**BEFORE THE NATIONAL GREEN TRIBUNAL,**
**CENTRAL ZONAL BENCH,**
**BHOPAL**

**Application No. 11/2013 (P.B.46/2013 THC)**

**In the matter of**

1. Aradhana Bhargav,
   W/o Shri Premnarayan
   R/o Purana Chapakhana Road,
   Chhindwara, Madhya Pradesh.

2. Medha Patkar,
   D/o Vasant Khanolkar,
   R/o Narmada Ashish,
   Navalpura, Off Kasrawat Road,
   Badwani, Madhya Pradesh.

3. Kunj Bihari Patel,
   S/o Lakhanlal,
   R/o Bhovana Khairi,
   Chhindwara, Madhya Pradesh.

4. Patiram Verma,
   S/o Murtu Verma,
   R/o Bhamanwara,
   Chhindwara, Madhya Pradesh.

5. Seela M.Mahapatra,
   D/o Sailabala Mahapatra,
   R/o D-52, Second Floor,
   Sector – 10, Vasundhara,
   Gaziabad, Uttar Pradesh. .....Applicants

Versus

1. Ministry of Environment and Forest,
   Government of India,
   Through Secretary
   Paryavaran Bhawan,
   CGO Complex, Lodhi Road,
   New Delhi.

2. Central Water Commission,
   Through Chairman,
   Sewa Bhawan, R.K.Puram,
   New Delhi – 110066.

3. State of Madhya Pradesh
   Through Chief Secretary,
   Vallabh Bhawan,
   Bhopal – 462003
   Madhya Pradesh.

4. Water Resource Department,
   Government of Madhya Pradesh,
   Through the Engineer-in-Chief,
   Narmada Bhawan, Tulsi Nagar,
   Bhopal, Madhya Pradesh. .....Respondents

**Counsel for Applicant :**

**Shri Sanjay Parikh, Sr. Advocate, Shri Abhimanue Shreshtha, Advocate, Ms. Sridevi Panikkar, Advocate and Ms.Sadhana Pathak, Advocate**

**Counsel for Respondents :**

**Shri Ravindra Shrivastava, Sr. Advocate, Shri C.D.Singh, Advocate, Shri Sachin K.Verma, Advocate, Shri Om Shankar Shrivastava, Advocate, Shri Sunny Choudhary, Advocate and Ms. Parul Soni.**

**ORDER/JUDGMENT**

**PRESENT:**
**Hon'ble Mr. Justice M.Chockalingam (Judicial Member)**
**Hon'ble Dr. Ajay A. Deshpande (Expert Member)**

**Delivered by the Hon'ble Shri Justice M.Chockalingam, JM**

**1.** In pursuance of an order made by the Principal Bench, National Green Tribunal (NGT), New Delhi, this application was taken on file as Application No. 11/2013 (CZ) by this Bench.

**2.** The applicants, claiming as persons interested in the protection of environment and ecology and also the persons personally being affected have filed this application under the provisions of the NGT Act, 2010 whereby they have challenged the validity of the environment approval made in communication No. 12/6/81/-ENV-5/IA dated 21.04.1986 and the communication J-12011/23/2002-IA-I dated 30.11.2005alongwith a direction that they are invalid and also a declaration that the commencement of the Pench diversion project without prior environmental clearance under the EIA notification, 2006, was totally illegal and also for a direction to the MoEF that no construction or other activity related to the said project should be done without prior environmental clearance, to restore the ecology and for awarding proper damage compensation to all the affected persons.

**3.** The case of the applicants, as could be seen from the averments made by the application can be stated thus. The proposed project envisaged construction of earthen dam on river Pench, a tributary of river Kanha in Godavari basin in village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh. It was intended to provide irrigation in net CCA 70,918 hectares with annual irrigation of 96,519 hectares which would increase the level of ground water and hence, it is a major irrigation project listed in Schedule of both EIA notification 1994 and 2006. Thus, requiring prior environmental clearance from the Central Government. In April 1986 i.e. prior to the enactment of Environmental Protection Act, the then project proposed by

the Central Water Commission was accorded environmental approval by the Environment Appraisal Committee, Department of Environment & Forest and Wild Life Impact Division, Government of India. But the construction of the project was not commenced. The estimated cost of project was 184 crores in 1987 increased to 543.20 crores in 2003. Since the construction work was started only in November 2012, the cost of the project had gone up further. From the year 1988 to 2005, approximately 12.56 crores were spent on development of approach road, residential quarters, office, rest house building and hutment at site survey work of dam, drilling of dam site and establishment and miscellaneous work. About 5607.28 hectare private land and 895.40 hectare government land would go into submergence by which 31 villages would be affected. An area of 10.58 hectares land was acquired for approach road to dam site and payment thereof was made on 31.03.1988. An area of 16.98 hectares was acquired for RBC upto 3 Kms in March and May, 1993. The land acquisition for dam site RBC and HBC and rehabilitation sites are yet to be completed since they were undertaken only in the year 2005. No environment management plan was prepared. The project was monitored last in the month of August 1997 and no progress was made since at the time the site inspection was done by the Additional Director, Regional Office, MoEF on 26$^{th}$-27$^{th}$.08.1997. In the meanwhile, EIA notification 2006 came into effect where 29 projects were asked to take environmental clearance which also included the project in question. By a clarification that the environmental clearance for the project which was cleared by the MoEF before EIA notification 1994 and where no construction/other operations were commenced till 01.08.1998 will be invalid. In all such cases, fresh environmental clearance was to be obtained if those projects came into 29 categories listed within the

