurisdiction The proposed Court shall have original jurisdiction on environmental disputes with all powers of a Civil Court and shall grant (apart from the damages contemplated under the National Environment Tribunal Act, 1995 in the case of injury on account of use of hazardous substances in its original jurisdiction) all reliefs which a Civil Court can grant under the Code of Civil Procedure, 1908 or other statutes like the Specific Relief Act, including declaration, setting aside of orders by public authorities or the State, permanent injunction, mandatory injunction, appointing receivers to manage the property, damages or compensation, possession etc. The Court can be approached by way of an original petition. The proposed Court shall also be entitled to pass all interlocutory orders - both ad interim and final, pending disposal of the original petitions. A fixed court fee of Rs. 1000 should alone be payable in the original petitions that may be filed before the proposed Court. The Court must have powers to award exemplary costs if frivolous or vexatious original petitions are filed.

So far as the jurisdiction of the Court is concerned, it must be provided that the Court will have jurisdiction (a) to protect the right to safe drinking water and the right to an environment that is not harmful to ones health or well being and (b) to have the environment protected for the benefit of present and future generations so as to (i) prevent environmental pollution and ecological degradation (ii) promote conservation and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Explanation has to be added to the above (proposed) provision that the jurisdiction shall include (a) the protection of natural environment, forests, wild life, sea, lakes, rivers, streams, fauna and flora; (b) preservation of natural resources of the earth; (c) prevention, abatement and control of environmental pollution including water, air and noise pollution; (d) enforcement of any legal or constitutional rights relating to environment and pollution under the Constitution of India or under any other law for the time being in force; (e) protection of monuments and places, objects of artistic or historical interest of national importance as declared by the law made by Parliament.

Jurisdiction of ordinary Civil Court and conflict of decisions: We have already stated that we are not ousting the jurisdiction of the Civil Courts to entertain environment related disputes. As of now, for example, if a chimney in a neighbour's house is releasing polluted air or a small sewage channel from one house or land is creating pollution to a neighbour's house or land, parties in villages are able to approach the nearest munsif Courts which are quite accessible to these villages. If we oust the jurisdiction of these Courts, villagers cannot be expected to go all the way to the seat of the Environment Court for each adjournment and contest the same. (May be, if a large section of people is involved, they may be able to contest the case in the Environment Court, even if

it is located at a distant place.) In fact, even in Australia and New Zealand, the jurisdiction of ordinary Courts is not ousted. Proposals in UK are also likewise. We are here only proposing to provide special Courts,- like the Consumer fora - which parties may easily approach, if they want a speedy or specialist Court. In fact, the Consumer (Protection) Act, 1986 states that the Act is in addition to the remedies under ordinary law. But, on the question of finality, it has to be provided that if an adjudication has become final in the Civil Court (or in the Environmental Court) it should be binding on the parties and parties cannot be allowed to move the Environmental Court (or Civil Court) which has not yet been approached.

If a dispute on some subject matter is pending in the Environment Court and another similar case is filed later in the Civil Court, or vice versa, parties can always obtain stay of the latter proceeding from the Court where the latter case is filed by filing an application on the same principle as in section 10 of Civil Procedure. Rules of evidence and Conciliation/Mediation The proposed Court will not be bound by rules of evidence and can lay down its procedure. It can entertain oral and documentary evidence and consult experts. It shall, however, have to observe principles of natural justice. The Judicial Members and the Commissioners may, if necessary, make spot inspections and record oral evidence. The proposed Environment Court should encourage Conciliation and Mediation at any stage of the proceeding - be it an appeal or an original petition. Environmental Principles to be applied Obviously, the proposed Court will have to apply the fundamental principles of environmental law as stated in Chapter VIII. The statute must state that the Environment Court must keep in mind the Precautionary Principle, Polluter Pays Principle, New Burden of Proof Principle, Prevention Principle, Strict Liability so far as hazardous 148 substances are concerned, Public Trust doctrine, Concept of intergenerational equity and the Concept of Sustainable Development.

Power to frame schemes and monitor them: The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. Take the case of air, water pollution, which are caused by an industry or a group of similar industries located in an area. Directions may have to be issued for their shifting, for closure of the industry temporarily and for directing payment of wages to the employees to cover two or three years of their wages; for directing local authorities to provide necessary amenities at the new location, like water and electricity, or to direct the industries to install effluent plants etc. A variety of issues arise simultaneously, involving several departments of the Central/State Government or local authorities. The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a

comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time.

