BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE

APPLICATION NO.81/2015(WZ)

CORAM:

Hon'ble Dr. Justice Jawad Rahim,
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)

B E T W E E N:

DILEEP B. NEVATIA,
Shashi Deep, 5-A. Worli Sea Face,
Mumbai 400 030.

.....**Applicant**

A N D

1. **UNION OF INDIA,**
   Through : The Secretary,
   Ministry of Environment and Forest,
   Indira Paryavaran Bhavan
   Jor Bagh, New Delhi 110 003

2. **MINISTRY OF PETROLEUM & NATURAL GAS,**
   Through : Secretary,
   Shastri Bhavan,
   New Delhi 110 001.

3. **CENTRAL POLLUTION CONTROL BOARD,**
   Through : the Member Secretary,
   Parivesh Bhavan, BCD cum Office Complex,
   East Arjun Nagar, New Delhi 110 032.

4. INDIAN OIL CORPORATION LIMITED,
Through Its Managing Director,
G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai 400 051

.....Respondents

Counsel for Applicants
Mr. Dileep Nevatia, in person.
Counsel for Respondent No.1 :
Mr. Aniruddha Tapkire & Amit Karkhanis,
Sapna Mordekar, Advs.
Counsel for Respondent No.2 :
Mr. K.D. Ratnaparkhi, Adv.
Counsel for Respondent No.3 :
Mr. Rahul Andhale, Adv.
Counsel for Respondent No.4 :
Mr. Manoj Wad, Adv.
Mr. Farheen A. Penwale, Adv.

Date: August 30th, 2016

J U D G M E N T

1. This Application is filed by an individual against alleged violation of Air (Prevention and Control of Pollution) Act 1981 and Environment (Protection) Act 1986, being caused due to the poor quality of kerosene supply by the public sector refineries operating under Ministry of Petroleum and Natural Gas to the poorest segment of the society for their cooking and other purposes and also to the Defence personnel, thereby, adversely affecting the health of

poor people and defence personnel all over the country. The Applicant had arrayed Union of India, through Secretary of Ministry of Environment and Forest as Respondent No.1, Ministry of Petroleum and Natural Gas (MoPN) as Respondent No.2. Central Pollution Control Board (CPCB) is Respondent-3 while Indian Oil Corporation Ltd. (IOCL) is Respondent No.4.

2. The Applicant states that the Indian standard IS 1459 : 1974 for "Superior Kerosene Oil" was adopted on 22nd February 1974 and has remained unchanged, since then except minor amendments, made in 1984 and 1993. The total sulphur percentage by max (maximum) in kerosene prescribed under the standard is 0.25 percent or 2,500 ppm for supply to general public and 0.20 percent or 2000 ppm for supply to defence sector.

3. Applicant's contention is that the kerosene is mostly sold at subsidised rates to the poorest segment of the Society for their domestic uses. He alleges that due to pressure of civil society and various influential groups, the specifications for vehicle fuel, namely petrol and diesel, have been modified based on the Environmental considerations. But no such revaluation is done for kerosene. Hon'ble Supreme Court of India had also issued certain directions in order to abate the Urban Air Pollution and in line with these directions, the Government of India

has from time to time, issued Notifications for improved vehicle emission norms, inter-alia, linking the improvement in the vehicle specifications and fuel quality. He states that improved Gasoline Quality has been achieved by phasing out Lead, reduction in Benzene content, Octane number enhancement and reduction in Sulphur content from 2000 ppm (parts per million) to the present level of 150 ppm for BS-IV. The Government is also contemplating further improvements by bringing down the Sulphur content up to 10 ppm with adoption of BS-V and BS-VI emission standards programme. He further contends that similarly, the diesel quality improvement programme was implemented by increasing the Cetane number, changes in Distillation Recovery and Density, limiting Polycyclic Aromatic Hydrocarbon (PAH) content and reduction in Sulphur contents from 10,000 ppm to the present level of 50 ppm for BS IV. This sulphur concentration is also proposed to be brought down to 10 ppm with the adoption of BS V and BS VI standards.

4. His grievance is that while all efforts are being made by the Government for reducing the outdoor i.e. ambient air pollution by improving the automobile fuel quality, surprisingly no steps are taken and no efforts made to reduce the highly excessive sulphur content in the kerosene used for domestic purposes which has remained unchanged

since the year 1974. He has cited several research material for the purpose to establish that toxic high content of Sulphur and the poor quality of kerosene is resulting in un-acceptable levels of indoor pollution, affecting the health of poor and deprived segment of the society.

