

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

**M.A. NO. 567 OF 2016 AND M.A. NO. 1220 OF 2016
IN
ORIGINAL APPLICATION No. 21 OF 2014, 95 OF 2015 AND 303
OF 2015**

**Vardhman Kaushik Vs. Union of India & Ors
And
Sanjay Kulshrestha Vs. Union of India & Ors
And
Supreme Court Women Lawyers Association Vs. Union of India
& Ors**

IN THE MATTER OF:

M.A. No.567 of 2016

1. Ministry of Heavy Industries & Public Enterprises,
Department of heavy Industry, Through its Secretary,
Room No. 117, Udyog Bhawan,
New Delhi- 110011

.....Applicant

M.A. NO. 1220 OF 2016

1. Harvinder Sekhon

.....Applicant

Vs.

1. Union of India
Through its secretary
Ministry of Environment and Forest
Paryavaran Bhawan,CGO Complex
Lodhi Road, New Delhi-110003
2. Government of NCT of Delhi
Through Secretary
Delhi Secretariat
Indraprastha Estate, Delhi-110002
3. CENTRAL POLLUTION CONTROL BOARD
Through its Chairman
Parivesh Bhawan, CBD-cum-Office Complex
East Arjun Nagar,
Delhi-110032

4. Delhi Pollution Control Committee
Through the Chairman
4th Floor, ISBT Building,
Kashmiri Gate, Delhi-110006
5. Ministry of Housing and Urban Development
Through Secretary
118-C
(M/O HUPA)
Niram Bhawan
Maulana Azad Road,
New Delhi, 110011
6. Ministry of Petroleum
Government of India
Through Secretary
A Wing, 2nd Floor,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001
7. Ministry of Transport and highways
Through Secretary
Transport Bhawan,
1, Parliament Street
New Delhi-11001

.....Respondents

Counsel for Applicant :

Mr. Sanjay Upadhyay, Adv with Ms. Upama Bhattacharjee and
Mr. Saumitra Jaiswal, Advs for applicant

Counsel for Respondents:

Mr. Narender Pal Singh, Adv. with Mr. Dinesh Jindal, LO, Delhi
Pollution Control Committee

Mr. Dinesh Kumar Garg, Adv. and Mr. Dhananjay Garg, Advs. for
State of Uttarakhand

Mr. Gautam Singh and Mr. Rudreshwar Singh, Advs. for State of
Bihar and BSPCB

Mr. Sarthak Chaturvedi and Mr. Rohit Pandey, Advs. for
Andaman & Nicobar Island

Mr. Pradeep Misra and Mr. Daleep Dhyani, Advs. for UPPCB

Mr. V. K. Shukla, Adv. for State of MP.

Ms. Puja Kalra, Adv. for SDMC
Ms. Sakshi Popli, Adv. for NDMC.
Mr. Raja Chatterjee and Mr. Chanchal Kumar, Ganguli and Mr. Piyush Sachdev for State of West Bengal.
Mr. Mukul Singh, Adv. for Ministry of Environment, Forest and Climate Change
Mr. Ravindra Kumar, Adv. and Mr. Gudipati G. Kashyap, Adv. for NOIDA & GNIDA
Ms. Aruna Mathur, Mr. Avneesh Arputham, Mr. Amit Arora and Ms. Anuradha Arputham, Advs. For State of Sikkim & Pollution Control Board
Mr. Nishe Rajen Shonker and Ms. Anu K. Joy, Advs. for State of Kerala.
Mr. Daleep Poolakkot, Adv. for State of Goa
Mr. Rajiv Bansal, Mr. Kush Sharma and Mr. Anirudh Chadha, Advs.
Mr. Rajkumar Maurya, Adv. for Mr. Balendu Shekhar, Adv. in M.A.
Mr. Sharad Singh, Adv. and Mr. Atul Jha, Adv. for State of Chhattishgarh
Ms. Priyanka Swami, Adv. for Ghaziabad Nagar Nigam
Mr. Jayesh Gaurav, Adv. for JSPCB.

Counsel for the applicant in M.A. No. 567/2016

Ms. Pinki Anand, ASG with Mr. Balendu Shekhar, Adv.

In M.A. no. 1220/2016

Party in person

Present:

Hon'ble Mr. Justice Swatanter Kumar, (Chairperson)

Hon'ble Dr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

JUDGMENT

Per Dr. Jawad Rahim J.

Reserved on: 20th July, 2017

Pronounced on: 14th September, 2017

1. M.A. No. 567 of 2016 is by the Union of India through the Ministry of Heavy Industries, Public Enterprises and Department of Heavy Industries seeking permission to implead in Original Application 21 of 2014 and also to

modify or recall the orders passed by this Tribunal on 18th July, 2016 and 20th July, 2016, respectively

2. Mr. Harvinder Sekhon, party in person, has also moved M.A. No. 1220 of 2016 for similar reliefs.
3. There are several other applications which are filed and pending seeking different directions in relation to orders of this Tribunal dated 18th July, 2016 and 20th July, 2016 on which this order will have bearing.
4. In the first lap we have taken M.A. No. 567 of 2016 and 1220 of 2016 for consideration.
5. We have heard substantially, Ms. Pinki Anand, Learned ASG for the applicant in M.A. No. 567 of 2016 and Mr. Harvinder Sekhon in M.A. No. 1220 of 2016 and Learned Counsel for the applicant, in supplementation to the factual matrix and the documents filed.
6. The factual and legal issues raised has received our serious consideration.
7. Before we advert to all such contentious issues, it is necessary to refer to the genesis of this action. It is incorporated below briefly as a prelude.

PRELUDE

The Hon'ble Supreme Court invoking the mandate of Article 39, 47 and 48 of the Constitution, which casts a duty on the State to secure health of the people, including public health, and prevent degradation and to improve the environment, examined the condition of Ambient Air quality and the cause

for Air pollution in the capital of this Country. Being of the prima facie opinion that quality of air was steadily degrading and no effective steps were taken by the Administration as a result of failure of the Government to discharge its constitutional obligation, on 23rd September, 1986, Hon'ble Supreme Court directed the Delhi Administration to file an affidavit specifying the steps taken for controlling pollution emissions, smoke and noise from vehicles plying in Delhi. Since then the Hon'ble Supreme Court has been continuously endeavouring to secure pollution free environment for the citizens and with this objective prevailed upon the Government to take several actions. Those directions have become the harbinger for subsequent actions.

Meanwhile, The Hon'ble Supreme Court, accepting Bhure Lal Committee report which was constituted by Union of India under Section 3 of the Environment (Protection) Act, 1986, by its order dated 28th July, 1998 fixed the time limit within which to switch over to CNG was to take effect and use of Diesel in the Vehicles was to be stopped. This order was in continuation of earlier order dated 21st October, 1994.

8. On record, the Union of India filed several statements before the Hon'ble Supreme Court to persuade it to permit use of Diesel as a fuel and canvassed extensively the disadvantage of CNG which the Hon'ble Supreme Court described as "Baffling Response of Union of India to the problem". However, Hon'ble Supreme Court acceded to the request of

the Central Government to extend the time limit for change over from Diesel to CNG periodically and extended the time granted from 1st September, 2001 and then to 31st January, 2002.

9. During the period 2001, while seeking extension of time from the Court, the Central Government appointed R.A. Mashelkar Committee to examine the ill-effect or benefits of use of Diesel to CNG as a fuel and the Committee in its report expressed its opinion that choice of fuel shall be left to the users. When the report was placed before the Hon'ble Supreme Court, the Hon'ble Apex Court, in unequivocal terms described the report as "*insensitive and factually incorrect*", and declined to accept the recommendations of R.A. Mashelkar Committee.
10. Consequently, the Hon'ble Supreme Court, in its Judgement in the case of Vellore Citizen's Welfare Forum V. Union of India and ors. (1996) 5 SCC 647, elucidated the Precautionary Principle and the Polluter Pays Principle.
11. The principles so evolved by the Hon'ble Supreme Court are baseline for further adjudication in this field and adopting pragmatic approach, the Apex Court examined the adverse impact on environment vis. a vis. economic development.
12. Accepting recommendations by Bhure Lal Committee, the Hon'ble Supreme Court held time to time directions to the Union of India were necessary. It took note of the fact that Union of India never opposed the changeover of the CNG but

has sought for various directions through I.A. 116 in the said case which the Hon'ble Supreme Court rejected on 27th April, 2001.

13. While rejecting the application, the Hon'ble Supreme Court took note of Government's callous attitude and apathy towards degradation of air quality and the adverse impact on the environment consequent to use of diesel, among other factors.

14. At this juncture, while dealing with the request of the Union of India, in M.A. No. 567 of 2016 filed through the Ministry of Heavy Industries and Public Enterprises, Department of Heavy Industries, (the applicant in M.A. No. 567 of 2016) we shall, thus begin referring to the observation of the Hon'ble Apex Court, in the order referred to above.

