

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

Miscellaneous Application No. 240/2014

In

Original Application No.158/2013

In the matter of:

M/s Jaypee Infratech Ltd.

.....Applicant

Versus

1. Amit Kumar
S/o Sh. Rishipal Singh
R/o 167, Vijyant Enclave
Sector-28, Noida,
Uttar Pradesh
2. Union of India
Through Secretary
Ministry of Environment & Forest
Prayavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi
3. State of Uttar Pradesh
Through Chief Secretary
Uttar Pradesh Secretariat
Lucknow-01, UP
4. Department of Forests, through Principal Secretary,
6th Floor, Bhapu Bhawan,
Lucknow, Uttar Pradesh
5. Uttar Pradesh Irrigation Department
Through Principal Secretary
Sinchal Bhawan,
Lucknow, Uttar Pradesh
6. National Board of Wild Life through Chairman
Paryavaran Bhawan
New Delhi
7. New Okhla Industrial Development Authority
Through its CEO
Administrative Complex
Sector-6, Noida,
Gautam Budh Nagar-08
Uttar Pradesh
8. District Magistrate
Surajpur Collectorate
Noida, Gautam Budh Nagar-01
Uttar Pradesh

9. Senior Superintendent of Police
Sector-14-A, Noida
Gautam Budh Nagar-01
Uttar Pradesh
10. BPTP International Trade Centre Limited
10th Floor, DCM Building,
16, Barakhamba Road,
Cannaught Place, New Delhi-01
11. Omaxe Buildwell Pvt. Ltd.
7, L.S.C Kalkaji,
New Delhi-19
12. Unitech Acacia Projects Pvt. Ltd.
Unitech House, South City-1,
Gurgaon-01, Haryana
13. Adobe Systems India Private Limited
Level-2, Elegance Building, Campus 217,
Mathura Road, Jasola District Complex,
Jasola, New Delhi-25
14. Jaypee Greens Wish Town
Yamuna Expressway Project,
Sector-128, Noida, U.P
15. Jaypee Institute of Information Technology
A-10, Sector-62,
Noida-07, U.P
16. SDS Infratech Private Limited
407, Krishna Apra Plaza,
Sector 18,
Noida, U.P
17. Wave Vertica Pvt. Ltd.
A-25, Ground Floor,
Mohan Co-Operative Industrial Estate,
New Delhi
18. Wave Mega City centre Private Limited
A-25, Ground Floor,
Mohan Co-Operative Industrial Estate,
New Delhi
19. Wave Silver Tower Private Limited
33, Community Centre,
New Friends Colony, New Delhi
20. KSC Educational Society L-1, Central Stage Mall,
Sector-18, Noida,
Uttar Pradesh
21. T.G.B Realcon Private Limited
Meghdutam Group Housing Complex
F-21 C, Sector-50
GautamBudh Nagar
Uttar Pradesh

22. E.T Infra Developers Private Limited
Plot C-1, Sector 16, Noida
Uttar Pradesh
23. Noida Cyber Park Private Limited
Logix Parl, IV Floor, A-4 &5, Sector-16,
Noida-01
Uttar Pradesh
24. Indian Institute of Tourism and Travel Management
A-35 & 369. Sector-62,
Noida, Uttar Pradesh
25. Chief Secretary
State of Haryana
04th Floor, Haryana Civil Secretariat
Sector-1, Chandigarh
26. Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat,
I.P Estate,
New Delhi
27. Vipul IT Infra Soft Pvt. Ltd
Plot No.A4, Sector-16,
Noida-01
Uttar Pradesh

.....Respondents

Counsel for Applicant:

Mr. Krishnan Venugopal, Sr. Adv. With Mr. pawan Upadhyay and Mr. Manan Verma, Advs, Mr. Manan Verma, Adv.

Counsel for Respondents:

Mr. Vivek Chib Adv., Mr. Asif Ahmed, Adv for MoEF Respondent No.1.