5. The Applicant had approached the concerned authorities stressing the need for improvement in the kerosene quality by reducing its sulphur content, but no proper consideration was given by any of the authorities and they have merely relied on the BIS standard of 1974 to justify their position. The Applicant has therefore raised the dispute for protection of environment from substantive adverse effect and has approached the Tribunal under Section 14 read with section 18 of the National Green Tribunal Act, 2010 with following prayers :

i) Directing Respondent Nos.1 and 2 to upgrade the petroleum refineries to entirely switch over to the production of "*Ultra Low Sulphur Kerosene*" (ULSK), having the Sulphur content at around 15 ppm by 1.4.2017.

ii) Directing Respondent Nos.1 and 3 to set up adequate facilities all over the country, including in the rural areas, to test and monitor pollutants specified under National Ambient Air Quality Standards.

6. Respondent No.1 i.e. MoEF has not filed any response or reply.

7. Respondent No.2 has filed an affidavit through Mr. Pawankumar on 28th October 2015 and submits that improvement in the fuel quality and vehicular emission norms are based on environmental considerations on account of increased vehicular pollution/density and rapid urban growth and its impact on human health. Sulphur reduction in auto fuel and kerosene are not comparable. Respondent No.2 admits that the sulphur content in kerosene remains unchanged since 1974, but contends the Government is taking action to gradually reduce domestic kerosene consumption across the country and replacing it with cleaner fuel like LPG to even remote villages. It is their contentions over the years the kerosene consumption has decreased (8.9 MMTPZA in 2010-11 to 7.09 MMTPA in 2014-15) while LPG consumption has increased from 14.3 MMTPA in 2010-11 to 18.0 MMTPA in 2014-15.

8. Respondent No.2 further contends that the sulphur content in the kerosene was stipulated after due deliberations and considerations by BIS and the petroleum refineries are producing superior kerosene meeting BIS specification IS : 1459-1974.

9. Respondent No.2 filed another affidavit on 16th April 2016 in reply to the re-joinder and denied that the kerosene

is a polluting fuel. It is further stated that the BIS in its July 2014 meeting has finalised Draft standard IS : 1459 for kerosene and the sulphur content has been revised from 0.25 % wt. max besides other changes in the specifications. Respondent No.2 emphasises on efforts taken to increase the National LPG coverage and to increase its penetration in Rural and backward areas. Respondent No.2 therefore, contends that the present standards finalised by the BIS after due deliberations and in 2014. Now, BIS has finalised Draft standard for reducing the sulphur content from 0.25 % (per cent) to 0.20 % (per cent) max and therefore, opposed the Application.

10. Respondent No.3 Central Pollution Control Board (CPCB) filed its affidavit on 14th September 2015 contending as follows :

> *"The issue related for the up gradation of the Government and private refineries to entirely switch over to the production of "Ultra Low Sulphur Kerosene" (ULSK), having the sulphur content at around 15 ppm by 1-4-2017 or at the latest 1-4-2018. It is agreed that the high quality of Sulphur in the kerosene being supplied to PDS as well Defence will result into higher emissions of both Oxides of Sulphur as well as particulates upon combustion. In India the Fuel Quality Specifications with respect to Superior Kerosene Oil have been developed by Bureau of Indian Standards (BIS : IS 1459 : 1974) and subsequently MoPNG ensures supply of the commensurate fuel quality (Superior Kerosene Oil in the present case) in accordance with the specification formulated by BIS. The regulations for the*

formulation of fuel quality standards (Superior Kerosene Oil in the present case) is with BIS and its supply accordingly is in the purview of MoPNG while CPCB has no regulatory power in the said matter."

11. Respondent No.4 (Indian Oil Corporation Ltd.) filed an affidavit on 10th September 2015 to contend that they are fully complying with the BIS 1459 of 1974 standard as amended and therefore, any violation of the BIS Act cannot be looked into by the Tribunal. Further, the Respondent states that the Tribunal is not bestowed with the jurisdiction to fix the specifications or the standards under the Air (Prevention and Control of Pollution) Act 1981 or Environment (Protection) Act, 1986. It is further stated that fixing of the standards/specifications is the statutory function under Bureau of Indian Standard Act, 1986 and cannot be dealt by the Tribunal. It is also stated that the kerosene with distinct advantages of availability and affordability, is also a substantially cleaner fuel when compared to its alternatives like firewood, cow dung cake or charcoal for cooking. In view of the above, the Respondent No.4 opposed the Application.