12. The recommendations made by the Bhure Lal Committee and the directions issued in 1998 have not been challenged by the Union of India. The directions issued by the Bhure Lal Committee are statutory and continue to be in force. It is not, therefore, open to the Union of India to seek variation of the same without any justifiable reason. Prior to the filing of the affidavit of 26th April, 2001, the Union of India never opposed the change over to CNG. Its application being I.A. No. 116 for variation was dismissed on 27th April, 2001. In the order dated 17th September, 2001, this Court observed, while dealing with another application being I.A. No. 142 in which prayer (d) was that the bus operators should have an option of using either CNG or diesel with 0.05 sulphur content, that "we do not see any justification to grant prayer (d) at this stage". Mr. Rohtagi, Addl. Solicitor General submitted that the use of the expression "at this stage" mean that such a request could be met or made at a subsequent point of time and that is why the present application filed on 5th February, 2002 for modification had been filed by the Union of India. The said plea of Mr. Rohtagi cannot be accepted and is not in accordance with the orders passed by this Court. As already noticed, a prayer to this effect was first made by the Union of India in I.A. No. 116. In the order of 27th April, 2001, it was observed that the Court did not think that any modification of its order dated 26th March, 2001 was required. The application was disposed of and the request for modification was not accepted. While disposing of the application I.A. No. 142 it was first observed in the order as follows:

Our order dated 28-7-1998 with regard to conversion of entire city bus fleet (DTC and private) to single fuel mode

of CNG (direction 'G') does not require any modification or change. That direction stands.

15. What emerges therefrom is the fact that after long exercise from 1994 and considering the expert opinion report of Bhure Lal Committee, the Hon'ble Supreme Court opined Diesel was not a fuel of choice compared to CNG and thus to prevent the pollution of air and its adverse effect directed conversion. Emphatically, it could be observed that use of Diesel as a fuel was to be discontinued and accordingly several directions are issued. Thus, the entire exercise has been carried out to prevent vehicles using diesel as a fuel.

16. It is in this context that the case of M.C. Mehta vs. Union of India WP (Civil) No. 13029 of 1985 gains importance when the Union of India approached the Hon'ble Supreme Court to modify its directions regarding conversion of CNG on the same grounds as urged now, the Hon'ble Supreme Court by its Judgement dated 5th April, 2002 rejected all contentions and reiterated weeding out of all Diesel vehicles. It is material to record that the reasons and the grounds urged in the instant M.A. No. 567 of 2016 by Union of India is nothing but reiterating the same grounds which found no favour with Hon'ble Supreme Court on the issue of banning use of diesel as a fuel in vehicles.

17. Subsequent to those proceedings before the Hon'ble Supreme Court, the National Green Tribunal Act was enacted which came into force on 18th October, 2010 and the cases pertaining to environment has been transferred from Supreme Court and

other High Courts to this Tribunal and many new actions have also been initiated.

18. Mr. Vardhman Kaushik, the applicant in O.A. No. 21 of 2014, claiming to be public spirited person initiated these proceedings in which this Tribunal has passed several orders right from 2014 till now. Among various orders passed by this Tribunal in O.A. No. 21 of 2014 of Vardhman Kaushik, the order dated 7th April, 2015 and the recent orders dated 18th July, 2016 and 20th July, 2016 are relevant as the applicants are seeking modification of those orders.

Main Case

19. With this prelude we shall now advert to the contentions of the Learned AAG Ms. Pinki Anand on factual and legal issues, the sum and substance of which is as follows:-

- I. That the scientific reports of IIT Kanpur, the DPCC and CRRRI Report of 2002 brings to surface the ill-effects of fossil fuel as compared to diesel emission on the ambient air quality. That, the scientific studies done favour proposition that the diesel fuel could be permitted to be used for automobiles.*
- II. That this Tribunal has not given due credence to scientific study material.*
- III. This Tribunal, before reaching conclusion that the vehicles more than 10 years using diesel and vehicles more than 15 years using petrol shall be banned has neither ordered conduct of any fresh scientific study nor it has given credence to the report and data submitted by CRRRI in 2002, report of IIT Kanpur, Report of DPCC and other material produced by the Central Government.*
- IV. The Tribunal has ignored that there is no provision in the Indian Motor Vehicle Act to ban vehicle depending upon the fuel it consumes except as envisaged in Sections 53, 55, 59 of the Motor Vehicle Act, the exercise of which power to ban motor vehicles vests only in the Central or State Government as the case may be and no Court or the Tribunal has any jurisdiction to issue any mandate/directions like the direction issued by this Tribunal.*
- V. This Tribunal has no jurisdiction to ban the vehicle fixing the age on its own conclusion as such order could be passed only under section (59) of the Motor Vehicle Act by the Central Government by virtue of the power thereby conferred.*
- VI. That, the Motor Vehicle Act is not one of the enactment included in the Schedule 1 of the NGT Act and therefore this Tribunal does not have jurisdiction to fix age or ban vehicles according to its age.*

- VII. *The order in question infringes the right to property guaranteed unsustainable under Article 14 of the constitution of India and therefore it is and needs modification.*
- VIII. *The order in question imposes conditions which are difficult to perform and if performed would lead to several repercussions, disadvantageous to environment and create uncontrollable adverse impact on transport sector.*
- IX. *The order in question defeats the principle of sustainable development.*

In support of the aforesaid points, Ms. Pinki Anand, the learned AAG, would rely on the study report data from CRRI of 2002, the report of IIT, Kanpur of DPCC to submit that pollutants in the ambient air, is not attributable to the use of diesel; that diesel is safe and should be preferred against Gasoline. Commenting on the conclusion of this Tribunal that diesel vehicles are more polluting than petrol, CNG & electric vehicle, contends that Government of India has submitted before this Tribunal that there are various pollutants that cause air pollution, from the vehicular emissions. Diesel may be inferior to petrol in some pollutants such as Particulate matter and Oxides of Nitrogen, but petrol is also inferior to diesel in some other pollutants. She describes the conclusion of the Tribunal, that only diesel is polluting fuel as a misconception and relying on CRRI report contended that diesel vehicles have higher fuel efficiency which leads to 10 to 15% lower emission of carbon dioxide (Co₂) as compared to petrol vehicle. Assuming 10 % lower carbon dioxide emission from diesel, diesel passenger vehicle in India's fleet would have saved over 1.5million tones of carbon dioxide emission a year thereby significantly helping in the Government's commitment of reducing country's emission

intensity per unit DGB by 33-35 % below the 2005 level by 2030.

20. She would further contend aforesaid scientific data was highlighted at the 21st conference at the United Nation Framework Convention on Climate Change to which India is party and it is accepted as a scientific certification.

21. That the aforementioned data supports the United Nation's Climate Change Conventions policy. She submitted the reduction in carbon dioxide level in the air by using diesel as fuel is significant because India like other nations committed at the United Nation Climate Change convention, to reduce aggregated percentage of carbon dioxide emissions in India. Since, Indian Government is committed to reduce the crude import due to consumption of fossil fuel from the road transport segment, it is necessary to mandate fuel consumption standard for passenger vehicle from 2017. Since, lower fuel consumption leads to lower carbon dioxide emission, by design the diesel vehicle predominantly have lower carbon dioxide against petrol vehicle and should be prepared.

22. She further submitted that, as against the material placed by her there was no better scientific material to negate her contentions. That, before passing the orders in question this Tribunal did not have sufficient scientific material to establish or even to conclude reasonably that use of diesel as fuel is more harmful than petrol. According to her, before passing orders in question and imposing complete ban on the diesel vehicle of

over 10 years, the Tribunal has acted arbitrarily to impose ban which takes away the right of parties which are protected under the Article 51 of Constitution of India. She hastened to add this Tribunal ought to have obtained fresh study report on the emission level by the use of diesel as a fuel and as also emission level from vehicle using petrol. If such a study was conducted, a clear picture would have emerged that use of fossil fuel like petrol is more dangerous and causes pollution to the environment because of the composition of different pollutants against the use of diesel fuel. She has filed the report CRRI, Report of IIT Kanpur, Report of DPCC which we have perused.

23. She submits the NGT has incorrectly noticed that vehicle density in NCR Delhi is very high whereas the NCR is a very wide geographical area covering Delhi and parts of Haryana, Rajasthan and UP. The vehicle density of NCR is much less than many of the mega cities of the Country and relies on graft depiction of vehicle density and air quality index (PM 2.5) in seven different cities during April, 2015.

24. That it is wrongly mentioned in the order that there has been no study by competent agency not to ban vehicles more than 15 years age while ignoring the fact that ban by NGT on more than 10 years vehicle is also not supported by any authentic study.