Execution of orders and contempt procedure: It was prescribed in section 25 of the National Environment Tribunal Act, 1995, that whoever fails to comply with an order of the proposed 150 Tribunal should be liable for imprisonment upto a term of 3 years or with fine which may extend upto Rs. 10 lakhs or with both. (We are aware that section 19 of the National Appellate Authority Act, 1997 prescribed imprisonment upto seven years and fine upto rupees one lakh or both.) Obviously, the punishment could be awarded only by the normal criminal courts competent to award such punishment. This could take a pretty long time. So far as execution of its orders are concerned, proposed Courts must have all powers which a Civil Court has for execution and should also be able to exercise contempt jurisdiction. There is no difficulty in conferring such a power on these Courts. The Commission is of the view that having regard to the fact that big industries which pollute the environment (or our streams, lakes and rivers or air) come before the Court, there is need to invest the Court with contempt powers so that the Court can, by way of summary proceedings, see that its orders are effectively implemented instead of taking out lengthy proceedings by way of execution or proceedings under the criminal law. Parliament can invest these proposed Courts with such a power by law made under Entry 14, List III of the VII Schedule. Power to mould appropriate relief Normally, Civil Courts do not grant relief which is not prayed for. But, like Writ Courts, these environment Courts must be able to mould any relief appropriate to the facts and circumstances of the case.

Therefore, we are of the view that, in the original petitions or in appeals, the proposed Courts should have power to grant any other relief other than what is sought for, which is suitable in facts and circumstances of the case.

Locus standi: So far as locus standi before the proposed Court in original petitions is concerned, it must be as wide as it is today before High Courts/ Supreme Court in the writ jurisdiction in environment matters. This is the position in Australia and New Zealand also. Any person or organisation who or which is interested in the subject matter or in public interest must be able to approach the Court. As stated earlier, the Court must be permitted to impose exemplary costs in case of frivolous or vexatious litigation.

Amicus curiae: There must be provision for intervention by individuals/ organization and also power in the Court to appoint amicus curiae. Qualification of Judicial Members so far as the persons who man the proposed Environment Court are concerned, as stated earlier, there will be three Judicial Members assisted by three expert Commissioners. The Court must also be assisted by a statutory panel of Technical/Scientific personnel called Commissioners as is done in Australia and New Zealand. Having regard to the variety of issues that come

before Environment Courts, it will be necessary to have a panel of at least three such Commissioners. Their role will be advisory and they have to be present in the Court during the course of the hearings. They are not Members of the Court but are a statutory panel intended to independently advise and assist the Court in analysing and assessing scientific or technological issues. At least one Commissioner must always be present in the Court. In case the Court feels that any other expert in a different branch than those in the panel is to be examined, the Court may on its own or in consultation with the panel of Commissioners, refer the matter for opinion to other expert/experts in the particular field under consideration.

We, therefore, recommend that a law be made by Parliament under Article 253 for constitution of Environmental Courts in each State (or group of States) having original and appellate jurisdiction as stated in this Chapter and having jurisdiction on environmental issues. The Courts will be manned each by three members with judicial or legal experience as stated and a panel of expert Commissioners. An appeal against the judgment shall be to the Supreme Court of India. The procedure to be followed by the Court will be as stated in this Chapter."

47. The 186th Report of the Law Commission, submitted in 2003, eventually paved the way for the enactment of the National Green Tribunal Act, 2010. This can be seen from the relevant portion of the Statement of Objects and Reasons of the Act, which read as follows:-

"4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction. 5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws. 6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the

multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

48. From the 186th Report of the Law Commission and the salient features of the Act, the following could be deduced:

(1) The creation of the National Green Tribunal, was in pursuance of the repeated directions issued by the Supreme Court in at least four important cases namely, *M.C. Mehta v. Union of India* [1986 (2) SCC 176], *Indian Council for Enviro Legal Action v. Union of India* [1996 (3) SCC 212], *A.P. Pollution Control Board v. M.V. Nayudu* [1999 (2) SCC 718], *A.P. Pollution Control Board v. M.V. Nayudu* [2001 (2) SCC 62].

(2) The object of creation of the National Green Tribunal was to provide, what could be called a one-stop-shop solution, for all types of issues such as Environmental clearances, settlement of disputes relating to environment, relief and compensation for victims of pollution and environmental damage, restitution of property, restitution of environment etc.