Mr. Ardhendumauli Kumar Prasad, Adv, Ms. Savitri Pandey, Adv for Respondent No.2

Mr. Abhishek Chaudhary, Adv, Ms. Savitri Pandey, Adv and Mr. S.N Pandey, Adv for Respondent No. 3

Mr. Ardhendumauli Kumar Prasad, Adv, Mr. Raman Yadav, Adv for Respondent No.4

Mr. Vikramjeet, Adv. For Ms. Neelam Rathore, Adv, Mr. Vikas Malhotra,Adv, Mr. M.P Sahay, Adv for Respondent No. 5

Mr. Ravindra Upadhyay & Mr.Praveen Kumar, Advs, Mr. Porom Mishra for Mr. Ravinder Kumar, Adv for Respondent no.6

Mr. Adarsh Upadhyay and Mr. Piyush Vashista, Advs, Mr. K.K Sharma,Adv, Mr. R.L Battu, Adv and Mr. Kaustuv Pathak, Adv, Mr. Raman Yadav, Adv for Respondent No.7

Mr. Raman Yadav, Advs, Adv for Respondent No.8

Mr. Hemant Saini, Adv, Mr. Rahul Dhaiya & Mr. Yashpal for Respondent No. 9

Mr. Pinaki Mishra, Sr. Adv, Mr. Balbir Singh, Adv, and Mr. Kunal Sabharwal, Adv, Ms. Sonam, Adv for Mr.Sumeer Sodhi Adv, Mr. Mohit Malhotra, Adv For Respondent No. 10

Shri Arun Bhardwaj, sr. Adv and Mr. Pawan Upadhyay, Adv, Ms. Sonam, Adv for Mr.Sumeer Sodhi Adv, Mr. Mohit Malhotra, Adv for Respondent No. 11

Mr. Arun Bhardwas, Sr. Adv, and Mr Pawan Upadhyay, Minica Benjamin Adv, Ms. Anisha, Adv, Mr. Karan Yandav and Mr. Kaustuv P. Pathak, Advs for Respondent No. 12 & 13

Mr. Pinaki Mishra, Sr. Adv, Mr. Balbir Singh, Adv, and Mr. Kunal Sabharwal, Adv. For M/S Adobe

Shri Arun Bhardwaj Sr. Adv and Mr. Pawan Upadhyay Adv, Mr. Sarvjit Pratap Singh Adv Mr. Tarun Sharma, For Respondent No. 13 &14.

Ms. Amrita Panda, Adv, Mr. Nitish Gupta, Advfor Respondent No. 15

Ms. Sonam, Adv for Mr.Sumeer Sodhi Adv, for Respondent No. 16 to 19.

Mr. D.P Singh and Mr. Vineet Malik, Advs, Mr. B.S Nagar, Ms. Vidya Pawan, Adv, Mr. Umesh Saxena, Adv for Respondent No.20

Ms. Akansha Srivstava, Adv, Ms. Reena Rawat, Adv for Respondent No. 21

Mr. balbir Singh, Adv, Ms. Monica Benjamin, Adv for Respondent No. 12&22

Mr. Vikas Sharma, Adv, Mr. Narender Hooda, Sr. Adv and Mr. Vineer Malik, Adv for Respondent No. 23

Mr. Narendra Hooda, Sr. Adv. AAG with Mr. Vineet Malik, Adv for Respondent No. 24

Mr. V.K Tandon, Adv, with Mr. Yogesh Saini, Adv for Respondent No. 25

Mr. Vivek Kumar Tandon, Adv for NCT of Delhi

Mr. Amarjit Singh Chadhlok, Sr. Adv, Mr. Vikram Sobti, Adv, Mr Arshi, Adv for Respondent No. 27

Mr. Pradeep Misra, Daleep Kumar Dhayani, Adv for UPCB

Mr. Sanjeev Kr. Pabbi, Mr. Rakesh Mishra and Mr. Neeraj K. Sharma, Mr. Ajay Kr. Singh Advs for Respondent No. 32 & 33.

GREEN TRIBUNAL, NEW DELHI

NGT

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. G.K. Pandey (Expert Member)

Hon'ble Prof. Dr. P.C. Mishra (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Dated : 30th May, 2014

JUSTICE M.S Nambiar (JUDICIAL MEMBER):

1. This application is for review/modification of the final order dated 03.04.2014 passed in original application no. 58/2013 filed by respondent No. 11/ Noticee no. 34 (M/s Jaypee Infratech Ltd.). By order dated 03.04.2014, the original application was disposed of giving certain directions making it clear that the decision taken by the Ministry of Environment and Forest (MoEF) based on those directions will be subject to the final decision of the Hon'ble Supreme Court. The O.A. was filed praying for a direction against the respondents to prevent illegal and unauthorized construction works undertaken by the developers within a radius of 10 Kms. from the boundary of the Okhla Bird Sanctuary. While the original application was pending, by interim order dated 28.10.2013 based on the order of the Hon'ble Supreme Court dated 04.12.2006 in "*Goa Foundation Vs. Union of India*". It was held that any new project which is being considered for the purpose of issuance of EC by the State Level Environment Impact Assessment Authority (SEIAA)

or by the MoEF, if it falls within a radius of 10 km from the boundary of Okhla Bird Sanctuary, E.C shall not be granted unless the authority is satisfied that the National Board for Wild Life (NBWL) has given no objection for the project. It was also directed that wherever Environmental Clearances has been granted, it shall be kept under suspension as in-operative unless and until the National Board for Wild Life gives no objection certificate. In the final order, the interim orders passed earlier were directed to continue in operation till notification is issued by the MoEF regarding Eco-Sensitive Zone in respect of Okhla Bird Sanctuary.