EIA notification 1994. It is pertinent to point out that the environmental clearance granted to the proposed project was revoked by a communication dated 22.10.2001 by a communication addressed by the Regional Office, MoEF to the Central Water Commission. In the meanwhile, the project was transferred to Water Resource Department, Madhya Pradesh. Surprisingly, on a letter written by the Chief Engineer, Wiaganga Basin Water Resource Development MP the MoEF directed the Regional Office, MoEF, Bhopal to conduct a site inspection which was carried on by the Additional Director, Bhopal in the presence of the five officers of the project proponent. The site inspection report revealed that the salient features of the project had changed and estimated cost had also increased and the plant needed revision and also the plants for catchment area, treatment and command area development which were vital for the project were still to be prepared. No environmental management plan prepared and there was no major progress at the dam site and thus, in short, the environmental conditions were not complied. Apart from that there were other illegalities and violations. From the said report, it was quite evident that the environmental clearance granted in 1986 was revoked, even otherwise, the project required fresh clearance in view of the communication dated 23.07.1998 issued by MoEF. But for the reasons best known to MoEF, vide a letter dated 30.11.2005 it was informed to the Chief Engineer, Wiaganga Basin Water Resource Development, MP that in view of the inspection report, a project do not require fresh environmental clearance. Pursuant to the same, in April 2006, the Water Resource Division of the Water Commission accorded investment clearance for the project at the cost of Rs. 583.50 crores and the project was included in the accelerated irrigation programme in the year 2007-08. Various notices were issued for the supply of

materials for construction by the project proponent and other related activities had been undertaken only in November, 2012.

**4.** It is also the pleaded case of the applicants that the approval granted in 1986 was granted by Environment Protection Act, 1986 which came into force when there was no procedure or parameter as existed under the present scheme for grant of environmental clearance. With the issuance of the EIA notification 1994, the procedure for grant of environmental clearance was already done by the MoEF and the same was replaced by EIA notification 2006. A perusal of both the notifications would clearly indicate that the major irrigation projects such as the project in question required environmental clearance from the Central Government / MoEF under both the notifications. On 4th-5th November, 2012, the second applicant joined the agitation for forceful and legal rehabilitation for the purpose of taking over their lands for the proposed project. At that time, a letter was handed over by the Collector, Chhindwara informing her that the construction work of the proposed project started on 04.11.2012 and all the requisite permission was obtained from the Water Resource Department, MP. True copies of certain documents related to the proposed projects were handed over to her wherefrom she came to know all the above facts about the proposed project, the environmental approval granted by the Environment Appraisal Committee in the year 1986, subsequent revocation in the year 2001 and also the further communication that fresh approval was not necessary. It is also specifically pleaded that since the environmental approval in the present project was granted in the year 1986, it cannot be said to be valid for more than the prescribed period either under the EIA notification 1994 or under the EIA notification 2006. It is pertinent to point out that the original environmental approval granted was also revoked.

Thereafter, no question of any inspection of the said project would arise. Equally the opinion given by the Additional Director, MoEF dated 30.11.2005 was also bereft of any support from law and was bad for more reasons. At no stretch of imagination and no reasons, the MoEF can come forward that no new environmental approval is necessary for proposed project and thus, the construction and related activities started by the project proponent from 04.11.2012 were thoroughly illegal. The proposed project has not been granted approval under the Water or the Air Pollution Control Act. The proposed project is closely situated to Pench National Park which is situated in Seoni District of Madhya Pradesh. The Pench National Park has been included in the umbrella of Project Tiger and the 19th Project Tiger Reserve in the year 1992. The original environmental approval was granted in the year 1986 and the question whether such a project in the vicinity of Tiger Project could be given do not arise but the proposed project required the environmental clearance under the EIA Notification 2006 and thus, it would be quite clear that the project undertaken by the project proponent is in violation under the Environment Protection Act, 1986 and also other acts enumerated under Schedule-I of the NGT Act, 2010. Apart from that, the environmental approval granted on 21.04.1986 do not contemplate and cater to all conditions and parameters under which the river Pench project need to be evaluated in view of the sustainable development and hence, in view of the changed circumstances also, the project required environmental clearance under EIA notification 2006. The project proponent has illegally commenced the construction on 04.11.2012 without valid prior environmental clearance thus, is continuously violating the provisions of the Environment Protection Act, 1986 and other Acts enumerated under the Schedule-I of the NGT Act, 2010. Since, the construction and other

related activities are going on and thus, the cause of action is continuing cause of action and is applicant is well within limitation. Since, in view of the averments above, the applicants have sought for reliefs as shown above.

**5.** On service of notice, the respondents appeared through their Counsels and filed their replies putting forth their defence to the main application.

**6.** The respondent no. 3 and 4 made application No. 447/2013 seeking dismissal of the main application on the ground of delay alleging that the application has not been preferred within the period prescribed by the provisions of NGT Act. The respondent therein, who are the applicants in the main petition filed their reply.