12. We have considered the pleadings and arguments of learned counsel. Though the Applicant had prayed for setting up of air monitoring stations in the country, the prayer was not pressed for during the arguments. And

therefore, following issues have been culled out which requires adjudication for the final disposal of this Application.

1) Whether the Tribunal has jurisdiction to deal with the present Application ?

2) Whether there is any urgency or need to prescribe standards for Sulphur content in kerosene from environmental concentration, if yes, what can be the modality for prescribing sub-standard under the relevant environmental regulations method ?

3) What can be the time frame for implementation of such standards ?

13. Though the issues have been framed sequentially as above, the facts and circumstances of this Application would necessitate dealing with these issues simultaneously, therefore, have been dealt with accordingly below.

14. Though it has been generally agreed by Respondent Nos.2, 3 and 4 that high quantity of sulphur in kerosene will result into higher emissions of both sulphur oxides as well as particulates upon combustion, stand taken by Respondent No.2 and 4 is that the issue of specifying the sulphur standards in kerosene cannot be construed as of a substantial environmental significance under the provisions of Environment (Protection) Act, 1986 and Air (Prevention

and Control of Pollution) Act 1981 thereby attracting provisions of Section 14 of National Green Tribunal Act. Respondent No.2 submits that Government is aware of the concerns associated with high Sulphur content in kerosene for domestic use and Bureau of Indian Standards (BIS) is taking necessary steps by stipulating necessary standards. In fact, Respondent No.2 states that the Bureau of Indian Standards, in its July 2014, meeting has taken a decision to revise the sulphur content from 0.25 % to 0.20 % (per cent).

15. The second limb of the argument, particularly of Respondent No.2, advanced by the learned counsel Shri K.D. Ratnaparkhi was that the specifying the standards for sulphur in kerosene is a policy issue and this Tribunal should not entertain such Application, in view of judgment of Hon'ble Apex Court in "*Narmada Bachao Andolan*" case. In short, it is the contention of Respondent Nos.2 and 4 that the issue of sulphur content in kerosene cannot be covered under any of the scheduled Acts appended to the National Green Tribunal Act and the Tribunal should keep its hands off from this matter.

16. In this context, we would like to reproduce some of the contents of the affidavits filed by the Respondents.

i) CPCB is Respondent No.3 has submitted following :

The issue related for the up gradation of the Government and private refineries to entirely switch over to the production of "Ultra Low Sulphur Kerosene" (ULSK), having the sulphur content at around 15 ppm by 1-4-2017 or at the latest 1-4-2018. It is agreed that the high quality of Sulphur in the kerosene being supplied to PDS as well Defence will result into higher emissions of both Oxides of Sulphur as well as particulates upon combustion. In India the Fuel Quality Specifications with respect to Superior Kerosene Oil have been developed by Bureau of Indian Standards (BIS : IS 1459 : 1974) and subsequently MoPNG ensures supply of the commensurate fuel quality (Superior Kerosene Oil in the present case) in accordance with the specification formulated by BIS. The regulations for the formulation of fuel quality standards (Superior Kerosene Oil in the present case) is with BIS and its supply accordingly is in the purview of MoPNG while CPCBl has no regulatory power in the said matter.

ii) Respondent No.2 in its affidavit filed on 28th October 2015

Sulphur reduction in auto fuels and kerosene is not comparable. Sulphur reduction auto fuels is also aimed to improve the efficiency of After Treatment Device (ATD) which are sensitive to sulphur content.

Sulphur in diesel fuel contributes to fine Particulate Matter (PM) emissions through the formation of sulphates both in exhaust and in the atmosphere. It

can also lead to corrosion and wear of engine. Efficiency of some of the after treatment devices is severally affected at higher sulphur levels.