25. Summing up grounds on this point she referred to measures to be taken for controlling air pollution of vehicles in cities. The Significant steps taken by the Central Government to improve

ambient air quality and prevent air pollution. She has listed out various schemes of the Central Government which according to her, will bring an atmosphere free of air pollution thereby achieving the object directly without requiring any harsh order like the one passed by NGT.

26. She submits providing incentives to the public for changeover to non-conventionally fuel vehicles like CNG, electrically operated vehicles is a remedy which is to be implemented. The Government's perusing action for early completion of eastern and western periphery expressways to reduce vehicular load in Delhi which is an answer to the problem.

Analysis and our conclusion regarding Maintainability of the applications.

27. At the threshold itself we find the applications are legally not maintainable and could have been rejected in *limine* but we have considered other aspects as well.

28. We have bestowed our serious concern on all contentions. The contention so urged may appear impressive, but on the closer analysis it is only worth rejection.

Maintainability

29. The application in question is not maintainable in law for following reasons:

- a. The order dated 18th July, 2016 and 20th July, 2016 sought to be modified has genesis from the order dated 7th April, 2015 passed by this Tribunal assigning elaborate reasons for banning vehicles of more than 10 years using

diesel. The applicants in M.A. Nos. 567 of 2016 and 1220 of 2016 have not questioned or assailed the order dated 7th April, 2015 from which the order in question geminated. The orders in question are in further to it and the directions issued by this Tribunal are to enforce the order dated 7th April, 2015.

- b. On this ground itself application is not maintainable.
- c. Secondly, the prayers in these applications are hit by doctrine of *res-judicata* as is spelt out in Section 11 of Code of Civil Procedure.
- d. The records would reveal that the order dated 7th April, 2015 was brought in question by certain persons from the category of persons to whom the direction issued on 18th July, 2016 and 20th July, 2016 apply, virtually on the same grounds as urged in the present applications.

30. The order dated 7th April, 2015 was questioned by the persons claiming to be affected by the direction dated 18.07.2016 and 20.07.2016. Two M.A. No. 412/2015 and M.A. No.413/2015 were for the same relief to recall the order dated 7th April, 2015 as in the present applications. The order reads:

M.A. No. 412 of 2015 and M.A. No. 413 of 2015

The Applicant in either of these applications is not present. We have heard the Learned counsel appearing for the parties. The prayer in the application is for setting aside order of the Tribunal dated 07th April, 2015 by which it was directed that the diesel vehicles which are more than 10 years old should not be permitted to ply on Delhi roads. Firstly, this application is mis-conceived in as much as after the Tribunal passed order on 07th April, 2015, the same was challenged before the Hon'ble Supreme Court of India and the Statutory Appeal was dismissed by the Hon'ble Supreme Court of India. The old diesel vehicles undisputedly are the source of air pollution. It has been brought on record before us that even during the odd-even enforcement by the NCT, Delhi the ambient air quality of Delhi was not found to be much improved. In fact the parameters remained

excessive. In our order dated 04th July, 2016 in Original Application No. 179 of 2016 – Mahendra Pandey Vs. Govt. of NCT of Delhi & Ors. we had noticed the excessive parameters of the ambient air quality which reads as under:-

“Learned Counsel appearing for the Central Pollution Control Board submits that the complete and comprehensive analysis report has been placed on record. As per this report the ambient air quality in Delhi during the Odd-Even implementation period is found to be more deteriorated than the one when the said restriction was not in force.

As per the analysis report the average value of PM_{2.5} is higher during odd-even phase than pre odd-even period. During the odd-even period it varied from 63 to 182 as against the pre odd-even when it which varied from 45 to 143. Similarly other parameters like PM₁₀, NO₂, SO₂, CO and Ozone all through the period were noticed to be higher than the pre odd-even period ambient air quality.

The Learned Counsel appearing for the NCT of Delhi prays for time to seek instructions and examine the impact of this report on the decision of Government of NCT of Delhi. The Counsel would also require the transport department of NCT of Delhi to give vehicular data and place the same before the Tribunal in relation to prior and during odd-even period.

The analysis report even for the first period of odd-even policy, filed on record, is also showing similar trends.”

This would show that even during enforcement of odd-even, ambient air quality had hardly improved. This itself is an indicative of the fact that to the extent of pollution being caused by vehicles, it is the old vehicles which substantially contribute majorly to the air quality and therefore they must be stopped. Besides, the fact that the order passed by the Tribunal on 07th April, 2015 has already attained finality and has become binding.

We in any case see no reason to vary our said order. In fact that order requires to be enforced more vigorously and effectively by the authorities concerned. It is an accepted fact, not only in India but all over the world, that the emission from diesel vehicle are more injurious to environment and consequently the health of the people than petrol or the vehicles being run on other sources of energy like CNG, Electricity etc. This vehicular pollution could be controlled by not permitting the vehicles causing emissions which would increase PM₁₀, PM_{2.5}, SO₂ and NO_x in the ambient air quality of that place. Furthermore, it is the NCR Delhi where the vehicular density is very high, the prohibitory directions have been passed. The same very vehicles could be driven in other places where there is larger space available for dispersion and dilution of vehicular emission from such vehicles.

Be that as it may, we are of the considered view that there is no occasion for the Tribunal to set aside the order date 07th April, 2015. It has been pointed out by the various Authorities including Delhi Traffic Police that they have made definite attempts to stop diesel vehicles which are more than 10 years old to ply on the road, but efforts hardly had met with any success. Few challans and fines of a smaller amount have been made under the Motor Vehicle Act which has not lead to any tangible impact.

It is also stated that impounded vehicles are released by Learned Magistrate in exercise of their jurisdiction under the Motor Vehicles Act.

Consequently, we hereby direct that the RTOs of NCR, Delhi, Haryana, Rajasthan will deregister all the diesel vehicles which are more than 10 years of age. Upon deregistering such vehicles they will supply the list of all deregistered vehicles to the Traffic Police which in turn to

take appropriate steps as already directed under the order of the Tribunal and under the provision of the Motor Vehicle Act.

The Traffic Police and the RTO shall issue public notice of these orders forthwith. It is to be noticed here that other major sources of air pollution in Delhi are from dust and burning of waste for which we have already passed detailed directions separately and we required Central Pollution Control Board, Delhi Pollution Control Committee, NCT, Delhi and all other Public Authorities to file the Status report in relation to compliance of the directions already issued by the Tribunal in this case vide order dated 10th April, 2015.

M.A. No. 412 of 2015 is accordingly disposed of without any order as to cost.

M.A. No. 413 of 2015

This application is filed on behalf of DTC praying that it should be permitted to operate 56 numbers of diesel trucks, out of these 6 trucks are less than 10 years old and 30 trucks are between 10 to 11 years old and 20 are between 12-13 years old.

In view of the above order, the trucks which are less than 10 years old can be permitted to run and utilized by the DTC but only for another period till they become 10 years old. The vehicles which are more than 10 to 13 years old or which are above 10 years old should be replaced immediately by the DTC by new trucks. It is to be noticed that diesel trucks are the serious contributory of the air pollution and as their emissions are more injurious to the human health besides they cause serious ambient air quality deterioration.

With the above directions M.A. No. 413 of 2015 stands disposed of.

31. Now, the question is whether the M.A. No. 567/2016 seeking similar relief as in the M.A. No. 412/2015 could be granted. The answer is in negative for the reasons assigned by this Tribunal on 18.07.2016 to reject M.A. No. 412/2015. It acts as constructive *res-judicata*.

32. The provision of Section 11 of the CPC, 1908 reads as:-

Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

33. Further, the order dated 7th April, 2015 which lead to issue of subsequent direction which are assailed by the applications were questioned before the Hon'ble Supreme Court in following cases ***Vishaal Shripati Jogdand Vs. Union of India & Ors. Civil Appeal No. 40853/2014, Union of India vs.***

Vardhaman Kaushik Civil Appeal No. 3111 of 2015 and Sheela Yadav Vs. Vardhaman Kaushik & Ors Civil Appeal No. 11902 of 2015. The order passed in the above mentioned cases are as follows:

Vishaal Shripati Jogdand Vs. Union of India & Ors. Civil Appeal No. 40853/2014:

Application for permission to file appeal is allowed. The Civil Appeal is dismissed as withdrawn, in terms of the signed order.

Vardhaman Kaushik Civil Appeal No. 3111 of 2015:

The civil appeal is disposed of in terms of the signed order.

Sheela Yadav Vs. Vardhaman Kaushik & Ors Civil Appeal No. 11902 of 2015:

1. Heard learned Counsel for the appellant (s).
2. After going through the judgment (s) and order (s) passed by the National Green Tribunal, Principal Bench, New Delhi and the material available on record we see no infirmity in the impugned judgment (s) and order (s) passed by the Tribunal. Accordingly, the application (s) seeking permission to file the appeal (s) are rejected.