**7.** Hence, the preliminary objection raised by the respondents on the question of limitation was first taken up for consideration.

**8.** Advancing arguments on behalf of the respondent no.3 and 4, the Learned Counsel would submit that the main application filed under Section 14 and 15 of the NGT Act was hopelessly barred by limitation. The Department of Environment, Forest and Wild Life, Government of India granted environmental approval to the Pench Diversion Project on 21.04.1986 subject to certain safeguards to be implemented during the execution of the project. The MoEF in order to ascertain as to whether the project related work was commenced prior to 1994, made an inspection by the dam site. The report dated 30.09.2005 pursuant to the inspection made it clear that the project related activities such as preconstruction infrastructure work pertaining to development of approach road, residential quarter, office, rest house building at the site, drilling dam site were already initiated in the year 1987-88 and six bridges alongwith approach roads were constructed upto 1992-93. On the

strength of the inspection report, MoEF conveyed to the Water Resources Department, Govt. of MP vide letter dated 30.11.2005 that the project do not require fresh environmental clearance and the conditions stipulated in the environmental clearance dated 21.04.1986 should be strictly complied with. While, the matter stood thus, the applicants have brought forth this application *inter alia* initially seeking a direction that the communication of the environmental clearance dated 21.04.1986 and a subsequent communication dated 30.11.2005 whereby it was ordered that the project did not require fresh environmental clearance and the stipulated condition in the environmental clearance dated 21.04.1986 should be strictly complied with, were invalid. The other reliefs are in the nature of consequential reliefs which may or may not flow, if the declaration asked for above was not granted. Thus, for all legal and practical purposes, the need for declaration on the environmental approval of the year 1986 and subsequent communication of the reiteration in 2005 are the main reliefs and subject matter of adjudication. The grounds as set out by the applicant would clearly indicate that they have tried to impugn the subsequent communication dated 30.11.2005 on the ground that the environmental approval of 1986 had lapses and the project required fresh clearance. This issue, in so far as the records stand today and as far as the respondents are concerned seeking a common ground is concluded by the stand that no fresh clearance is required and subsequently, the activity of execution and development of project is not illegal. In order to adjudicate upon the first and foremost area of adjudication would centre around the validity of the environmental approval of 1986 and it is reiteration in 2005. Thus, for the purpose of the substantial relief, the existence of these two letters would substituted the cause of action in as much as the question would be as to

whether the jurisdiction of the Tribunal to adjudicate upon the validity of the above two documents, by virtue of the statute of limitation was barred or not.

**9.** Pointing to Section 14(3) and 15(3) of the NGT Act, 2010, the Learned Counsel would submit that an analysis of the statute providing the period of limitation, it would be quite clear that the application filed by the applicant was barred by time. The close reading of the above provisions would make it abundantly clear that there is a bar, if it is not within limitation and the special period of limitation for application falling under Section 14(1) is a period of six months which is further extendable for a period not exceeding 60 days and also the starting point for the period of limitation is on the date of which such cause of action first arose. It is well known that the expression 'cause of action' means all such bundles of facts which a suitor is required to prove in court of law in order to succeed in getting a particular relief. In that view of the matter, so long as the applicants do not prove that environmental approval dated 21.04.1986 and the subsequent communication dated 30.11.2005 are not valid, they cannot maintain the application. Therefore, the cause of action is strictly relatable to the existence of these two letters. The use of the words 'first arose' in the said provisions are of immense significance. These words, not only are the indicators of the unambiguous legislative intent and scheme expressed in plain words, but statutorily fix the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. The plain and unambiguous words of statute scheme and intention should be given effect to. This is further re-enforced by the use of the words "from the date" which again would imply that there is a definite occurrence of the cause of action. It is pertinent to point that similar language is used for the Section 15(3) of the Act also. The contention put forth by the

applicant side that there is a continuing cause of action is thoroughly misplaced and untenable in law. The applicants are well aware that the application in the present form is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the project proponent had illegally commenced the construction on 04.11.2012 without valid prior environmental clearance and thus, was continuously violating the provisions of the Environmental (Protection) Act, 1986 and other Acts enumerated under Schedule-I of the NGT Act and since, the construction and other related activities were going on, the cause of action was continuing and the application is well within limitation. For the purpose of reckoning the limitation of Section 1493) and 15(3) of the Act, the averments made by the applicant as above were wholly irrelevant and of no consequence since the concept of continuing cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14(3) and 15(3) of the Act. The NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14(3) and 15(3) of the Act which will certainly exclude the general law of limitation. The assumption that the project proponent has illegally commenced the construction on 04.11.2012 was factually incorrect and misleading. The plain and simple language of Section 14(3) i.e. unless it is made within the period of six months from the date on which the cause of action / dispute first arose negates the principles of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words namely "first arose". On the facts of the present case, Section 22 of the Limitation Act will have no effect. Though, the same being a part of the general law of limitation since it would stand excluded by the special provision