17. Admittedly, kerosene is widely used for domestic cooking and lighting purpose, mainly in the Rural area and that too, by the under privileged class of the Society. It is also not disputed that the use of high content sulphur kerosene result into release of various air pollutants, including carbon monoxide (CO), hydro carbons (HC), particulates and poly aromatic hydro carbon (PAH). It is also evident from the affidavit of Respondent No.2 that the Government is conscious of this issue and has therefore, undertaken a policy decision and programme to gradually reduce kerosene consumption across the country and replacing it with cleaner fuel like LPG. All these discussions above clearly establish the fact that the high concentration of sulphur in kerosene when used in the domestic appliances like stove, burner can result into release of complex matrix of air pollutants which are capable of adversely affecting the health of people due to resulting indoor air pollution.

18. Now coming to the legal terms, this Tribunal has already elaborately dealt on the conspectus of air quality and air pollution in its judgment in "*Application No.40/2014 Mr. Charudatta Koli & Ors. Vrs. M/s. Sea Lord Containers*

Ltd & Ors." and the relevant paragraphs are reproduced below :

> ***10.*** *Reverting to the question of status of air quality in the said area, it would be pertinent to understand the conspectus of the term 'Air Pollution' and 'Ambient Air Quality' with reference to the provisions of Air (Prevention and Control of Pollution) Act 1981. The term 'Air Pollution' has been defined in section 2 of the Air (Prevention and Control of Pollution) Act, as follows :*
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> > ***2(a)*** *: "air pollution" means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;*
> >
> > ***2(b)*** *"air pollution" means the presence in the atmosphere of any air pollutant;*
> >
> > **2(c)** - - - - -
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> > **2(d)** - - - - - -
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> > **2(e)** - - - - - -
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> > **2(f)** - - - - - - -
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> ***11.*** *Section 16(h) of the Air (Prevention and Control of Pollution) Act 1981, the Central Pollution Control Board (CPCB) is required to lay down the standard for the quality of air. Further, the State Pollution Control Boards (SPCB) are required to lay down standards for emissions of Air Pollutants into the atmosphere from the industrial plants and automobiles or for discharge of any air pollutants into the atmosphere from any other sources whatsoever, not being a ship or aircraft and such standard needs to be notified in consultation with Central Board and having regard to standards for quality of air laid down of Central Board.*
>
> ***13.*** *Now, considering the definition of 'air pollution' provided by the Air (Prevention and Control of Pollution) Act 1981, it is manifest that the term 'air pollution' is an inclusive definition which is not restricted to the 12 numbers of parameters prescribed in the notification dated 18th November, 2009. The term 'air pollution' has a wider connotation and encompasses presence of any solid, liquid or gaseous substance (including noise) in the atmosphere in such concentration, as may be or tend to be harmful. Obviously, the Legislature, with the vision of ever improving knowledge of complexity of air pollution, has included the term 'any' in the definition of air pollutant and air pollution, and also clearly set out priority by correlating the*

definition of air pollutant and air pollution with its adverse impacts on the health or environment. The terms Air pollutant and Air Pollution therefore, have a capacious meaning. There are three (3) broader criterias which can be evolved from such definition, such as a) presence of such substance, b) presence in such concentration and c) whether it may be or tend to be injurious/ harmful to health and environment. It is, therefore, necessary to understand such technical composition of the air quality in order to verify whether there is any air pollution? Obviously, such understanding cannot be and should not be restricted to the twelve (12) parameters notified in the NAAQS.

19. Now coming to the Section 14 of the National Green Tribunal Act, the Tribunal shall have the jurisdiction over all such cases where substantial question relating to Environment (including enforcement of any legal right relating to environment) is involved and such question arises out of implementation of enactment specified in Schedule 1 appended to NGT Act, 2010.

20. The Environment (Protection) Act, 1986 also defines the term environmental pollutants, as any solid, liquid, or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment. The term environment has also been defined in the said Act which include water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

21. Considering the provisions of Air (Prevention and Control of Pollution) Act, 1981 and also, Environment

(Protection) Act, 1986, we are of the considered opinion that the increased indoor air pollution due to use of kerosene having excessive sulphur content, which is likely to cause adverse health effect on the user population will be covered both under the Environment (Protection) Act, 1986 as well as Air (Prevention and Control of Pollution) Act, 1981 and therefore we do not have any hesitation to hold that the issue raised by the Applicant i.e. need of reducing the sulphur concentration in the kerosene used for domestic purpose is a substantial question relating to environment and is covered under Section 14 of the National Green Tribunal Act, 2010.