34. The Hon'ble Supreme Court has rejected all the above referred Appeals affirming the order passed by this Tribunal on 7th April, 2015. Thus, the orders passed by this Tribunal has reached logical end and finality. Amongst the above said orders, the order passed in the case of *Sheela Yadav* is of importance as in the said case the Hon'ble Supreme Court has categorical observed that they find no reason for interfering with the order passed by this Tribunal. The order has been confirmed by the Hon'ble Supreme Court in unequivocal expression. Thus, the applications M.A. Nos. 567 and 1220 of 2016 are hit by Doctrine of *Res-judicata* and our views finds support from the following decision of the Apex Court:-

Dr. Subramanian Swamy vs. State of Tamil nadu & Ors. Civil Appeal No. 10620 of 2013 and T. Sivaraman &

Ors. vs. State of Tamil Nadu & Ors. Civil Appeal No. 10622

of 2013 wherein the Hon'ble Supreme Court, in similar fact circumstances, applied the Principle of Constructive **Res-judicata** held thus:-

23. *The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments". "Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth.*

24. *The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there be an end to law suits) and partly on the maxim "nemo debet bis vexari pro uno et eadem causa" (no man should be vexed twice over for the same cause).*

Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide: Shah Shivraj Gopalji v. ED-, Appakadh Ayiassa Bi & Ors., AIR 1949 PC 302; and Mohanlal Goenka v. Benoy Kishna Mukherjee & Ors., AIR 1953 SC 65).

25. *In Smt. Raj Lakshmi Dasi & Ors. v. Banamali Sen & Ors., AIR 1953 SC 33, this Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in Sheoparsan Singh v. Ramnandan Singh, AIR 1916 PC 78 wherein it had been observed as under:*

"..... the rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time.... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha 25 Page 26 include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law, sue again, he should be answered, "you were defeated formerly". This is called the plea of former judgment.'... And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law"

26. *This Court in Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr., AIR 1960 SC 941 explained the scope of principle of res-judicata observing as under:*

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or

because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

A similar view has been re-iterated by this court in Daryao & Ors. v. The State of U.P. & Ors., AIR 1961 SC 1457; Greater Cochin Development Authority v. Leelamma Valson & Ors., AIR 2002 SC 952; and Bhanu Kumar Jain v. Archana Kumar & Anr., AIR 2005 SC 626.

27. The Constitution Bench of this Court in Amalgamated Coalfields Ltd. & Anr. v. Janapada Sabha Chhindwara & Ors., AIR 1964 SC 1013, considered the issue of res judicata applicable in writ jurisdiction and held as under:

“...Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Art. 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law.”

34. This Court, while considering the binding effect of the judgment of this Court, in State of Gujarat & Anr. v. Mr. Justice R.A. Mehta (Retd.) & Ors., AIR 2013 SC 693, held:

“There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding,.....It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned". (Vide: Smt. Somavanti & Ors. v. The State of Punjab & Ors., AIR 1963 SC 151; Ballabhdas Mathuradas 31 Page 32 Lakhani & Ors. v. Municipal Committee, Malkapur, AIR 1970 SC 1002; Ambika Prasad Mishra v. State of U.P. & Ors., AIR 1980 SC 1762; and Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., AIR 2002 SC 1598).”

35. The above said decisions aptly apply to the facts of this case.

Besides, the order passed on 7th April, 2015 is not an order against any individual but is an order passed to be applicable to certain categories of vehicles and to have effect on category of persons. Therefore, the decision of this Tribunal on 7th Aril,

2015 and the directions issued in pursuant thereto dated 18th July, 2016 and 20th July, 2016 are judgements and orders in *rem* and not in *persenem*. Thus, when such order have been affirmed in a legal challenge by the category of persons affected by it they come within the meaning of “No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title”.

36. Also, the rejections of the Appeals by the Hon'ble Supreme Court in exercise of its Appellate Jurisdiction under section 22 of National Green Tribunal has given finality to order dated 7th April, 2015 from which the order dated 18th July, 2016 and 20th July, 2016 germinate renders these applications not maintainable in law under Principle of *Res-judicata*.

Analysis and conclusion on factual aspect

37. From the tenor and thrust of her contentions on factual aspects, it is observed that she asserts that this Tribunal took a view to impose complete ban as spelled out in our order in question, without scientific study or without sufficient data/material being available.

38. Such conte4ntion is discounted because there was no need to order conducting of fresh investigation regarding ill-effect of use of diesel and petrol in vehicles afresh for the reason there is already on record sufficient material after investigation by the Central Pollution Control Board that the use of diesel in

vehicles is highly toxic carcinogenic and leads to untimely fatality. It is a report published in CPCB magazine "Parivesh" which deals with diesel exhaust particles and its ill effects. The report declare as follows:

The popularity of the diesel engine in heavy duty applications in trucking, rail road, marine transport, DG sets and construction industry is due to both its fuel efficiency and long service relative to the gasoline engine. Compared with gasoline engine, diesel emissions are lower in carbon monoxide (CO), hydrocarbon (HC) and carbon dioxide (CO₂), but higher in oxides of nitrogen (NO_x) and particulate matter (PM). Diesel exhaust is a complex mixture of both particulate and gaseous phase. Diesel exhaust has particulate with mass median diameter of 0.05 to 1.00 micrometer, a size rendering them easily penetrable and capable of depositing in the airways and alveoli. The particles consist of a carbonaceous core with a large surface area to which various hydrocarbons are absorbed, including carcinogenic polycyclic aromatic hydrocarbons (PAHs) and Nitro-PAHs that have elicited the most concern with respect to human health. The gaseous phase contains various products of combustion and hydrocarbons including some of the PAHs present in the particle phase. Once emitted, components of diesel exhaust undergo atmospheric transformation in ways that may be relevant to human health. For example, nitro-PAHs, created by the reaction of directly emitted PAHs with hydroxyl radicals in the atmosphere can be more potent mutagens and carcinogens and more bioavailability than their precursor. A study undertaken by a Swedish Consultancy, Ecotraffic (Peter AnlWk and Ake Branberg, 1999) shows that the cancer potency of diesel vehicles is more than two times than that of petrol vehicles in India. But if only the most harmful of the exhaust emissions, that is particulate emission is considered, the carcinogenic effect of one new diesel car is equivalent to 24 petrol cars and 84 new CNG cars on the road.

39. On perusal of the report, it admits of no doubt that diesel emissions are lower in carbon monoxide (CO), Hydrocarbon (HC) and carbon dioxide (CO₂) but is established to be higher in oxides of Nitrogen (NO_x) and Particulate Matter (PM). Diesel exhaust is complete mixture of both particulate and gaseous emission. The diesel exhaust has particulate mass median diameter of 0.05 to 1.00 micrometer, a size rendering them easily penetrable and capable of depositing in the airways and alveoli. The particles consist of a carbonaceous core with a large surface area in which various hydrocarbons are absorbed,

including carcinogenic polycyclic aromatic hydrocarbon (PAHs) and Nitro-PAHs that have elicited the serious concern with respect to our health. The report shows that emission and exhaust of diesel is carcinogenic and causes cancer, thus the risk of cancer is higher in use of diesel as a fuel.

40. The report speaks loudly, that it is the most harmful of the exhaust emission, which releases particulate emission, i.e carcinogenic. *The report declares one new diesel car is equivalent to 24 petrol car and 84 new CNG cars on road.* Thus, the contention that there will be reduction of carbon dioxide level by use of diesel is not positive factor in favor of use of diesel as fuel much less a justification that diesel could be preferred or allowed to be used as a fuel and the cars build to run on the diesel should not be banned and restriction of 10 years should not be imposed.

41. The above report published by the CPCB binds the applicant/Union of India and the finding of the Hon'ble Supreme Court taking into consideration such report estopes the Central Government from contending to the contrary as is being done through the instant application.

42. Having found that particular emission from diesel is carcinogenic, we would prefer to address its ill-effects on the human life. The Hon'ble Supreme Court has taken note of this factor in order dated 5th April, 2002 in MC Mehta Vs Union of India which is relevant in this case, as extracted below:

During the course of arguments, literature was filed in Court giving data from cities all over the world which co-relates increased air pollution with increase in cardiovascular and respiratory diseases

and also shows the carcinogenic nature of Reparable Particulate Matter (RSPM) - PM10 (i.e. matter less than 10 microns in size). The scientific studies indicate that air pollution leads to considerable levels of mortality and morbidity. Fine particulate matter, or reparable particulate matter (RSPM) - PM10 (i.e. matter less than 10 microns in size) - is particularly dangerous. The Journal of American Medical Association (JAMA) has published in its recent issue the findings of a study involving over 500,000 people, conducted over 16 years, in different cities of the US. The researchers find that fine particle related pollution leads to lung cancer and cardiopulmonary mortality. Their research indicates that with an increase of every 10 microgram me per cum (mg/cum) of fine particles, the risk of lung cancer Increases by 8 per cent.