of limitation. In the special law, under Section 14(3) and 15(3) of the Act. The NGT Act is a special law enacted for the effective and expeditious disposal of cases related of Environment (Protection) Act and conservation of forest and other natural resource. Hence, the law provides the period of limitation which would be have overriding effect over the Limitation Act which is general law. If the plea of the applicants of principles of continuing cause of action for the purpose of brining a dispute under Section 14(1) within the limitation or reliefs under Section 15(1) within the limitations of 15(3) is to be accepted, then it would lead to the serious, anomalous and undesirable consequences. Apart from that it would be contrary to the express prescription of the statutory limitation under the NGT Act. If the theory of continuing cause of action is to be accepted, any action or application or proceeding may be instituted at any point of time on an occurrence of a small fact which may be construed as part of cause of action. This would mean even if the project which nearing completion with investment of huge public expenses can be called into question. But this is not the intent of the NGT Act. Thus, it can be well stated that the limitation stand concluded by any circumstance at the earliest in point of time would have to be considered as relevant dated for computation of limitation. The averment made in the application that the construction has commenced on 04.11.2012 was contrary to the pleadings made by the application and the documents relied on by them. The applicants have specifically averred about environmental approval for the project in April 1986 and that the construction of the project was estimated at the cost of 184.04 crores in 1987 which increased to 543.20 crores in 2003, etc., the environmental clearance granted to the project was revoked by a communication dated 22.10.2001 by the Regional Office, MoEF, Bhopal to the

Central Water Commission. From the averments of those facts pleaded by the applicants, it is highly apparent that the construction commenced in 1988 and the inspection report made by the committee clearly shows that the commencement of the project in the 1987-1988 what was started in on 04.11.2012 was only spillway work. It is also clearly averred in the reply affidavit and thus, this date 04.11.2012 cannot said to be date of commencement of work and thus viewed from any angle, the delay was enormous and application is liable to be rejected. The applicants, for the reasons well known to them, preferred not to challenge the environmental clearance dated 21.04.1986 though their lands were being acquired in the year 1992 for the construction neither of the project nor even after 30.11.2005 when the environmental clearance granted in the year 1986 was reaffirmed by the Government of India. Under the circumstances they should not be allowed to challenge the environmental clearance granted at this belated stage and thus, the application made by the applicants is barred by limitation. In support of his contention, the Learned Counsel relied on the following decisions:

(i) S.S Rathore Vs. State of MP, (1989) 4 SCC 582.

(ii) General Manager, Telecom Vs. M.Krishnan & Anr., (2009) 8 SCC 481.

(iii) Jesurethinam & others Vs. Ministry of Environment & Forest, Union of India &ors, 2012(2) FLT 811 (NGT).

(iv) Sanskar DastidarVs. Shrimati Banjula Dastidar & Anr. (2006) 13 SCC 470.

(v) Ms .Medha Patkar vs. MoEF & ors. Appeal no. 01 of 2013 (PB, NGT).

(vi) Narmada Bachao Andolan Vs. Union of India &Ors. (2000) 10 SCC 664.

(vii) Consumer Federation Tamil Nadu Vs. Union of India & 5 others, Appeal No. 33 of 2011 (PB NGT).

(viii) State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr. (2011) 7 SCC 639.

**10.** Answering to the above contentions and also in support of the case of the applicants that the application is well within time, the Learned Senior Advocate, Shri Sanjay Parish would submit that the application by the respondents seeking rejection of the main application as barred by limitation is misconceived in law. The applicants, *inter alia* in Para 9 of the application has averred that the project proponent has illegally commenced construction on 04.11.2012, without valid prior environmental clearance, thus is continuously violating the provisions of Environmental (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since the construction and other related activities were going on, the violation continued. Thus, the cause of action was continuing cause of action and the application was well within limitation. Thus, it would be quite clear that the applicants have contended that there was a continuing wrong and the project proponent, without environmental clearance had commenced and were continuing with the construction activity on the impugned project. The applicants came to know about the commenced of the civil work for construction of the project in question only from the letter dated 05.11.2012 given by the Collector, Chhattisgarh, to the applicant no. 2 alongwith the letter true copies of certain documents relating to the project were also provided. Those documents consists of the letter dated 21.04.1986, from MoEF letter dated 22.11.1990 and

a letter 30.11.2005, from the Ministry of Tribal Affairs and MoEF's letter dated 30.11.2005. Only thereafter, the applicants filed the RTI application on 05.12.2012 seeking other documents. A reply was received on 22.12.2012 stating that as per the RTI Act, 2005 under sub Section (1) of Section 8 would cease to be exempted, if 20 years have lapsed, the incident to which information relates and the file records were not available. However, a copy of environmental clearance dated 21.04.1986 was enclosed free of cost. Subsequently, the Regional Office, MoEF, Bhopal by its reply dated 14.01.2013 sent a copy of site inspection report dated 30.09.2005. Only from the same applications, came to know about the revocation of the environmental clearance dated 21.04.1986. The said application under RTI and replies are filed by the applicants. The applicants thus, came to know about the civil work having started at the project site from the letter dated 05.11.2012 by the Collector and the documents given alongwith the said letter. The applicants gathered knowledge of the revocation of the environmental clearance about the site inspection report from the letter dated 30.09.2005 received in reply dated 13.01.2012 in the RTI application dated 05.12.2012 and it was on that basis the instant application was filed on 15.02.2013. It is pertinent to point out that at the outset, the applicants got necessary knowledge by which their right to file the present application accrued before this Tribunal only on 05.11.2012 and subsequently on 14.01.2013. The Tribunal passed orders dated 12.03.2013, 10.04.2013, 01.05.2013 and 29.05.2013 for production of documents related to revocation of environmental clearance. Thereafter, the Tribunal directed the Director to appear on the next hearing date. The documents were not produced.