22. Notwithstanding, a particular provision of Section 33 of the National Green Tribunal Act, 2010 which has overriding Effect, it will be interesting to examine the contentions of Respondent Nos. 2 and 4 related to Bureau of Indian Standards Act, 1986. The preamble of Bureau of Indian Standards Act, 1986 reads as follows :

> *"An act to provide for establishment of a Bureau for the harmonious development of activities of standardization, marking and quality certification of goods and for matters acted therewith or incidental thereto. Further the terms specification is defined in Section 2 of the Act which reads as follows :*
>
> *"Specification" means a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture or other characteristics to distinguish it from any other article or process."*

23. Similarly, the powers and functions of the Bureau are defined in Section 10(1) of Bureau of Indian Standards Act, 1986, reproduced below :

> *10. (1) The Bureau may exercise such powers and perform such duties as may be assigned to it by or under this Act and, in particular, such powers include the power to -*
>
> *a. establish, publish and promote in such manner as may be prescribed the Indian Standard, in relation to any article or process;*
> *b. recognise as an Indian Standard, in such manner as may be prescribed, any standard established by any other Institution in India or elsewhere, in relation to any article or process;*
> *c. specify a Standard Mark to be called the Bureau of Indian Standards Certification Mark which shall be of such design and contain such particulars as may be prescribed to represent a particular Indian Standard;*
> *d. grant, renew, suspend or cancel a licence for the use of the Standard Mark;*
> *e. levy fees for the grant or renewal of any licence;*
> *f. make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without a licence;*
> *g. seek recognition of the Bureau and of the Indian Standards outside India on such terms and conditions as may be mutually agreed upon by the Bureau with any corresponding institution or organisation in any country;*
> *h. establish, maintain and recognise laboratories for the purposes of standardisation and quality control and for such other purposes as may be prescribed;*
> *i. undertake research for the formulation of Indian Standards in the interests of consumers and manufacturers;*
> *j. recognise any institution in India or outside which is engaged in the standardisation of any article or process or the improvement of the quality of any article or process;*
> *k. provide services to manufacturers and consumers of articles or processes on such terms and conditions as may be mutually agreed upon;*
> *l. appoint agents in India or outside India for the inspection, testing and such other purposes as may be prescribed;*
> *m. establish branches, offices or agencies in India or outside;*

n. *inspect any article or process, at such times and at such places as may be prescribed in relation to which the Standard Mark is used or which is required to conform to the Indian Standard by this Act or under any other law irrespective of whether such article or process is in India or is brought or intended to be brought into India from a place outside India;*

o. *coordinate activities of any manufacturer or association of manufacturers or consumers engaged in standardisation and in the improvement of the quality of any article or process or in the implementation of any quality control activities;*

p. *perform such other functions as may be prescribed.*

24. During the pendency of this Application, the Bureau of Indian Standards Act, 2016 was notified on 22nd March 2016 repealing the Bureau of Indian Standards Act, 1986. Though this Act was not relied upon by either of the parties, it is necessary to consider the provisions of this Act also. The Preamble of Bureau of Indian Standards Act 2016 reads as under :-

> *"An Act to provide for the establishment of a national standards body for the harmonious development of the activities of standardisation, conformity assessment and quality assurance of goods, articles, processes, systems and services and for matters connected therewith or incidental thereto".*

25. Further the Indian Standards has been defined in the said Act as under :-

> *(17) "Indian Standard" means the standard including any tentative or provisional standard established and published by the Bureau, in relation to any goods, article, process, system or service, indicative of the quality and specification of such goods, article, process, system or service and includes—*
>
> *(i) any standard adopted by the Bureau under sub-section (2) of section 10; and*
>
> *(ii) any standard established and published, or recognised, by the Bureau of Indian Standards established under the Bureau*

of Indian Standard Act, 1986, which was in force immediately before the commencement of this Act;

26. Further the term "specification" and "standards" have been defined in Section 2 as under :-

*(37) "**specification**" means a description of goods, article, process, system or service as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture or processing, consistency and reliability of service delivery or other characteristics to distinguish it from any other goods, article, process, system or service;*

*(39) "**standards**" means documented agreements containing technical specifications or other precise criteria to be used consistently as rules, guidelines, or definitions of characteristics, to ensure that goods, articles, processes, systems and services are fit for their purpose;*