In fact the report has received the scrutiny and acceptance by the Hon'ble Supreme Court as could be seen from its judgment in the case of M.C. Mehta Vs Union of Inida order dated 05.04.2002. There is direct reference to this report by the Hon'ble Supreme Court and accepting the said report all contentions to the contrary urged by the Central Government were rejected when the Central Government sought modification of its earlier order.

The Hon'ble Supreme Court rejected all such contentions and declined to set aside/recall/modify their earlier order dated 28th March, 1995 and 9th February, 1996 passed in the case of Residents Welfare Society Vs State of Delhi 1996 (1) SCC 161

for the following reasons recorded in Para 9 and 10 which is as follows:

9. *One of the principles underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable. The two essential features of sustainable development are (a) the precautionary principle and (b) the polluter pays principle.*
10. *The "precautionary principle" was elucidated thus by his Court in Vellore Citizens' Welfare Forum v. Union of India and Ors. MANU/SC/0686/1996 : (1996) 5 SCC 647, inter alia, as follows:*

(1) the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

(2) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(3) The "onus of proof" is on the actor or the developer to show that his action is environmentally benign.

(4) It cannot be gainsaid that permission to use automobiles has environmental implications, and thus any "auto policy" framed by the Government must, therefore, of necessity conform to the Constitutional principles as well as overriding statutory duties cast upon the Government under the, EPA.

(5) The "auto policy" must, therefore,

(a) focus upon measures to " Anticipate, prevent and attack " the cause of environmental degradation in this field.

(b) in the absence of adequate Information, lean In favour of environmental protection by refusing rather than permitting activities likely to be detrimental.

(c) Adopt the "precautionary principle" and thereby ensure that unless an activity Is proved to be environmentally benign in real and practical terms, It Is to be presumed to be environmentally harmful.

(d) Make informed recommendations which balance the needs of transportation with the need to protect the environment and reserve the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

43. It is thus clear that the absence of adequate information or material data lean in favour of environment protection by refusing rather than permitting activities likely to be detrimental. Thus merely because this Tribunal had not ordered independent study with regard to ill-effects of use of diesel compared to petrol or any other study report is not a ground. The burden to establish what is contented about the beneficial aspect by use of diesel is on the Government/Applicant/Union of India who seeks modification of the order.

Contentions on legal Issues :

44. Ms. Pinki Anand Ld. ASG, apart from the relying on factual aspects as referred to in para Supra, has questioned

maintainability of the order of this Tribunal dated 18.07.2016 and 20.07.2016 on its legality.

45. Referring to directions of this Tribunal, directing de-registration, she submits the term de-registration is alien to the provisions of Motor Vehicle Act, 1988. The Act provides for “cancellation registration” or “Suspension of Registration”. She refers to provisions of sub-section 3 of Section 55 of Motor Vehicle Act which deals with cancellation of registration.

55. Cancellation of registration.—

(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of India, the registering authority shall cancel the registration.

(5) If a registering authority is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were, or by representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving the owner an opportunity to make such representation as he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), and for reasons to be recorded in writing, cancel the registration.

(6) A registering authority cancelling the registration of a motor vehicle under section 54 or under this section shall communicate such fact in writing to the owner of the vehicle, and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(8) The expression “original registering authority” in this section and in sections 41, 49, 50, 52, 53 and 54 means the registering authority in whose records the registration of the vehicle is recorded.

(9) In this section “certificate of registration” includes a certificate of registration renewed under the provisions of this Act.

46. According to her, even this provision does not provide any power to the state or Central Government to cancel the registration without *examination* of the vehicles and thus she contended cancellation of registration of the Motor vehicle cannot be ordered by the State or Central Government without re-examination of the vehicle to test its road worthiness and consequently this Tribunal has no such power to impose general ban. The paramount consideration is whether the use of the vehicle is dangerous to human life.

47. Further, she submits the orders of the NGT in question (18th July, 2016 and 20th July, 2016) which directs diesel vehicles of more than 10 years to be scrapped after deregistration, registration is illegal and in violation of law. There is no authority under law for scrapping the vehicles whose registration is cancelled. Cancellation of registration would not permit only plying of the vehicle on roads but does not take away right of the owner to retain it.

48. Scrapping order is an infringement of right to property guaranteed under Section 14 of the Constitution of India.

49. Referring to Section 59 of Motor Vehicle Act, 1988, which confers power on Central Government to fix age of the vehicle, she contends the power is exercisable only by the Central

Government and even the State Government has no power to fix the age of the vehicle. She relies on Section 59.

59. Power to fix the age limit of motor vehicle.—

(1) The Central Government may, having regard to the public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture, after the expiry of which the motor vehicle shall not be deemed to comply with the requirements of this Act and the rules made thereunder: Provided that the Central Government may specify different ages for different classes or different types of motor vehicles.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, having regard to the purpose of a motor vehicle, such as, display or use for the purposes of a demonstration in any exhibition, use for the purposes of technical research or taking part in a vintage car rally, by notification in the Official Gazette, exempt, by a general or special order, subject to such conditions as may be specified in such notification, any class or type of motor vehicle from the operation of sub-section (1) for the purpose to be stated in the notification.

(3) Notwithstanding anything contained in section 56, no prescribed authority or authorized testing station shall grant a certificate of fitness to a motor vehicle in contravention of the provisions of any notification issued under sub-section (1).

50. According to her, under this provision the power to fix the age of vehicle being only with the Central Government and that to only after issuance of notification and publishing in Official Gazette, no power is conferred even on the Central Government to fix the age of the vehicle by a general order. The Order of the NGT directing banning of diesel vehicles of more than 10 years and directing it to be scrapped is violation of Motor Vehicle Act, 1988 particularly, section 59, and is thus unsustainable.

51. On this point she would further contend that cancellation of registration as provided section 55 of the Motor Vehicle Act can be done only for each of the vehicle on individual assessment as provided by the provisions of Motors Vehicle Act, 1988 and that to only after first giving notice to the owner and giving him a reasonable opportunity of being heard and on proof the vehicle is beyond repair and dangerous to be used on roads. No other

factor permits cancellations of registration of vehicle based on the age. Any order passed fixing age of the motor vehicle without following the procedure prescribed in Section 59 will be non est and cannot be enforced.

52. She further submitted that globally, end of life of vehicles is decided not by age of vehicle but by determining its condition and road worthiness. Determining end of life of the vehicle by fixing age limit unilaterally results in several loss of vehicle particularly the personally owned vehicles which has been maintained very well in de-registration will ultimately lead to national waste and effects the right to property individual rights of the people guaranteed by the constitution and pushes them to face in-compensable loss.

53. Referring to the data from the automobile manufactures and the specification with regard to life of engine, she submits vehicles which have not covered the prescribed life mileage would be legally entitled to ply on roads even if they have been poorly maintained and is not road worthy. This is protection under law for the reason no order could be passed except in terms of the provisions of Section 55 and 59 of the Motor Vehicle Act, 1988. Arbitrarily banning of vehicles based on age would cause economic hardship to the owners of the vehicles whose very livelihood may depend on these vehicles leading to social injustice. It dissuades the potential customers to buy diesel car as compared to petrol cars whereby discriminating the citizens based on the type of fuel consumed without any

legal sanction. The directions of the NGT in order in question will suddenly throw lakhs of vehicles for scrapping without any proper provision, and will lead to unorganised dismantle of vehicles and imbalance environment adversely denting vehicular operations in Country further aggregating economic loss.

Analysis of other grounds and our conclusion on legal issues

54. The term cancellation and term suspension of registration used in the provision of Section 53 and 55 of the Motor Vehicle Act is in different context and is situation based.

53. Suspension of registration.—

(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such, the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of such suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration.

(5) A certificate of registration surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

55. The phraseology of section is clear. It operates in the circumstances if the vehicle is found to be in a condition that its use in a public place would constitute a danger to the public

or fails to comply with requirements of this Act or when it is used for hire or reward without a valid permit for being used as such. In such circumstances the registration authority named in this Act has the power to “suspend” for a limited period until the defects are rectified to its satisfaction and in any other case falling under clause (b) for a period not exceeding four months.

Thus, the provisions are intended to put a temporary restraint on use of vehicles and in this regard to suspend the registration. The power conferred on the registration authority by section 53 is also exercisable by other authorities other than issuing authority and if they make such an order for suspension which it is to be intimated to registering authority in whose jurisdiction vehicle is found at the time of such order.