**11.** On 10.06.2013 and 13.06.2013, the said documents were submitted by MoEF without supporting affidavit. The MoEF submitted only three documents, letter dated 30.03.2001, 22.10.2001 and 06.09.2001. The documents dated 19.06.2001 which mentioned that the environmental clearance had lapsed was not produced. When the attention of the Tribunal was drawn to this fact, the direction was issued for production of said documents on the next hearing on 30.07.2013. The respondents had not only concealed the fact of lapsing of environmental clearance dated 21.06.1986 but also the respondent no. 3 and 4 filed contrary in the affidavit. The applicant side mentioned specifically about the revocation of the environmental clearance dated 21.04.1986. The respondent MoEF in its reply filed in May 2013 had stated that it is a matter of record and not disputed. The respondent no. 2 also handed over the reply to the applicants dated 30.07.2013 in which it has been stated that it was again a matter of record related to respondent no.1 and replying respondent had not required any comments. Apart from that, the respondent no. 3 and 4 in their affidavit dated 21.04.2013 has specifically stated that the environmental clearance dated 21.04.1986 was never revoked and the State Government of Madhya Pradesh had never received any letter or order or communication from the MoEF revoking the environmental clearance and the applicants have made the bald statement. Thus, from the said reply, it would be clear that the respondent no. 3 and 4, categorically made a statement that they did not receive any letter from the MoEF revoking the environmental clearance dated 21.04.1986. On the contrary, the said letter dated 22.10.2001 produced subsequently in June, 2013 clearly showed that on 21.03.2013, the status report was submitted by Water Resource Department of Madhya Pradesh to MoEF and the letter dated 19.06.2001 regarding lapse of environmental

clearance was subsequently addressed to the Secretary, Water Resource Department. All the above clearly show that respondent no.1 initially concealed the relevant documents while respondent no. 3 and 4 made misleading and false statement on oath before the Tribunal. The concealment of relevant documents from the Tribunal and making false statement amounts to playing fraud on the Tribunal. This is so deliberately done to avoid correct and proper adjudication of the Tribunal regarding environmental clearance on the question of limitation. Thus, the applicants submits that the cause of action in the instant case was continuing wrong and which further arose when MoEF filed its affidavit in May 2013 and also in June, 2013 when documents were filed and on 30.07.2013 when document dated 19.06.2001 was given to the Tribunal containing the fact that the environmental clearance had lapsed. Thus, the application filed by respondent no. 3 and 4 that the present application is barred by limitation is devoid of merits.

**12.** The Learned Counsel would further contend that in our country, the rural and other area where projects were implemented, the people are largely unaware of the legal complications. They become aware of the problem when the activities start at the site. Even in that situation they had no means to know whether it is legal or otherwise. It is pertinent to point out that damage to environment is a continuing wrong and constitute public injury. Hence, it should not be forgotten that broadly, the Tribunal has to act within the parameters of Article 21 of the Constitution as well as the precautionary principle, polluter pay principle and doctrine of sustainable development as provided under Section 20 of the NGT Act.

**13.** Arguing on the concept of continuing cause of action, the Learned Counsel would submit that a wrongful act is of such a character that the injury

caused by it continues and then the act constitutes a continuing wrong. If once a cause of action arises and the acts complained of continuously repeated, the cause of action continues and goes on de die in diem. In support of the contentions, the Learned Counsel relied on the judgments :

(i) Balakrishna Salvaram Pujari Waghmare & Ors.V s. Shree Dhyaneshwar Maharaj Sansthan & Ors. AIR 1959 SC 798.

(ii) State of Bihar Vs. Deokaran Nenshi & Anr. AIR 1973 SC 908.

(iii) Commissioner of Wealth Tax Vs. Suresh Seth AIR 1981 SC 1106.

(iv) Bhagirath Kanoria & Ors. Vs. State of MP (1984) 4 SCC 222.

(v) Firm Ganpat Ram Rajkumar Vs. Kalu Ram &Ors. (1989) Suppl 2 SCC 418.

(vi) Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath & Ors (1991) 2 SCC 141.

(vii) Union of India &Ors. Vs. Tarsem Singh (2008) 8 SCC 648.

(viii) State of Madhya Pradesh &Ors. Vs. Yogendra Shrivastava (2010) 12 SCC 538.

(ix) Goa Foundation & Anr. Vs. Union of India & Ors (MA No. 49/2013 in Application No. 26/2012; dated 18.06.2013).

(x) S P Gupta Vs. Union of India 1981 Supp SCC 87 213.

(xi) Olga Telis 1985 (3) SCC 545.

(xii) Ram Chandra Shankar Deodhar Vs. State of Maharashtra, 1974 (1) SCC 317.

(xiii) Pallav Seth Vs. Custodian and Ors. (2001) 7 SCC 549 at 572.

(xiv) Ashok Leyland Limited 2004 (3) SCC 1.

(xv) Lala Balmukund 1975 (1) SCC 725.

(xvi) Bailamma & Ors Vs. Poonaprajana House Building Cooperative 2006 (2) SCC 416.

(xvii) Yusufbhai Vs. State of Gujarat (1191) 4 SCC 531.