2. The present application is filed contending that the Tribunal passed the interim order based on a wrong assumption that the Hon'ble Supreme Court in '*Goa Foundation V.s Union of India*' case has laid down that the eco-sensitive zone in respect of Okhla Bird Sanctuary is within a radius of 10 km from the boundary of the bird sanctuary.
3. The case of the applicant is that the judgment of the Hon'ble Supreme Court dated 04.12.2006 in '*Goa Foundation V.s Union of India*' case does not declare that the eco-sensitive zone is within a radius of 10 km from the boundary of the Okhla Bird Sanctuary and therefore, there is an error apparent on the face of the record, warranting review/modification of the order dated

03.04.2014. The applicant would contend that the question whether by the order dated 04.12.2006 passed in Writ Petition no. 460/2004 (Goa Foundation Vs. Union of India & Ors.), the Hon'ble Supreme Court prohibited any mining activity within a distance of 10 km from the boundaries of the National Parks or Wild Life Sanctuaries was later considered by the Green Bench of the Hon'ble Supreme Court and by the decision dated 21.04.2014, it was declared that the Hon'ble Supreme Court has not passed any order for implementation of the decision taken on 21.01.2002 by the National Board for Wild Life to notify areas within a radius of 10 km of the boundary of the National Parks or Wild Life Sanctuary as eco-sensitive areas, with a view to conserve the forest/wild life and environment and that there was no direction interim or final prohibiting mining activities within a radius of 10 km of the boundary of National Parks or Wildlife Sanctuaries and it is for the MoEF, Government of India to issue draft notification defining eco-sensitive zones around each protected area and after objections are received, the Central Government have to consider the same and, thereafter, take decision regarding imposition of prohibition of mining activities in the eco-sensitive area within this period stipulated in sub rule 3(b) of rule 5 of the Environment (Protection) Rules, 1986 and no notification has so far been issued.

4. The applicant would contend that by the said decision prohibition of mining was restricted to a distance of 1 km from the boundary of the bird sanctuary and not 10 km and, therefore, the direction in the interim order prohibiting constructions without approval of the National Board for Wild Life (NBWL) within a radius of 10 k.m, which was made absolute by the final order, warrants review/modification.
5. We have heard Mr. Krishnan Venugopal, the learned Senior Counsel appearing for the applicant in M.A. No. 240/2014, the learned Senior Counsel appearing for the MoEF, the Learned Counsel appearing for the original applicant, and the other respondents. .
6. The learned Senior Counsel appearing for the applicant argued that when there is an error apparent on the face of the record, the order of the Tribunal, prohibiting issuance of environmental clearance before getting no objection from NBWL in case of new projects and keeping environmental clearances already granted under suspension and also prohibiting issuance of completion certificate for the buildings constructed, within a radius of 10 km from the boundary of Okhla Bird Sanctuary is not sustainable and therefore, is to be reviewed or modified.
7. The Learned Senior Counsel further argued that when the order of the Hon'ble Supreme Court dated

04.12.2006 was not properly appreciated by the Tribunal and based on the wrong assumptions issued directions, such directions, which is clear from the later declaration of the Hon'ble Supreme Court, the final order dated 03.04.2014 and the interim order passed on 28.10.2013 are liable to be reviewed.. The learned Senior Counsel also submitted that the power provided under the explanation to rule 1 of order 47 of Code of Civil Procedure is not applicable as the earlier order was not set aside or modified and instead the Hon'ble Supreme Court has only clarified the earlier position. The learned Senior Counsel therefore, submitted that the earlier orders are to be reviewed as sought for.