27. It would also be relevant to refer to the preambles of Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981 which are reproduced below;

The Environment (Protection) Act, 1986 *: An Act to provide for the protection and imp[rovement of environment and for matters connected therewith.*

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which India participated to take appropriate steps for the protection and improvement of human environment;

AND whereas it is considered necessary further to implement the decision aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

The Air (Prevention and Control of Pollution) Act, 1981 *: An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith*

28. The Environment (Protection) Act, 1986 empowers the Central Government to take measures to protect and improve the environment. Section 3 of the Environment (Protection) Act, deals with powers of the Central Government wherein the Central Government has been bestowed with the powers to take all such measures as it deems necessary or expedient for the purpose of protection and improving the quality of environment and preventing, controlling and abetting environmental pollution. Section 3(2)(iii) and (iv) also empowers the Central Government to lay down the standards for the quality of environment in its various aspects and also for emission or discharge of environmental pollutants from various sources what-so-ever.

29. Similar provisions are available in Air Act, wherein Section 16 entrust the CPCB to take all necessary measures to protect the air quality throughout the country, and also, to specify the emission standards.

30. In the present Application as noted above, the Applicant is seeking directions to the Authorities to take measures to notify sulphur standards for kerosene. Needless to say, that such measures are to be taken in accordance with law upon exercising the rule making power envisaged in the Environment (Protection) Act, 1986. Once

such power is duly exercised, the issue arising out of other enactments like BIS Act become subservient to the cause of environment on account of overriding effect of the Environment (Protection) Act, 1986 by virtue of Section 24 of the said Act which reads as follows: "

> *"24. **Effect of other laws.** – (1) Subject to the provisions of sub-section (2), the provision of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.*
>
> *(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act."*

Pertinently, we are dealing with the environmental issue in the present case as per the provisions of the National Green Tribunal Act, 2010. Provisions of BIS Act can also not eclipse the provisions of National Green Tribunal Act, 2010 by virtue of Section 33 of the National Green Tribunal Act, 2010 which reads as under:

> *"**33. Act to have overriding effect.** - The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

31. Conjoint reading of the BIS Act, 2016, Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981 would reveal the clear demarcation of the mandate under these respective Acts. The environmental regulations focus on preservation of

environment by protecting the environment from the various causes of pollution and degradation. While the BIS Act mandates establishment of a national standards body for the harmonious development of activities of standardisation, conformity assessment and quality assurance of goods etc. It is manifest from the preambles of these regulations that in case of issues related to environment protection and conservation, the environmental regulations would prevail. The BIS Act at most be effectively used to ensure appropriate standardisation or conformity assessment and quality assurance, once such standards are finalised under the environmental regulations based on environmental considerations. We therefore do not find any overlapping or contradictions between BIS act and Environmental regulations as far the issue in *limine* is considered. All these regulations are distinct but will be in force simultaneously, may be in complimentary manner for the common cause of public good.

32. Produced originally from coal ("coal oil"), but later from the fractional distillation of petroleum oil, kerosene is a transparent liquid fuel with a mixture of hydrocarbon chains 6 to 16 carbon atoms in length. Although kerosene has numerous commercial and industrial applications (e.g., aviation fuel, general solvent), the focus of this Application

is on household uses, for cooking, heating, and lighting, in low- and middle-income communities, which lead to the most widespread exposures to kerosene and its combustion products.

33. Kerosene is commonly used in countries where solid fuels—biomass (wood, agricultural residues, and animal dung) and coal—are major household energy sources, often burned indoors without chimneys or smoke hoods. Exposures to combustion products from solid fuels have been associated with a range of health effects, including lung cancer, chronic obstructive pulmonary disease (COPD), low birth weight, cataracts, pneumonia, and tuberculosis etc. Kerosene is viewed as a step up the cleaner energy ladder from solid fuels, and can provide benefits to poor households in terms of convenience and time savings.