(3) The Tribunal was to have both original and Appellate jurisdiction, with enormous powers not only to execute its orders as decrees of civil courts, but also to punish those who fail to comply with its orders.

(4) The Tribunal was to collect a court fee and entertain claims preferred within a period of limitation.

Contentions for the Continuance of LoEA:

49. The first contention of the learned counsel who want the LoEA to continue is that the Authority was created by an order of the Supreme Court and hence it is not permissible for this court to make it redundant.

50. But this argument does not stand to reason, in view of the fact that the writ petition in which the Supreme Court passed orders directing the creation of LoEA, now stands transferred to this court in W.P.No.13433 of 1996. The Supreme Court has left it to this court to deal with the main writ petition itself. Hence, this court has the power to decide the fate of LoEA.

51. The second contention of the learned counsel is that the LoEA does not stand repealed either expressly or impliedly under Section 38 of the National Green Tribunal Act, 2010.

52. It is true that under Sub-Section (1) of Section 38, the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 alone stand repealed. But the omission to make a mention of the Loss of Ecology Authority in Section 38 of the National Green Tribunal Act, 2010 is understandable. The LoEA was not created by a statute so as to be repealed by

an enactment creating another Tribunal in the place of the same. What was created pursuant to the directions issued by the Supreme Court, cannot be repealed by an act of Parliament. Moreover, the expression "repeal" normally would apply to an Act or statutory prescription. The Loss of Ecology Authority was not created by any statutory prescription. It was created by the Central Government in an exercise of the power conferred by Section 3(3) of the Environment (Protection) Act, 1986, pursuant to the directions issued by the Supreme Court. Hence, the question of repeal does not at all arise. The Notification issued by the Central Government on 30.9.1996 creating the LoEA in exercise of the power conferred by Section 3(3) of the Environment (Protection) Act, 1986, cannot be repealed under Section 38. A Notification cannot be repealed by an Act of Parliament. Therefore, the second argument does not hold good.

53. The third contention is that there are lot of distinguishing features between the National Green Tribunal and LoEA, including the existence of a suo motu power on the part of the LoEA.

54. But as seen from Sub-Section (2) of Section 18, an application for the grant of relief or compensation or settlement of disputes may be made to the Tribunal either by (i) the person who sustained injury; (ii) or by the owner of the property to which damage has been caused; (iii) or by the Legal Representatives of the person who died due to environmental damage; (iv) or by an agent; and (v) or by any person aggrieved including a representative body or organization. Such application can be filed even by the Central Government or State Government or the Central or State Pollution Control Board or Local Authority or Environmental Authority. Therefore, the question of locus has been diluted under Section 18(2) to such an extent that the lack of suo motu powers is more than compensated.

55. In so far as the grievance relating to court fee is concerned, the 186th Report of the Law Commission itself prescribed a fixed court fee. The mere prescription of a court fee, cannot make the Tribunal a place beyond the reach of the common man. In any case, the non-governmental organisations involved in environment protection may make representations to the Government to amend the National Green Tribunal Act, 2010, so as to delete the requirement of court fee.

56. In so far as the prescription of limitation is concerned, we do not think that the respondents can really object to it. Two types of limitation are stipulated in the National Green Tribunal Act, 2010. The first is a period of limitation prescribed under Section 14(3). The second is a period of limitation prescribed under Section 15(3). The limitation for filing an appeal is prescribed separately under Section 16. Persons whose claims are already pending before LoEA, need not be afraid of the prescription of a limitation in the National Green Tribunal Act, 2010. The claims now pending before LoEA, if transferred to the National Green Tribunal, cannot at all be dismissed on the ground of limitation, since those claims had been entertained by LoEA. Whenever a court or Tribunal or other

Authority is abolished and the cases pending therein are transferred to another court or Tribunal, the question of limitation cannot be examined with reference to the Act by which the court or Tribunal of the latter category was constituted. In any case, on instructions, it was submitted by Mr. G. Rajagopalan, learned Additional Solicitor General that the issue of limitation will not be raised by the Central Government.

57. The next difference pointed out by the learned counsel for the respondents is that the LoEA is entitled to draw samples, analyse the same and determine the load of pollution and that such a power is absent in the National Green Tribunal Act, 2010. But we do not think that it is correct. Section 19(1) confers enormous powers upon the Tribunal and hence the Tribunal can compel any expert to take samples and have them analysed, before submitting a report.