Any order passed under section 53 “suspending registration” of vehicle is subject to further orders to be passed. Thus, this provision is not attracted in the circumstances in which this Tribunal has passed the order issuing directions to deregister the 10 years old diesel vehicles.

56. Section 55 deals with “cancellation of registration” this provision also operates in different circumstances. If the motor vehicle has been destroyed or has been rendered unless the owner of the vehicle shall be required to intimate about it to registration authority within whose jurisdiction the owner resides or has place of business where the vehicle is normally kept, and in such case the registration authority may order examination of vehicle and if it is satisfied the vehicle is

incapable of use, or its use in public place would constitute a danger accept the request of owner.

Provision of sub-section 1, 2 and 3 refers only to the owner of the vehicle seeking cancellation of registration on his own volition in the circumstance numerated therein. Registering Authority by itself does not initiate order in those circumstances. However, sub-section 5 of Section 55 authorise the authorities, if it is satisfied that the registration of the motor vehicle has been obtained on the basis of documents which were, or the representation of facts which was, false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration, the registering authority shall after giving notice to the owner and opportunity cancel the registration for the reasons to be recorded. Sub-Section 1, 2, 3 and 5 of Section 55 are not attracted in the fact situation this tribunal has ordered deregistration.

57. As regards Section 59 of the Motor Vehicle Act is concerned it provides the central Government, having regard to public safety convenience and objects of the act, by notification in a official Gazette specify the life of the motor vehicle reckoned from its date of manufacturing after expiry of which motor vehicle will not be deemed to comply with the provision and rules made thereunder.

The question for consideration is if in a given circumstance Central Government fails to discharge its statutory obligation to

invoke section 59 of the Motor vehicle Act should the citizen suffer and the courts or the Environmental Tribunal be a silent spectator. The answer is in negative for the reason assigned by us in the following paragraphs.

58. We have already referred to section 53, 55 to hold that these provisions operate in different fact situation and are not attracted to the facts and circumstances in which directions in question dated 18th July, 2016 and 20th July, 2016 are issued by this Tribunal. However, for clarity it is necessary to observe that the word *suspension* would mean the act of temporarily restricting, interrupting or terminating a person's power or privilege or temporary deprivation of a person's powers or privileges in respect of other property or rights to office etc. the order of suspension is temporary and is subject to further orders which to recall the suspension. The word *cancellation* used in language of Section 55 of Motor Vehicles Act is a order by which the grant of registration under the Motor Vehicle Act is obliterated i.e. cancelled thereby completely depriving the person's right of user etc. in respect of vehicle subject to Motor Vehicles Act i.e. right to ply on roads. The word *de-registration* in simple terms has the same effect like cancellation. De-registration is triggered when facts and circumstances are such which justify terminating right which a person could claim by virtue of registration, that means, in relation to motor vehicle it could be said that de-registration would have the effect as cancellation of registration which word is used in the statute

59. The fact of de-registration and cancellation being the same, the use of word de-registration in the order in question has no adverse legal consequence on the legality of the order, as, what was intended is to ensure that the vehicle of particular age, using a particular fuel, shall not be used or to plied on roads impacting the air quality in determent to the interest of humanity. Therefore, even though the Tribunal may not have used word cancellation of registration the object being same the use of word de-registration does not result in creating any blemish in law on the order in question. The dictionary meaning of the word cancellation or registering being the same, it has to be understood in that sense.

60. We shall now consider the scope of the section 59 of the Motor Vehicle Act, 1988. It is undisputed position of law that Article 39, 47 and 48 (a) of the Constitution Act, in unequivocal terms collectively caste a duty on the State to secure the health of the people, improve public health and protect the environment (as observed by the Hon'ble Supreme Court in W.P No. 13029 of 1985 M.C. Mehta Vs. Union of India).

61. Hon'ble Supreme Court expressing its anguish on the failure of the state to fulfil its constitutional obligation to protect the health of the people and to improve environment, intervened and issued directions to the Government. Though the Hon'ble Supreme Court was exercising its civil writ jurisdiction by

passing the orders in the Public Interest Litigation, justifying the intervention by the Courts, has clearly expounded the position of law that when the Government machinery fails to discharge its constitutional obligation, the courts would intervene and issue directions to achieve the objective to safeguard the life and health of the people. Emphasis being that the right to life guaranteed by Article 21 of the Constitution of India is unfringeable and needs to be protected and State has no excuse except to fulfil its Constitutional Obligation.

62. It is relevant at this juncture to refer to series of orders passed by Hon'ble Supreme Court, first being on 23rd September, 1986 directing the Delhi Administration to specify the steps taken by it for controlling pollution, emissions of smoke, noise etc. from vehicles plying in Delhi. That followed several subsequent orders by which Supreme Court noticing the adverse effect and serious impact on environment by use of particular type of fuel i.e. diesel directed State fleet at the first instance to be converted to CNG and then the other vehicles. All such orders are de hors the provision of the Motor Vehicle Act and any other law in force.

63. However, presently the position is quite different in view of the establishment of National Green Tribunal by Act of 2010 statutorily conferring the exclusive jurisdiction in the matter relating to environment, its protection and enforcement of national laws on Tribunal leading transfer all cases from the Constitutional Courts.

64. The question as to whether the Courts/Tribunal can issue direction to the Government in the matter which are statutorily covered under the provision of the Motor Vehicle Act, 1988 by implications has been dealt with in the case of *M.C. Mehta vs. Union of India* particularly in the order dated 5th April, 2002. To emphasise this point we may extract the observations of the Hon'ble Supreme Court in para nos. 26 and 27 which throws sufficient light. It reads as hereunder:-

26. The statistics show that the continuing air pollution is having a more devastating effect on the people, than what was caused by the Bhopal gas tragedy. In that case, the nation, including the Union of India, was rightly agitated and sought action and compensation from the multinational company, who was held to be responsible for the same. Here, in the case of CNG, the shoe is on the other foot because the government is not facilitating measures for clean air and water including the supply of CNG or any other clean unadulterated fuel. It is due to the lack of proper concern on the part of the governmental authorities that people are suffering from respiratory and other diseases. The Bhopal gas tragedy was a onetime event which, hopefully, will not be repeated, but here, with not enough concern or action being undertaken by the Union of India, far greater tragedies in the form of degradation of public health are taking place every day.

27. Under these circumstances, it becomes the duty of the Court to direct such steps being taken are necessary for cleaning the air so that the future generations do not suffer from ill-health.

Thus, it is seen that the Hon'ble Supreme Court had issued directions to direct the steps to be taken by the Government for cleaning the air, so that future generation do not suffer. The directions issued by the Hon'ble Supreme Court are relating to subjects which are covered under the provisions of the Motor Vehicle Act, 1988, the observation in para 1 and 2 of the Judgment (referred to above by the Hon'ble Supreme Court) spells out that environmental laws shall prevail over other common law regulations, including the provisions of the Motor Vehicle Act, 1988.

65. Besides, We have the Judgment of the High Court of Karnataka with regard to justification of the courts to issue directions regarding fixing of age of the vehicles and banning vehicles capable of using diesel which is an answers the question raised by Ld. ASG. We may refer to the decision in the case of **Karnataka Lorry Malikara Okkuta (R), by its General Secretary and ors. vs. The State of Karnataka, by its Chief Secretary and ors.** observed as follows:

15. *The Hon'ble Supreme Court in a number of cases has observed that the Government can take appropriate action to ensure safety and welfare of the public. More, particularly, the Supreme Court in M.C. Mehta's Case Supra has held that directions that are issued under the Environment Act are for protecting and safeguarding the health of the people, a right provided and protected by Article 21 of the Constitution and would override the provisions of every statute including the Motor Vehicle Act, if they militate against the Constitutional mandate of Article 21. It is also observed that the norms fixed under the Motor Vehicles Act are in addition to and not in derogation of the requirements of the Environment Act.*

16. *In view of the above, said provisions of the Environment Act and the Air Act and the observations of the Hon'ble Supreme Court in M.C. Mehta's case, it is clear that there is no merit in the contentions of the learned counsel appearing for the petitioners that the State Government has no power to issue directions under section 5 of the Environment Act and Section 20 of the Air Act. The argument is rejected.*

17. *It is well settled that it is always open to the State Government, which has authority under Section 5 of the Environment Act and Section 20 of the Air Act and to issue necessary directions. By the said notification, only the entry of vehicles aged more than 15 years within the city of Bangalore from the outer Ring Road has been prohibited, fixing the Schedule. It is seen that as per the counter, the State Government, after consulting the Board, has take necessary steps having regard to the ground realities and the position prevalent in Bangalore, which is within its competence as stated, and therefore, the argument that the said steps taken in other cities would ipso facto enable the Government to issue directions to prohibit the entry of transport/commercial vehicles aged more than 15 years, has no substance. Anyhow, the notification has not been given effect to. The facts placed as per the affidavit is an on 1.1.2003. Now 18 months have passed and more vehicles must be on the road. Certainly, there is increase in the pollution in the city due to emission of toxic fumes by plying such vehicles. However, these facts are to be ascertained by the respective authorities concerned.*

18. *Under the circumstances, it will be appropriate to direct the respondents to evolve some scheme after considering the details. Government should also give sufficient time to the vehicle owners*

for replacement of the old vehicles, in a phased manner, to make available the CNG fuel and to have the vehicles converted to it in a phased manner. The authority concerned should overall monitor and check the two wheelers, four wheelers and other types of vehicles including commercial/transport vehicles as well as passengers vehicles, at important functions, and to see that they do not violate the prescribed norms of pollution and the traffic rules and to ensure the safety and welfare of the public. The authorities concerned are also free to take note of the direction issued by the Apex Court in M.C. Mehta's Case Supra.