(xviii) Re: Sinclair (Deceased) Loyda Bank Plc Vs. Imperial Cancer Research Fund and Anr, (1984) 3 All ER 362.

**14.** The Learned Counsel would further submit that the applicants are aggrieved persons and concept of aggrieved persons has been enlarged in the NGT Act, 2010. Now the injury which is being caused and brought to the notice of the Tribunal in the application is a public injury as it could be distinguished from private injury. The right to environment under Article 21 of the Constitution and any damage to environment constituted violation of Article 21 of Constitution. It is well settled that the fundamental right cannot be waived or given up. Any damage to the environment is violation of Article 21 of the constitution construed as only public injury. So long as damage to the environment continues, the public injury also continues alongwith cause of action. Locus of public in general (as against individuals) also continues. If there is continues injury affecting the fundamental right continuously, it cannot be said that cause of action would seize as it would amount to waiver or giving up of the fundamental right under Article 21 of the Constitution. The relief for enforcement of fundamental right cannot be refused solely on the ground of latches, delay or the alike. The Supreme Court of India, in Lala Balmukund 1975 (1) SCC 725 has held that only such construction of limitation should be

preferred which preserves the remedy than the one which bars or defeats the remedy. It is true that the letter dated 19.06.2001 and 22.10.2001 have used the term 'lapsed' which means 'come to an end' of the environmental clearance dated 21.04.1986. The project proponent was also required to take environmental clearance under EIA Notification 1994 by way of direction in the said letter. The letter dated 30.11.2005 has no validity sanctity after environmental clearance dated 21.04.1986 lapsed and both in the notifications dated 23.07.1998 as well as in the MoEF letter dated 19.06.2001 and 22.10.2001 it was directed that the project proponent should take a fresh environmental clearance under the EIA notification 1994 and its amendment. Therefore, the letter dated 30.11.2005 was void ab initio and thus, the application made by the applicants seeking the reliefs was well within time.

**15.** As could be seen above from the contentions put forth on both sides, the Tribunal has to answer the question of limitation.

**16.** Admittedly, the environmental approval to the Pench Diversion Project for construction of earthen dam across the river Pench near village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh at a cost of Rs. 1788.72 Crores was granted by the Department of Environment Forest and Wild Life on 21.04.1986 subject to certain conditions in respect of safeguards to be implemented during the inspection of the project. The Tribal Development Division, Ministry of Welfare accorded approval on 22.11.1990 for the proposed rehabilitation plan for the Scheduled Tribes bring displaced due to the construction of the project in question. The EIA notification 1994 was issued by MoEF. A communication was issued by MoEF on 23.07.1998 wherein it was stated that the environmental clearance granted to the project enlisted in Schedule-I prior to the EIA Notification 1994, above referred to

wherein construction and other operations had started till 01.08.1998 to be invalid and also made it clear that it was mandatory for such projects to obtain fresh environmental clearance. Pursuant to the said communication, the Regional Office of MoEF, Bhopal by a communication dated 22.10.2001 informed that the environmental clearance granted in the year 1986 for the project remained lapsed. Following the letter by the Chief Engineer, Wiaganga Basin, Water Resource Department, MP to the MoEF, a site inspection was conducted by the Regional Office and the report dated 30.09.2005 was submitted. After receipt of the report, the Additional Director, MoEF sent a communication dated 30.11.2005 that the proposed project did not require fresh environmental clearance. The Planning Commission, Water Resource Division has also accorded investment clearance for the project at the rate of RS. 583.40 Crores by a communication dated 10.04.2005.

**17.** It is also not a matter in controversy that the activities such as pre construction infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarters, office, rest house building at the site, drilling at the dam site were already initiated and moreover number of bridges and asphalted approach road was also constructed and the said fact could be noticed in the inspection report dated 30.09.2005 referred to above from which it would be clear that all those activities had taken place prior to the date of inspection. While the matter stood thus, the applicants five in number claiming to be the persons personally aggrieved on their behalf and on behalf of the other villagers filed this application on 15.02.2013 seeking for the reliefs.

**18.** On the point of limitation, Para 9 of the main application specifically avers as follows :

*"9.1 That the project proponent has illegally commenced the construction on 04.11.2012, without valid prior environment clearance, thus is continuously violating the provisions of Environment (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since, the construction and other related activities are going on, the violation continues, thus, the cause of action is continuing cause of action and the application is well within limitation.*

**19.** The applicants have sought for :

(i) A declaration that no construction or other related activities of the Pench Diversion Project could commence without the prior environmental clearance under EIA Notification 2006 and the commencement of the project was illegal alongwith a direction to MoEF to ensure that without prior environmental clearance, no activities continued.

(ii) A declaration that the environmental clearance dated 21.04.1986 and the communication dated 30.11.2005,were not valid.

(iii) A direction to the concerned person or authorities responsible for the alleged illegal commencement of construction to restore ecology alongwith other consequential reliefs like stay on construction, appropriate damage compensation, etc.