58. The next difference between LoEA and National Green Tribunal, as pointed out by the learned counsel appearing for the respondents is that LoEA can frame reversal schemes and send the same to the State Government for implementation. Such a power is absent in the case of the National Green Tribunal.

59. But the aforesaid contention cannot stand in the light of what is provided in Section 15(1)(b) and (c) of the National Green Tribunal Act.

60. The next contention of the learned counsel for the respondents is that a class action in tort is permissible before LoEA and it is not feasible before the National Green Tribunal. But the said contention may not be correct in view of the provision contained in Section 18(2)(e) of the National Green Tribunal Act, 2010.

61. The last contention is that LoEA is an Authority constituted under special circumstances relating to Tamil Nadu. Therefore, such a specialised body created for the special needs of a State, cannot be closed and its functions entrusted to an all India Tribunal.

62. It may be true that LoEA was constituted due to the special needs of the State of Tamil Nadu. But it does not mean that an All India Tribunal which has come into existence for the purpose of dealing with all types of disputes, relating to environment, cannot deal with the issues that the LoEA was called upon to deal with.

63. Referring to the mode of recovery prescribed in para 3 of the Notification dated 30.9.1996 by which the LoEA was constituted, it was contended by Mr. T. Mohan, learned counsel that the LoEA had a much better mechanism for the recovery of the amounts due under the awards passed by them.

64. But we do not agree. The State of Tamil Nadu has an Act called the Tamil Nadu Revenue Recovery Act, prescribing a procedure for the recovery of arrears of land revenue. Therefore, the moment an award passed by the LoEA is forwarded to the Collector in terms of paragraph 3 of the Notification, the Collector has to follow the procedure prescribed by the said Act.

65. Our experience shows that at the outset, the District Collectors do not initiate immediate action. Many times writ petitions are filed for a mandamus to direct the Collectors to initiate action under the Revenue Recovery Act. If this first hurdle is crossed and proceedings are initiated, the award holders get caught in a quagmire at the next stage. The proceedings initiated under the Revenue Recovery Act, are challenged by way of writ petitions on the ground of violation of the procedure prescribed."

66. Therefore, we do not think that the provision for recovery of the amount due under an award, as an arrear of land revenue, gives an edge to the LoEA over the National Green Tribunal, especially when the National Green Tribunal has the power (i) to execute the award as if it is a decree of civil court; (ii) to transmit the award to the competent civil court for execution; and (iii) to prosecute a defaulter before a criminal court. The LoEA does not have powers similar to those available under Sections 26 to 28 of the National Green Tribunal Act, 2010. Therefore, in so far as execution is concerned, the National Green Tribunal appears to have a greater latitude.

67. We have already extracted para 4 of the Notification dated 30.9.1996 by which LoEA was created. Under the said paragraph 4, the LoEA was liable to furnish a progress report about its activities, once in two months, to the Central Government. Therefore, the Central Government appears to have treated LoEA as an Authority subordinate to it.

68. We have yet another reason why it is not necessary to continue the LoEA, after the constitution of the National Green Tribunal. A close look at Sub-Sections (1) to (3) of Section 3 of the Environment (Protection) Act, 1986 would show that Sub-Sections (1) and (2) indicate the power of the Central Government as well as the measures that the Government should take for protecting and improving the quality of environment and for preventing, controlling and abating environmental pollution. Sub-Section (3) is an enabling provision, entitling the Central Government to constitute an Authority either for the purpose of taking the measures referred to in Sub-Section (2) or for the issue of directions under Section 5.

69. In other words, Sub-Section (2) of Section 3 and Section 5 of Environment (Protection) Act, 1986 delineate two things namely, (i) the measures to be taken by the Central Government and (ii) the directions that could be issued by the Central Government. Sub-Sections (1) and (3) of Section 3 give two alternatives to the Central Government. They are (i) either to take the measures indicated in Section 3 (2) or to issue directions as per Section 5, by itself or (ii) to constitute an Authority to perform both these functions.

70. To put it differently, the object of constituting an Authority under Section 3 (3) is to enable the Central Government to outsource its own powers and functions to an independent Authority. The purpose of constitution of an Authority under Section 3(3), is to enable the Central Government to do, through

an external agency, what the Central Government itself could do, namely to take measures indicated in Section 3(2) and to issue directions under Section 5.