66. In the instant case series of orders passed by the Hon'ble Supreme Court referred to above Supra were sought to be either modified or recalled. The Hon'ble Supreme Court has discounted all such contentions and issued directions to impose. Despite such clarification no fruitful purpose has been served.

67. In these circumstances, in this case i.e. Vardhman kaushik vs. Union of India & ors., this Tribunal by its judgment dated 07th April, 2015 directed banning of the diesel vehicles which are 10 years old and petrol vehicles which are 15 years old. The directions so issued undoubtedly are directions for effective implementation of the provisions of the Air (Prevention and Control of Pollution) Act, 1981. The Air Act is one of the enactments included in Schedule I of the National Green Tribunal Act, 2010 Section 59 of the Motor Vehicle Act is therefore subject to the provisions of the environment laws likw Air and water. Section 14 of the deals with the Jurisdiction, NGt is established as a specialized environment Tribunal. Its jurisdiction is spelt out in Section 14 to 18. Section 14 envisages *"The Tribunal shall have the Jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment),*

is involved and such question arises out of implementation of the enactments specified in Schedule I.” Sections 29 ousts the jurisdiction of all civil courts retaining the appellate jurisdiction of the Hon’ble Supreme Court as envisaged in Section 22 of the Act. The Phraseology used in Section 14 leaves no scope of doubt that NGT is conferred with exclusive jurisdiction to deal with cases where the substantial question relating to environment and includes questions relating to enforcement of any legal right relating to environment spelled out in the enactment referred to in Schedule I .

68. Air Act which is one of the enactment specified in Schedule I mandates steps to be taken by authorities its section 17 and 20 are relevant.

69. Thus, enforcement and implementation of provisions is a clear legal mandate which the Centre and State Government through the modes as specified in the Act must take appropriate steps, but when the Centre and State Government fail to fulfil its statutory obligation and allows the situation to be created affecting the environment adversely and consequently infringes the right to life of the people guaranteed under Article 21 of the Constitution, the jurisdiction of the NGT could be invoked. In other words if the circumstances so created results in raising substantial question relating to environment arising out of the implementation or non-implementation of the enactment like in this case, the Air Act. The Tribunal Jurisdiction is triggered.

70. The words used in Section 14 “**question arising out of the implementation of the enactments specified in Schedule I**” would mean and include “*non implementation of the enactment specified in Schedule I*” To repeat, the word *implementation* would include questions arising out of *non implementation*. In this instant case we are concerned with *non implementation* of the mandate of Air Act which is an enactment specified in Schedule I and therefore, the substantial question relating to environment arises. The legal position when such question arises is that, it is NGT can invoke its exclusive jurisdiction to pass such orders as are justified in law for enforcement of the provisions of the enactment relating to protection of environment notwithstanding anything to the contrary in any other laws. Thus, the reasonable conclusion would be that anything contained to the contrary in the Motor Vehicle Act will not affect the jurisdiction exercisable by Tribunal under Section 14 to deal with cases where substantial question relating to environment arises.

71. We have already observed that provision of Motor Vehicles Act is regulatory in its mechanism and such provisions are supplementary and not in derogation of the mandate of the provisions in the NGT Act.

72. Undoubtedly facts in this case are that despite the direction of Hon’ble Supreme Court to ensure clean air and improve the Ambient Air Quality in Delhi and NCR, the State Machinery has failed. It is evident that the Central Government and State

Administration failed to take such steps as are necessary including examining the ill effect on the environment by use of diesel vehicles which are old and have impacted the air quality adversely, though the provision in Section 59 conferred discretion on the Central Government to specify age it has failed to exercise such power. The circumstances and the relevant material data relating to consequences resulting from the degradation in ambient air quality necessitated action by this Tribunal.

73. Though it was urged right to property guaranteed by the Constitution cannot be infringed by the order of the Tribunal, it is necessary to record that the right to property guaranteed is not an absolute and subject to reasonable restriction as provided by Article 300 A of the Constitution of India. The said right is subject to reasonable restrictions under law either by legislative power or by legally permissible process of law. Similarly, the right guaranteed by under Article 19 (1) (g) is also subject to reasonable restrictions as envisaged under Article 19 (6) of the Constitution of India. This opinion finds support by catena of decisions of the Hon'ble Supreme Court and the other constitutional Courts thereby rendering the order passed by this Tribunal on 7th April, 2015 fully sustainable. To aid further we have the decisions of the Apex Court vide order dated 5th April, 2002 in the case of *M.C. Mehta* and the decision of the Divisional Bench of Karnataka High Court, which declare enactment dealing with environment have overriding effect on

the Motor Vehicle Act. Therefore the question posed regarding jurisdiction of this Tribunal has to be answered in negative.

74. We affirmatively hold that provision of Motor Vehicle Act and such other enactments are subject to Environment Protection Act as the provisions of enactments dealing with environment are in furtherance to protecting right to life guaranteed by Article 21 of the Constitution.

75. The Environment (Protection) Act came into force with effect from 23rd May, 1986. Section 5 of the Act *begins with non abetante clause* “notwithstanding anything contained in any other laws but subject to the provisions of this Act, the Central Government may in exercise of its powers and performance of its functions under this Act, issue directions to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. Therefore, it is very clear the power conferred on Central Government to issue any direction to any person or authority in the matter relating to environment has an overriding effect on the other enactments and in this context of Motor Vehicle Act, 1988. Besides the provisions of the Environment (Protection) Act, 1986 the provisions of Air (Control and Prevention of Pollution) Act, 1981 and Water (Control and Prevention of Pollution) Act, 1974 are legislation which deals with environment and the provisions of these enactments also have overriding effect on the provisions of other enactments which includes Motor Vehicles Act, 1988. For instance the Air (Control and Prevention of Pollution) Act,

1981 came into force 29th March, 1981. Section 17 defines the functions of the Board and further empowers the Board- with a view to ensuring that standards for emissions of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section 1 of Section 17 is complied with the State Government shall, in consultation with State Board, give such instruction as deemed necessary to the concerned Authority incharge of registration of Motor Vehicles and such Authority shall not withstanding contained in the Act or rules. Therefore, it could be seen that the main aim and object in enacting the Air (Control and Prevention of Pollution) Act, 1981 to safeguard environments.

76. The resultant position is that this Tribunal has exclusive jurisdiction to decide cases where substantial question relating to environment arises including enforcement of any legal, where such question arises out of implementation or regarding non implementation of enactments specified in Schedule I and this justifies issuance of directions by the Tribunal imposing reasonable restriction on the right of person in relation to vehicle or any property which is likely to infringe and adversely affect the right to life guaranteed under Article 21.

77. Consequently, we hold that the directions issued by this Tribunal on 18th July, 2016 and 20th July, 2016 are legal and suffer from no legal infirmity or lack of jurisdiction.

Contentions to the contrary urged in this regard are therefore discounted.

78. The Tribunal has assigned sufficient reasons in order dated 7th April, 2015 from which the orders dated 18th July, 2016 and 20th July, 2016 have resulted and have stood the test of judicial review by the Hon'ble Supreme Court in exercise of its statutory power of Appeal. Thus in no circumstances the orders in question are assailable.