**20.** It is the specifically pleaded case of the applicants that the project proponent has illegally commenced the work only on 04.11.2012 without valid prior environmental clearance, that there is continuing wrong as the project proponent without environmental clearance has commenced and are continuing with the construction activity of the impugned project, that the applicants came

to know about the commencement of the spillway construction in respect of the project only from the letter dated 05.11.2012 given by the Collector, Chhindwara, MP to the applicant no. 2 and only from the documents provided, the applicants came to know about the approval granted in the year 1986 and also that no fresh environmental clearance was required from the letter dated 30.11.2005 and in so far as the remaining facts, the applicant came to know through their Right to Information Application and thus, the applicants have rested their case in so far as the question of limitation is concerned on the expression "continuing cause of action".

**21.** On the contrary, it is contended by the respondent side that the applicants have sought for a declaration that the environmental approval dated 21.04.1986 and subsequent communication dated 30.11.2005 are invalid and also declaration that the activities without a prior environmental clearance under EIA notification 2006 is invalid alongwith other consequential reliefs and hence, the applicant must be able to show that the reliefs sought for were within the prescribed period of limitation as envisaged by the NGT Act a special enactment. The concept of continuing cause of action put forth by the applicant side was foreign to the plain and expressed provisions on limitation engrafted under Section 14(3) and 15(3) of the NGT Act, 2010.

**22.** From the above contentions, it would be quite clear that the main controversy between the parties centres around the expression 'cause of action', as engrafted under the relevant provisions of the NGT Act.

**23.** Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

> "***14. Tribunal to settle disputes***. *– (1) 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 the implementation of the enactments specified on Schedule-I.*

*(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.*

*(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*

*Provided that the Tribunal may, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*

**24.** From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

**25.** Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution of environment for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the

legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

**26.** As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

(i) Black's Law Dictionary defines Cause of Action as : "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

(ii) In "Words and Phrases", the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

(iii) As per Halsbury Laws of England (Fourth Edition) "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff

his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.

(iv) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.

**27.** It would be apt and appropriate to reproduce the following observation made by the Principal Bench,NGT presided over by the Hon'ble Justice Shri Swatanter Kumar, Chairperson, NGT, New Delhi in Appeal No.01 of 2013 Ms. Medha Patkar & Others Vs. Ministry of Environment & Forest, Union of India & Others on the point of limitation :

*"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of*

*rupees on establishment and operation of the project, would be exposed to uncertainty, dander of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or*

*language that could be the precept for the Tribunal to take any other view."*

**28.** The contentions put forth by the applicants that the construction activities of the project commenced on 04.11.2012 has to be rejected since subsequent to the grant of environmental approval by the Department of Environment Forest and Wild Life by the Government of India in the 1986. As could be seen from the inspection report of the year 2005, as referred to the above, that the project a related activities such as pre construction infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarter, official rest house building at dam site, drilling work at dam site and also six bridges alongwith asphalted approach road was constructed. Even both the letters written by the Chief Engineer to MoEF dated 25.07.2001 and 30.04.2001 would make it evident that the project work commenced in the year 1986-87. The communication of the Executive Engineer dated 01.09.2001 would also indicate that the project work commenced in 1987 and was continuing. Needless to say again, the above activities were part and parcel of the Pench Diversion Project in question. Under such circumstances, the contention put forth by the appellant side that the construction work did not commence earlier but only on 04.11.2012 has to be got rejected.

**29.** Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors, reported in 2012 (2) FLT 811 NGT that, when a specific provision for

limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

**30.** Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negatived for more than one reason. The said letter dated 05.11.2012by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:

> "*Yesterday on 4th November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4th November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter.....*"

Nowhere it is stated in the letter that construction work commenced on 4th–5th November, 2012. From the reading of the letter, it would be quite clear

that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara.

**31.** In his sincere attempt of supporting his case, the Learned Counsel for the applicants would urge that though, the environmental clearance for the project in question was granted on 21.04.1986, the MoEF Regional Office, Bhopal revoked the environmental clearance on 22.10.2001 though the word 'lapsed' at one state on the revocation at the other stage was employed by the MoEF by two different communications. The effect of the same was to put an end to environmental clearance originally granted in the year 1986. If so, the same could not be revoked by any action or letter as done in the present case on 30.11.2005 and hence, the only way known to law by which the construction of the project in question would have commenced under the EIA Notification 2006. Hence, the applicants asked for a declaration that the said Pench Diversion Project should not commence without the prior environmental clearance under the EIA Notification 2006 and the commencement of the project was totally illegal. Thus, the reliefs asked for was within the prescribed

period of limitation since the illegal activities which were injurious to the environmental and ecology was continuing. The applicants have also sought for awarding appropriate damage compensation to all persons who have suffered physically, mentally and financially due to the illegal construction undertaken by the project proponent. Much reliance was placed by the Learned Counsel on the judgment of Goa Foundation Vs. Union of India MA No. 49/2013 in Application No. 26/2013 rendered by the Principal Bench, NGT, New Delhi. The Learned Counsel also took this Bench to different parts of the judgment. There cannot be any quarrel on proposition of law settled in that judgement. To examine what is cause of action, the Tribunal must read the entire petition as a whole and the material facts are thus pleaded and provided for the purpose of obtaining the reliefs and if the applicants disclose even a small cause of action that the claim cannot be rejected. The said judgement of the Principal Bench cannot be applied with the present facts of the case for two reasons. The question that arose before the Hon'ble Principal was on the maintainability of the application and not on the question of limitation. Secondly, the application therein sought reliefs that the respondent authorities should discharge their duties by way of exercise of power given under enactments stated in the Schedule-I of the NGT Act, 2010 for preservation and protection, etc. In the instant case, the applicants have asked for declaration in respect of environmental clearance dated 21.04.1986, communication dated 30.11.2005 and also a declaration on the strength that there was no environmental clearance and declaration that the activities of Pench Diversion Project could not commence without prior environmental clearance under EIA Notification 2006 and all other reliefs were only consequential. Thus, without going into the legality or otherwise, by environmental approval dated