71. Under the National Green Tribunal Act, 2010, the Environment (Protection) Act, 1986 was also amended. By Section 36 of the National Green Tribunal Act, 2010, Section 5-A was inserted in the Environment (Protection) Act, 1986. Under this Section, any direction issued by the Central Government under Section 5, either for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of the supply of electricity or water or any other service, was made appealable to the National Green Tribunal.

72. The legal effect of Section 5-A of the Environment (Protection) Act, 1986, if juxtaposed in to Section 5 read with Section 3(3) will be -

(1) that Central Government is competent to issue certain directions under Section 5;

(2) that the power under Section 5 can also be exercised by the Authority constituted under Section 3(3); and

(3) that the directions issued under Section 5, either by the Central Government itself or by the Authority constituted under Section 3(3) are amenable to the appellate jurisdiction of the National Green Tribunal.

73. Therefore, it is clear that the Loss of Ecology Authority, if it continues to exist, should only be an Authority subject to the judicial supervision (if not administrative supervision) of the National Green Tribunal. By virtue of paragraph 4 of the Notification dated 30.9.1996 by which it was constituted, the LoEA appears to be subject to the administrative supervision of the Central Government. Therefore, there is no point in maintaining an independent authority when the powers and functions exercised by them could be exercised by the Tribunal itself.

74. On the basis of statistics relating to disposal as well as pendency of claim petitions before the LoEA, it is contended that the National Green Tribunal will buckle under pressure, if 28,000 claims are transferred from the LoEA. But an assurance has been given on behalf of the Central Government that an additional Bench of the National Green Tribunal would be constituted at Chennai, if the pending cases are transferred from LoEA. Whether the constitution of one additional Bench is sufficient or not, can be tested after some amount of experience is gained. On the lighter side, we may point out that statistics relating to pendency do not intimidate any court of law.

75. Lastly, we may have to point out that there is no point in multiplying quasi-judicial tribunals and Authorities. The direction issued by the Supreme Court on 28.8.1996 for the constitution of an Authority, was at a time when no Environmental Court was in existence in the country. After the decision of the Supreme Court dated 28.8.1996, the Supreme Court had an occasion to consider the issue of constitution of Environmental Courts, in at least two decisions

bearing the same cause title namely A.P. Pollution Control Board v. M.V. Nayudu. On account of the directions issued by the Supreme Court in these decisions, the Law Commission considered the issue and came up with its 186th report which eventually led to the National Green Tribunal Act, 2010. Therefore, the direction issued by the Supreme Court for the constitution of LoEA, should be understood to be a direction to make a stop-gap arrangement, till a pucca Environmental Tribunal was constituted. Once such a Tribunal is constituted, with original as well as Appellate jurisdiction, on the civil as well as criminal side, the necessity to continue LoEA does not arise.

76. This is why, the Supreme Court issued certain directions in paragraphs 40 and 41 of its decision in Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India [(2012) 8 SCC 326]. They read as follows:-

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

77. But in Adarsh Co-operative Housing Society Limited v. Union of India (SLP (Civil) No. 27327/2013), the Supreme Court, by an interim order dated 10.3.2014, stayed the operation of paragraphs 40 and 41 extracted above. However, it appears that the application was withdrawn on 11.8.2014.

78. Though two different views were expressed across the Bar, about the effect of the directions contained in paragraphs 40 and 41 of the decision of the Supreme Court in Bhopal Gas Peedith Mahila Udyog, we need not go into the same. We have independently come to the conclusion that the powers and functions of the LoEA can be effectively discharged by the National Green Tribunal, subject to certain safeguards.

79. However, there is one more issue which needs to be sorted out. The

respondents 5 to 13 in W.P. No. 23291 of 2006 were appointed to various posts in the Loss of Ecology Authority on various dates. Some of them have continued for more than ten years. The details of their employment as given in the Annexure to the affidavit that they filed in support of their impleading petition M.P. No. 1 of 2013 are as follows:

Respondent Name Post Date of appointment Years of service

5 K.P. Jaiganesh Research Officer 19.01.2004 12

6 S. Rajakathiravan UDC 30.12.1998 17

7 T.S. Ranjan LDC 28.02.2008 8

8 S. Geetha LDC 23.7.2007 9

9 V. Tamilselvi LDC 01.7.2009 7

10 P. Baskar Peon 27.10.1998 17

11 K. Prabhakaran LDC 29.10.2002 13

12 S. Muralimurugan Peon 28.10.2002 13

13 R. Livingston Peon 20.6.2012 4

80. If the Loss of Ecology Authority goes and the pending cases are transferred to National Green Tribunal, the workload of the existing staff of the Tribunal may increase manifold. If one more additional Bench is going to be created, as indicated by the Additional Solicitor General, the Tribunal may require additional staff. Therefore, the rehabilitation of the staff working in the Loss of Ecology Authority may be fruitful for both sides. Therefore, while creating one or more additional Benches and having all the pending cases transferred from the Loss of Ecology Authority to the National Green Tribunal, the Government of India shall also consider the absorption of the staff working in the Loss of Ecology Authority, to the extent necessary.

81. Therefore, in fine, we pass the following order:

(i) W.P. No. 23291 of 2006 praying for a direction to the Union of India to make the Loss of Ecology Authority as a permanent body, is dismissed.

(ii) M.P. No. 11 of 2015 in W.P. No. 39722 of 2005 filed by the Union of India is allowed and the order dated 3.12.2014 passed in W.P. No. 39722 of 2005 shall stand modified to the effect mentioned in the following clauses.

(iii) All the claims pending investigation/enquiry on the file of the LoEA shall stand transferred to the Chennai Bench of the National Green Tribunal.

(iv) The period of limitation prescribed under Section 14(3) and Section 15 (3) or Section 16 of the National Green Tribunal Act, 2010, will not apply to the claims so transferred from the LoEA, in view of the fact that those claims were

entertained by an Authority which had jurisdiction to entertain them, at the time when they were taken on file and also in view of the fact that the period of limitation prescribed in the National Green Tribunal Act could not be made applicable to cases transferred from another Authority.

(v) The prescription regarding court fee contained in Rule 12 of the National Green Tribunal (Practices and Procedure) Rules 2011 shall not apply to the claims transferred from the LoEA, since they are transferred under orders of court, after the abolition of an Authority.

(vi) In view of the huge volume of claims now getting transferred to the National Green Tribunal, the Central Government shall constitute, at least one additional Bench at Chennai, as undertaken by the learned Additional Solicitor General, for the present. The Central Government shall examine the constitution of another additional Bench, within six months, so that the Tribunal does not crush under the weight of such a huge volume.

(vii) The Union of India shall consider rehabilitating the employees of the Loss of Ecology Authority whose particulars are furnished in paragraph 79 above by absorbing them into the National Green Tribunal.

(viii) W.P. No. 13433 of 1996 is a writ petition transferred from the Supreme Court about 20 years ago. With numerous applications for impleading already allowed, the number of respondents in the said writ petition has swelled to more than 1000 as on date. We do not know whether any useful purpose will be served in keeping the said writ petition alive. However, Mr. Sriram Panchu, learned senior counsel who had earlier been appointed as Amicus Curiae in this writ petition requested us to keep the writ petition alive. But, we are of the considered view that after the constitution of the National Green Tribunal, there is no point in keeping the said writ petition pending before this Court. Therefore, we direct W.P. No. 13433 of 1996 to be transferred to the file of the National Green Tribunal.

There will be no order as to costs.

W.P. No. 13433 of 1996 etc. cases

COMMON ORDER

(Made by V. Ramasubramanian, J.) - After orders were pronounced, two requests were made, one by Mr. N. Sankara Vadivel, learned counsel representing the Loss of Ecology Authority and another Mr. T. Mohan, learned counsel appearing for the fourth respondent in W.P. No. 23291 of 2006.

2. The request of Mr. N. Sankara Vadivel, learned counsel for the Loss of Ecology Authority is that the office of the Loss of Ecology Authority is functioning in a rented building and that they may be given three months time to wind up. This request deserves to be accepted.

3. Therefore, the office of the Loss of Ecology Authority is granted time upto

30.6.2016 for winding up. All the expenses incurred including salary for the staff upto that date shall be paid by the Central Government promptly as has been done before. In the meantime, the staff shall get asorbed into the Tribunal.

4. The request of Mr. T. Mohan, learned counsel is to fix a time limit for the disposal of the claims that are now transferred to the Tribunal.

5. In view of the long pendency of the claims before the Loss of Ecology Authority, the Tribunal shall dispose of all the claims within a period of six months from the date of receipt of a copy of this order.