34. It is not disputed that the use of kerosene for domestic purposes results into discharge of various air pollutants into the environment which are likely to have adverse health effects. WHO guidelines for Indoor Air Quality: Household Fuel Combustion November 2014 recommends that the household use of kerosene be discouraged while further research into its health impacts is conducted. Undoubtedly, the quality of the fuel i.e. kerosene will influence the quality of air emissions as well

as the types of air pollutants besides their concentration. In fact, all the Respondents have admitted to such a proposition and therefore only, the Government of India in Ministry of Petroleum and Natural Gas have embarked on reducing the use of kerosene by replacing it with more cleaner LPG connections. This approach of Ministry is based on universal premise of cleaner energy ladder i.e. from solid to liquid fuel to gaseous fuel to renewal sources of energy. This obviously is the welcome step but considering the extent of the kerosene used for the domestic purposes in a vast country like India and social economic complexity involved, it is reasonably apprehended that such a complete switch-over from kerosene to LPG in a very short time frame may not be practical. Undoubtedly, the health effects of the indoor air pollution caused due to the use of kerosene are continuing and there is an urgent need of appropriate intervention.

35. We have also noticed that during the course of proceedings, the sulphur content in the kerosene for domestic use has been reduced by BIS from 0.25 % (percent) to 0.20 % (percent) through an amendment issued in November 2015. On careful review of this Notification which has been placed on record, it is not clear on what basis and on what considerations such reduction in sulphur content of coal has been effected by the BIS and

therefore, it cannot be concluded that such reduction has been considered and effected based on environmental considerations, particularly that of adverse health effects of the indoor air pollution caused due to use of kerosene.

36. Under these circumstances, we have no hesitation to hold that the use of kerosene and resultant air pollution is a substantial issue related to environment under the provisions of National Green Tribunal Act, 2010, based on the provisions of Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981 and therefore, this Tribunal has the competent jurisdiction to deal with this particular Application.

37. We are also of the opinion that specifying the sulphur standards in kerosene is not a policy issue as contended and is an issue falling squarely within the statutory domain of the Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981.

38. Regarding the issue No.2 and 3, Respondent No.3 CPCB as well as Respondent No.4 IOC Ltd. are already on record that the use of kerosene for domestic purposes is known to cause release of spectrum of air pollutants which are directly affecting the health. It is also an admitted fact that it is the socially and economically weaker class that is mainly using the kerosene for domestic purposes, which

makes such release of air pollutants, a more sensitive issue. With the kind of exposure, this population is receiving to air pollution caused due to use of kerosene coupled with other socio economic facts like nutrition, sanitation etc., synergistic adverse impacts on health cannot be ruled out and therefore, in our considered opinion this is a fit case where the precautionary principle needs to be applied.

39. Government of India in the Ministry of Environment and Forest in similar scenario has already exercised its powers for notifying the fuel standards with regard to supply and use of coal for the thermal power plants vide Notification dated 2nd January 2015 and we, therefore, do not find any hindrance for MoEF to deal with specifying the sulphur as well as other quality criteria for kerosene to be used for the domestic purposes. However, it is the duty of the MoEF to lay down such standards as per the powers conferred under the Environment (Protection) Act, 1986. MoEF can take suitable expert advice to devise such standards, based on the environmental considerations. We are conscious of the fact that prescribing the standards is an elaborate scientific exercise involving development of criteria, assessment of impacts, cost-economics, feasibility and change management aspects. The Tribunal do not intend to enter in this domain of prescribing such standards as it is the statutory duty of MoEF to do the

same based on the expertise it has, after following the due procedure prescribed by the Law. We are sure, being a welfare state, the Government of India in Ministry of Environment and Forest, will take expeditious steps in this regard.

40. Considering the urgency to deal with such an issue, in view of continuous adverse health effects on the large population exposed to the indoor air pollution resulting from use of kerosene, high sulphur content, we feel it necessary and expedient that there is need to specify the environmental standards for kerosene used for domestic purposes, on priority, based on precautionary principle.

41. Based on the discussions as above, particularly the potential adverse health effects of use of kerosene for domestic purposes, we feel it necessary that the entire matter of quality of kerosene and its desired standards needs to be examined expeditiously on scientific grounds by the MoEF based on environmental considerations. Accordingly, we direct the Secretary, MoEF to notify the quality standards, including sulphur for kerosene, used for domestic purposes within 16 (sixteen) weeks from now. A compliance report shall be filed by the MoEF after the stipulated time.

42. Application is accordingly allowed to this extent and disposed of with no order as to costs.

43. Before parting, we would like to place our appreciation on record for the efforts taken by Applicant Shri Dileep Nevatia to take the public cause for environmental improvement.

....., JM
(Dr. Justice Jawad Rahim)

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

Date : August 30th, 2016

ajp