8. The learned Senior Counsel appearing for the MoEF, submitted that the power of the Tribunal to review the previous order is subject to the powers available under rule 1 of order 47 of Code of Civil Procedure and the explanation to rule 1 of order 47 mandates that the fact that the decision on a question of law on which the judgment of the Court has been reversed or modified by the subsequent decision of the superior Court in any other case, shall not be a ground for review of such judgment. The learned Counsel relied on the decision of the Hon'ble Apex Court in "*State of West Bengal & Ors. Vs. Kamal Sengupta & Ors. ((2008) 8 SCC 612)*" where, the identical powers available to the Administrative

Tribunal under section 22(3) of the Administrative Tribunal Act was considered. It was argued that the dictum of that case is squarely applicable to the facts of the case and when this Tribunal has already taken a view, based on the order of the Hon'ble Supreme Court dated 04.12.2006, it is not legal to review that decision based on a subsequent order of the Hon'ble Supreme Court, clarifying/ modifying the earlier decision and the remedy of the applicant if at all is to challenge the order in an appeal and the application for review is not maintainable.

9. The power of this Tribunal to review an order passed earlier, and the source of that power cannot be disputed. Section 19 of the National Green Tribunal Act, 2010 provides the procedure and powers of the Tribunal. Under sub section 4, the Tribunal, shall have for the purpose of discharging its functions under the Act, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of the matters provided under clause (a) to (k). Clause (e) is the power to review its decision. Therefore, it is clear that the Tribunal is competent to review its decision and that the power of review is to be exercised, as provided under the Code of Civil Procedure, 1908. Therefore, the power of review provided under section 19(4)(f) of National Green Tribunal Act, 2010 is akin to the powers provided under section 114 and rule 1 of order 47 of Code of Civil

Procedure which provide that any person considering himself aggrieved by a decree or order for which no appeal has been preferred, or from which no appeal is allowed, may apply for review, from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The explanation to rule 1 of order XLVIII reads as follows:

“The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

10. The Hon'ble Supreme Court in *K. Ajith Babu V.s Union of India* ((1997) 6 SCC 473) held that even though Order XLVII Rule 1 is strictly not applicable to the Tribunals, the principles contained therein have to be extended to them as otherwise there would be no limitation for the power and consequently there would not be any finality or certainty of order. The Hon'ble Supreme Court in *“Ajit Kumar Rath Vs State of Orissa, (1999 9 SCC 596”*) holding that the power to review vested in the Tribunal is similar to the one conferred

upon a civil Court under the Code of Civil Procedure held:

“The power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression ‘any other sufficient reason’ used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

11. The scope of review under order 47 rule 1 is distinct from that of an appeal. In *“Thungabhadra Industries Ltd. vs. Government of Andhra Pradesh, (AIR*

1964 SC 1372)” it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

12. After analyzing the earlier decisions the Hon’ble Supreme Court in the state of West Bengal and others V.s Kamal Sengupta ((2008) 8 SCC 612) held:

“The principles which can be culled out from the above noted judgments are:

- (i) “The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*
- (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial*

decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”

13. Taking note of the explanation dated to Rule 1 of Order 47 of Code of Civil Procedure, the Hon'ble Supreme Court in Haridas Das V.s Usha Rani Banik (2006) 4 SCC 78 held:

“In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that ‘may make such order thereon as it thinks fit’. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing ‘on account of some mistake or error apparent on the face of the records or for any other sufficient reason’. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favorable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other

case, shall not be a ground for review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection.”

14. What is an error apparent on the face of the record provided under Rule 1 of Code of Civil Procedure is also settled. The five Judge Bench of the Federal Court in “Hari Sankar Pal V.s Anath Nath Mitter (1949 FCR 36) it was held:

“That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code”.

15. In Parsion Devi and others V.s Sumitri Devi (1997) 8 SCC 715), the Hon’ble Supreme Court held:

“Under Order 47 Rule 1 CPC a judgment may be open to review inter-alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47

Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be ‘an appeal in disguise’.”

16. Therefore, the power of review of its own decision provided under section 19(4) (f) of the National Green Tribunal Act is to be exercised bearing in mind the limitation provided under rule 1 of Order 47 of Code of Civil Procedure, in the light of the settled principles.

17. It is true that while passing the order dated 28.10.2013, the interim order sought is reviewed, the following portion of the order of the Hon'ble Supreme Court dated 04.12.2006, in Goa Foundation V.s Union of India case was relied on.