79. Before be part we would refer, in brief the fact situation and the circumstances in which the order in question was passed by this Tribunal. It is as follows:

- a. Despite directions of the Hon'ble Supreme Court, State and Central Government had failed to act and take steps to improve the ambient air quality in the country and particularly, in the NCT Delhi and the capital states of the Country.
- b. The parameters of the ambient air quality remained excessive. In the order dated 04th July, 2016 in Original Application No. 179 of 2016 in the case of Mahendra Pandey Vs. Govt. of NCT of Delhi & Ors, this Tribunal has noticed that the excessive parameters in ambient air quality even during implementation of the odd even period performed to be more deteriorated than the one when the said restriction was not inforce. As per the analysis report the average value of PM 2.5 is higher during odd-even phase than pre odd-even period. During the odd-even period it varied from 63 to 182

as against the pre odd-even when it which varied from 45 to 143. The parameters like PM10, NO2, SO2, CO and Ozone all through the period were noticed to be higher than the pre odd-even period ambient air quality. Thus, statistics indicates the fact that the extent of pollution being caused by vehicles was primarily by the old vehicles which substantially contribute majorly to the air quality and therefore requires measures to be initiated. The Hon'ble Supreme Court was seized of the similar issue in the case of M.C. Mehta. The Hon'ble Supreme Court took note of National Auto Fuel Policy announced by the Government of India for implementation of Bharat Stage norms for vehicular emissions. The policy was based on the recommendations of the Mashelkar Committee constituted in 2001 which provided nearly a road map for achieving vehicular emission norms over a period of time and the corresponding of the fuel requirement. The process of implementation of Bharat Stage (BS Norms) was taken note of and directions were issued concerning the registration of motor vehicles the first point communicated dated 23rd March, 2005 issued by Ministry of Shipping, Road Transport and Highways, Government of India related to registration of vehicles from April, 2005. In this context the introduction of BS-III compliant vehicles in the cities of Delhi, Ahmedabad, Bangalore, Mumbai, Pune and Kolkata was undertaken however, the communications clarified that only BS-III manufactured on or after 1st April,

2005 could be registered in these cities. But it permitted BS-I and II compliant vehicles could be registered in the rest of the areas of the States and in these cities for some time till accumulated stock is exhausted. Further the Hon'ble Supreme Court took note of the fact that the Office Memorandum was issued by the Ministry of Shipping, Road Transport and Highways, Government of India on 3rd March, 2005 apparently in response to the issue raised by EPCA wherein though the intent is to have only BS-IV manufactured after 1st April, 2017 but the inventory of old vehicles manufactured by 31st March, 2017 would need to be protected and registered. It was clarified that there is not bar on sale or registration of vehicles produced prior to the aforesaid and this was procedure to be followed when country migrated to BS-II and BS-III emissions norms in 2001 and 2005. The Government issued subsequent clarification in 2005 and 2010. The Hon'ble Supreme Court took note of the standing committee's 5th report to the Lok Sabha secretariat in which it was observed as follows:

Greenhouse gases induced global warming and subsequent climate change are some of the perils threatening the survival of present day generation. The process of industrialization and development has caused innumerable changes in global climate. These climatic changes, which have occurred principally through the burning of fossil fuels such as gasoline and diesel in the transportation sector and automobile industry have led to an increase in the concentration of green house gases such as Carbon Dioxide, Methane, Nitrous Oxide and Hydro Fluoro Carbons in the atmosphere, thus disrupting the ecological and social systems across the globe.

1.2 The rapid growth in automobile industry and the increasing number of vehicular pollution have become one of the major causes in the phenomenal rise of air pollution in India. Though air pollution is caused by several factors, the dramatic rise in the vehicular emissions has compounded the problem.

80. The contention on behalf of the Central Government was that Central Government through its refineries had incurred an expenditure of 30,000 crores to make available BS-IV fuel from 1st April, 2017 all over the country and this was in reaffirmation of submission made on 5th January, 2016 that BS-IV fuel would be available by 1st April, 2017.

81. The Hon'ble Supreme Court though took note of submission but did not find favour to postpone but ban on the age of vehicles which use diesel as fuel. Thus, by its Judgment dated 13th April, 2017 extracted below the Hon'ble Supreme Court imposed complete ban:

“Accordingly, for detailed reasons that will follow, we direct that:

(a) On and from 1st April, 2017 such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by the manufacturer or dealer on and from 1st April, 2017.

(b) All the vehicles registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1st April, 2017 that do not meet BS-IV standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.”

82. The applicant was duly represented and heard by the Hon'ble Supreme Court before passing the said order. What has been addressed by the Hon'ble Supreme Court through the aforesaid order and what this Tribunal has addressed through its order dated 7th April, 2015 is the issue relating to deterioration of ambient air quality consequent to which innocent life have been lost and the disastrous effect of poor air quality was likely to create divesting effect on the life of the people. It undoubtedly

infringed right to life guaranteed by Article 21 of Constitution of India. The Precautionary Principle which is salutary principle in dealing with protection of environment is justifiable invoked by the Tribunal as envisaged under Section 20 of National Green Tribunal. It is now well settled that threat to environment is threat to life. The right to life guaranteed by Constitution of India and consequent threat to life. To avert and prevent the danger of loss of life and its ill effect on the future generation all concerned have to visualise and adopt means and methods and take necessary measures to deal with the most unexpected situation. This Tribunal by its order dated 7th April, 2015 and subsequent directions dated 18th July, 2015 and 20th July, 2016 has exactly done the same. Undisputedly, the applicant (Central Government) had failed to substantiate before passing of the order dated 7th April, 2015 that use of vehicles of more than 10 years using diesel as fuel will not be detrimental to the health of people and further failed to negate statistical information that the PM level in vehicular emissions consequent to diesel as fuel was scientifically proved to be carcinogenic leading to fatality and undetectable set back in health shortening the life span and render the living being particularly the human being and infant physically infirm and victim of poor health.

83. Besides the above, legal and technical aspects on which we hold the applications are not maintainable we have dispassionately examined each factual aspect and other

grounds canvassed by Learned Counsel Ms. Pinki Anand and Harvinder Sekhon and find no merit to accept it as sufficient ground to interfere with our orders.

84. For the above said reasons assigned by us M.A. No. 567 of 2016 and 1220 of 2016 are rejected with no order as to cost.

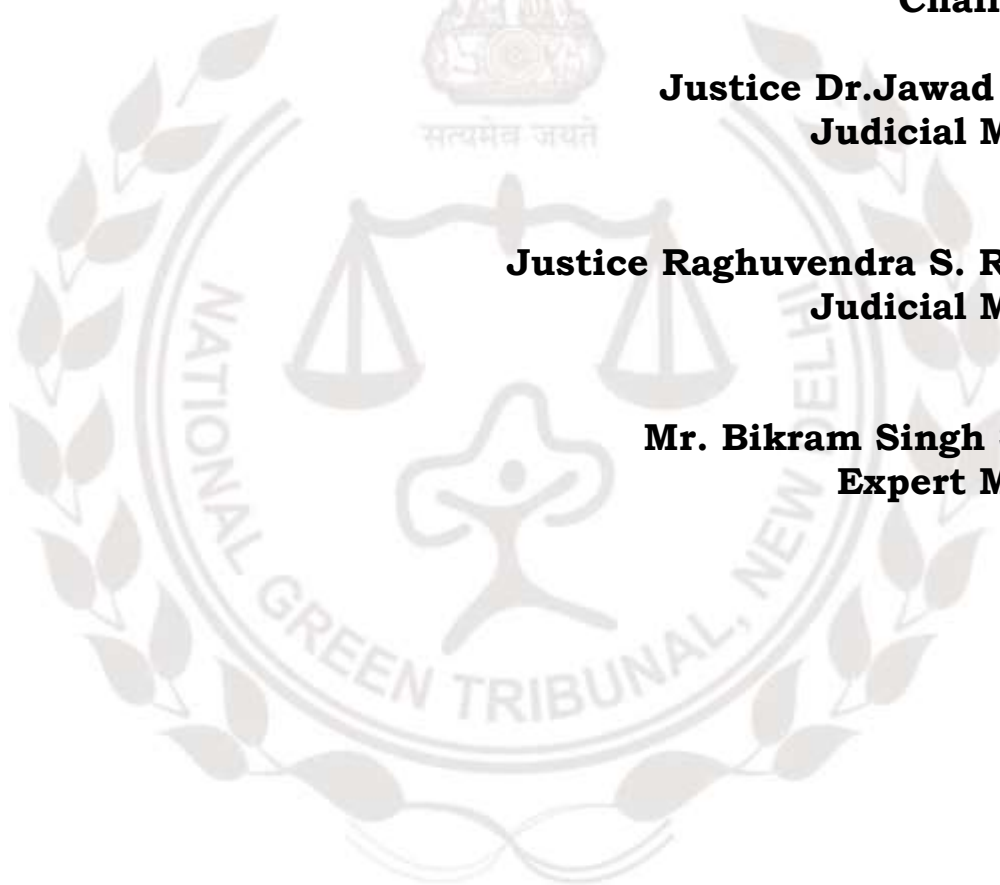


Justice Swatanter Kumar
Chairperson

Justice Dr. Jawad Rahim
Judicial Member

Justice Raghuvendra S. Rathore
Judicial Member

Mr. Bikram Singh Sajwan
Expert Member



NGT