21.04.1986, communication dated 30.11.2005, the question in respect of their declaration referred to above cannot be investigated or considered or a decision arrived at. Thus, the cause of action, as could be seen from the averments in the applications was directly relatable to the existence of the letters dated 21.04.1986, environmental clearance and letter dated 30.11.2005. In the considered opinion of the Tribunal, the concept of continuing cause of action cannot be made applicable to the present factual position that too when there is a specific bar against the entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) and 15(3) of NGT Act. At no stretch of imagination, neither the environmental approval dated 21.04.1986 nor the subsequent communicated dated 30.11.2005 can be assailed after long lapse of years. The words "first arose" in Section 14(1) and 15(3) which are indicators of the unambiguous legislative intent. While the expressed provisions of the statute of provision under Section 14(1) and 15(3) of the NGT Act is so clear, the concept of continuing cause of action as put forth by the applicants has not application. The statutory prescription of the special period of limitation under the said provisions would not only stand indicative but also exclude the said concept of continuing cause of action. If the theory of continuing cause of action is to be accepted, the words "first arose" in the above provisions will lose its import and significance. Having sought for a declaration that environmental approval dated 21.04.1986 and also the communication dated 30.11.2005 were invalid, now the applicants cannot be permitted to say that the environmental clearance dated 21.04.1986 was put an end by the subsequent communication in the year 2001 and thus, there was no environmental approval existed, cannot be countenanced. So long as the applicants have sought for a declaration as stated above, no doubt, the

application is barred by time. As stated above, the applicants who are living nearby and whose lands have also been taken for the purpose of the project in question cannot now be permitted to say, after long lapse of a decade, that they came to know, that too the existence of their right only in November, 2012. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected.

**32.** True it is that the application in the present form has to be rejected for the above reasons as one not within the period of limitation. It is not that the applicants are helpless or remediless. Apart from questioning the very grant of environmental approval in the year 1986, the communication dated 30.11.2005 whereby it was stated that no fresh environmental clearance was required, the applicants, in extenso, have averred that the construction and also the related activities by the project proponent was violative of not only the provisions of the Environment (Protection) Act, 1986 and other Acts enumerated in Schedule-I of NGT Act, 2010. Specific allegations have been made by them stating that they are aggrieved individually and collectively, directly and indirectly by the loss of ecology and by environmental degradation and that injury, harm and damage were caused to them and all whom they represent in view of the violations of all environmental law and for which they are also entitled for damages and compensations. Hence, there cannot be any impediment for the applicants to bring to the notice of the legal forum the activities which are violative of the provision of the said enactments apart from seeking direction in respect of the discharge of the obligations and duties by exercise of powers vested on the authorities under the said enactments. They can seek the enforcement of all the rights relating to environment. The Tribunal is vested with the original and appellate jurisdiction which is wide. Speaking on the wide jurisdiction of the Tribunal, both original and appellate, Hon'ble Justice Shri Swatanter Kumar, Chairperson, (Principal Bench), NGT, New Delhi had an occasion to consider the power and jurisdiction of the Tribunal in Application No. 26/2012 referred to above, has held as follows:

> "*22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case*

*and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is the substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:*

> *"'environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human being, other living creatures, plants, micro-organism and property."*

*Section 2(m) defines the term 'substantial question' relating to environment as follows:*

> *"It shall include an instance where –*
>
> *(i) there is a direct violation of a specific statutory environmental obligation by a person by which, -*
>
> *(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*
>
> *(B) the gravity of damage to the environment or property is substantial*
>
> *(C) the damage to public health is broadly measurable;*
>
> *(ii) the environmental consequences relate to a specific activity or a point source of pollution."*

*23. the legislature, in its wisdom, has defined the word 'environment' in very wide terms. It is inclusive of water, air, land,*

*plants, micro-organisms and the inter-relationship between them, living and non-living creatures and property. Similarly, 'substantial question relating to environment' also in an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made large, real and tangile, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the deminimis principle. In Inre Net Books Agreement (1962) I WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the cause and its issues relating to environment.*

*24. ..... The essence of legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the schedule Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT*

*Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.*

**33.** Thus, the Tribunal is of the considered opinion that it is a fit case where liberty has to be given to the applicants to file a fresh application, if so advised, for necessary reliefs within the framework of NGT Act, 2010.

**34.** Accordingly, the application is dismissed as not maintainable since it is barred by limitation. No cost.

**35.** Liberty is given to the applicants to file a fresh application for necessary reliefs within the framework of NGT Act, 2010.

**(Mr. Justice M.Chockalingam)**
**Judicial Member**

**(Dr. Ajay A. Deshpande)**
**Expert Member**

**Central Zonal Bench, Bhopal**
**12th August, 2013**