4. “The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision

that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

5. *The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C (2) of the Wildlife (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km zone.”*

18. In fact, it was based on this decision, the interim directions were issued on 28.10.2013, finding that the eco-sensitive zone shall be within a radius of 10 km from the boundary of the Okhla Bird sanctuary till a decision is taken and notified by the MoEF. The argument of the learned Senior Counsel appearing for the applicant is that, the order of the Hon'ble Supreme Court dated 04.12.2006 does not provide that the eco-sensitive zone shall have a radius of 10 km from the boundary of the sanctuary, and instead, the MoEF was directed to decide the question and issue the necessary notification and as there is no direction, whether interim or final, in the said order, the view taken by this Tribunal for issuing the directions on 28.10.2013, is not correct and it is an apparent error on the face of the record and therefore, it warrants review. The learned Senior Counsel would further argued that the subsequent decision of the Hon'ble Supreme Court in "*Goa Foundation Vs. Union*

of India”, dated 21.04.2014, established that the Hon’ble Supreme Court has clarified that the order dated 04.12.2006 does not contain any such direction. True, the Hon’ble Supreme Court in the said decision, has held that “

“It will be clear from the order dated 4.12.2006 of this Court that this Court has not passed any orders for implementation of the decision taken on 21st January, 2002 to notify areas within 10 kms of the boundaries of National Parks or Wildlife Sanctuaries as eco-sensitive areas with a view to conserve the forest, wildlife and environment. By the order dated 04.12.2006 of this Court, however, the Ministry of Environment and Forest, Government of India, was directed to give a final opportunity to all States/Union Territories to respond to the proposal and also to refer to the Standing Committee of the National Board for Wildlife the case in which environment clearance has already been granted in respect of activities within the 10 kms zone from the boundaries of the wildlife sanctuaries and national parks. There is, therefore, no direction, interim or final, of this Court prohibiting mining activities within 10 kms. Of the boundaries of National Parks or Wildlife Sanctuaries.”

19. It is also true and clear from the said decision that “until the Central Government takes into account various factors mentioned in sub rule (1), follows the procedure laid down in sub rule (3) and issues a notification under rule 5 of Environment Protection Act, prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of National Parks or Wildlife Sanctuaries.

20. But, the question is whether based on the said observations, the interim order passed on 28.10.2013 or the final order passed on 03.04.2014, whereby the interim order was directed to continue till a decision is taken by the MoEF is to be reviewed. When the power to review provided under section 19 (4)(f), is akin to the power of review provided under section 114 and Rule 1 of 47 of Code of Civil Procedure, the explanation to Rule 1 of order 47 mandates that the fact that the decision on a question of law on which the order sought to be reviewed is based, has been reversed or modified by a subsequent decision of the superior Court in any other case is not the ground for review. Therefore the order passed by the Hon'ble Supreme Court dated 21.04.2014 cannot be a ground for review of the order dated 28.10.2013 or 03.04.2014 passed by the Tribunal. Moreover, the final order dated 03.04.2014 which is sought to be reviewed, makes it absolutely clear that while it was directed that the interim order passed earlier shall continue to be in operation, the MoEF was directed to issue the notification without further delay, and any such decision taken will be subject to the final decision of the Hon'ble Supreme Court in the matter pending before it.

21. At the worst, the view taken by the Tribunal on the decision of the Apex Court in Goa Foundation V.s Union of India case may be erroneous. But that is not a ground for review as it is not an error apparent on the face of record as it is not self evident and has to be detected by a process of reasoning. Such error can only be corrected by the higher forum and not by recourse to review.

22. We find no apparent error or other sufficient reason to review either the final order dated 03.04.2014 or the interim order passed on 28.10.2013. Therefore, the application for review can only be dismissed.

23. The Learned Senior Counsel appearing for the applicant submitted that, if the interim order is to be continued it would adversely affect the interest of a large section of people as the 10 km radius would extend to a very large area including the South Extension part1, Greater Kailash, India Gate etc in Delhi, and Noida Sector 62 A, Sector 66, Sector 35, 36, 37 etc of India and in such circumstances, the MoEF shall be directed to take the decision and notify the eco-sensitive zone expeditiously within a time frame. The Learned Senior Counsel appearing for the MoEF submitted that a decision on the question, as directed by the Tribunal and by the Hon'ble Supreme Court will not be delayed and expeditiously a decision will be taken expeditiously. We hope and trust that, the MoEF

will not further protract the decision and would notify the eco-sensitive zone taking into consideration all the relevant aspects without further delay. In such circumstance we find it not necessary to issue any further direction.

The application is dismissed. No cost.



Hon'ble Mr. Justice Dr. P.Jyothimani
Judicial Member

Hon'ble Mr. Justice M.S. Nambiar
Judicial Member

Hon'ble Dr. G.K. Pandey
Expert Member

Hon'ble Prof. Dr. P.C. Mishra
Expert Member

Hon'ble Mr. Ranjan Chatterjee
Expert Member

New Delhi,
30th May, 2014.

NGT