Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 5231-32 of 2016

Himachal Pradesh Bus Stand Management and Development Authority (HPBSM&DA) .... Appellant

Versus

The Central Empowered Committee Etc. & Ors. .... Respondents

With

Civil Appeal Nos. 5229-5230 of 2016

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into sections to facilitate analysis. They are:

A The appeal

1 The civil appeals in the present case arise under Section 22 of the National Green Tribunal Act, 2010 ("**NGT Act**"). The correctness of a judgment and order dated 4 May 2016 of the National Green Tribunal ("**NGT**") is in issue.

2 The NGT dealt with an original application filed by the second respondent, who is also the appellant in companion **Civil Appeal Nos. 5229-5230 of 2016**, to challenge a report dated 18 September 2008 of the Central Empowered Committee ("**CEC**"), the first respondent. In its report, the CEC concluded, *inter alia*, that a part of the Bus Stand Complex constructed by the second respondent and the appellant at McLeod Ganj in Himachal Pradesh violates the provisions of the Forest (Conservation) Act, 1980 ("**Forest Act**"). The CEC recommended the demolition of the illegal portions.

3 The NGT accepted the findings of the CEC, observing that the Bus Stand Complex seriously disturbs the ecology of the area in which it has been constructed. The NGT directed, *inter alia*, that:

(i) The structure of the Hotel-cum-Restaurant in the Bus Stand Complex be demolished by the second respondent;

(ii) The second respondent shall pay a compensation of Rs. 15 lacs in terms of Sections 15 and 17 of the NGT Act;

(iii) The appellant shall pay a compensation of Rs. 10 lacs, while the State of Himachal Pradesh and its Department of Tourism shall pay a compensation of Rs. 5 lacs each; and

(iv) The Chief Secretary of the State of Himachal Pradesh shall conduct an enquiry against the erring officers of the appellant, in order to fasten the responsibility for the illegal project.

B Previous orders of this Court

4 By an order dated 16 May 2016, this Court admitted the present appeals and framed the following substantial questions of law, as provided in Section 22 of the NGT Act:

> "1. Whether the Tribunal has failed to appreciate that the land which is subject matter of the appeal had already been diverted for non - forest use under Section 2 of the Forest (Conservation) Act, 1980?
>
> 2. Whether the Tribunal failed to consider properly the effect of Section 14 of the Himachal Pradesh Bus Stand Management and Development Authority Act, 1999 which empowers the authority to establish and maintain hotels and restaurants at or near bus stands?
>
> 3. Whether the Tribunal exceeded its jurisdiction in holding that alleged violations of the Himachal Pradesh Town and Country Planning Act, 1977 are made out even though the said enactment is absent in the Schedule I of enactments attached to the National Green Tribunal Act?"

This Court also granted a stay against the operative portion of the NGT's judgment directing: *(i)* the demolition of the Hotel-cum-Restaurant structure in the Bus Stand Complex; and *(ii)* an enquiry to be conducted against the appellant's officers.

5 The above order was modified on 9 September 2016, by lifting the stay against the enquiry to be conducted against the appellant's officers. However, this Court directed that an enquiry shall be conducted by the District and Sessions Judge, Kangra within whose jurisdiction the Bus Stand Complex is located. The District and Sessions Judge was directed to place a report before this Court. Parties to the present appeals were permitted to associate themselves with the enquiry being conducted by the District and Sessions Judge.

C The history of the forest land

6 The genesis of the present case originates in an order dated 12 November 1997 of the Union Ministry of Environment and Forests (the fourth respondent, "**MOEF**"), on a proposal made by the State of Himachal Pradesh, permitting the diversion of 0.093 hectares of forest land for the construction of a parking space at McLeod Ganj, in accordance with Section 2 of the Forest Act. The order is extracted below:

> "After careful consideration of the proposal of the State Government, the competent authority hereby conveys approval under Section -2 of Forest (Conservation) Act, 1980, for diversion of 0.093 hectares of forest land for the construction of parking place at McLeod Ganj, forest division Dharamsala, District Kangra, HP, subject to following conditions:
>
> 1. Legal status of the forest land will remain unchanged. The forest land will be restored to forest Department as and when it is no more required.
>
> 2. Compensatory afforestation will be carried out, by planting at least 250 plants of deodar and ornamental species around McLeod Ganj town as proposed, at a cost of Rs.11500/ - which is reported to have been deposited by user agency vide TC No.3 dt. 02.09.97.

> 3. The Forest land will be used only for the purpose as mentioned in the proposal.
>
> 4. The user agency will abide by any condition that may be imposed by the State Forest Department in the interest of afforestation and protection of the forest.
>
> 5. This approval is subject to the clearance of the proposal under other relevant Acts/ Rules / Court's Ruling /Instructions etc. as applicable to this proposal.
>
> State Government will ensure fulfilment of these conditions."

7 MOEF issued a further order dated 1 March 2001, diverting another 0.48 hectares of forest land for the construction of a bus stand at McLeod Ganj. The contents of the order read thus:

> "After careful consideration of the proposal of the State Government, the competent authority hereby conveys approval for diversion of 0.48 hectares of forest land for construction' of above mentioned project at Dharmsala, forest division Dharamsala and district Kangra, H.P., subject to following conditions.
>
> 1. Legal status of the forest land will remain unchanged.
>
> 2. Minimum no. of trees as are unavailable may be felled which should not exceed 17 (seventeen) as proposed.
>
> 3. Compensatory afforestation will be carried out, on 0.098 forest land at P46K Dharamsala C.B. Govt. Forest of Dharamsala forest division at a cost of Rs.14,900/- (Rs. Fourteen thousand nine hundred) which is reported to have been deposited by user agency vide cheque No.055710 dated 19.10.2000.
>
> 4. Forest Guard hut as proposed in the proposal, will also be constructed at a cost of Rs.2.25 lacs which is reported to have been deposited by user agency.
>
> 5. The user agency will abide by any condition that may be imposed by the State Forest Department In the interest of afforestation and protection of the forest.
>
> 6. This forest land will not be used for any other purpose than that mentioned in the proposal.

> 7. This approval is subject to the clearance of the proposal under other relevant Acts/Rules /Court's Ruling /Instructions etc. as applicable to this proposal.
>
> 8. The Ministry may revoke suspend the clearance if implementation of any of the above conditions is not satisfactory. State Government through state forest department will ensure fulfillment of these conditions."

8 Of the above land, an area admeasuring 0.093 hectares is above the main Dharamshala-McLeod Ganj road while an area admeasuring 0.48 hectares is below the main road. Both these pieces of land face each other and are a part of Banoi Reserve Forest. The user agencies responsible for the construction of the parking space and the bus stand were the S.D.O. Dharamshala and Himachal Pradesh Tourism Department. The cost of these projects was estimated at Rs. 10 lacs and Rs. 90-95 lacs.

9 In April 2000, the appellant was constituted for the construction of bus stands in the State of Himachal Pradesh following the enactment of the Himachal Pradesh Bus Stands Management and Development Authority Act, 1999 ("**HP Bust Stands Act**"). In January/February of 2006, the land diverted for non – forest use under the above orders dated 12 November 1997 and 1 March 2001 was transferred on a 99 year lease to the appellant.

D The construction of the Bus Stand Complex

10 The land transferred to the appellant was to be utilised for the construction of a parking facility in McLeod Ganj. Given the nature of the costs that would be incurred for the creation of a 'modern complex', the Board of Directors of the appellant in their meeting held on 7 November 2003 decided to construct a Bus

Stand-cum-Parking Complex on a Build-Operate-Transfer basis[1]. In furtherance of this, the appellant invited offers on 19 November 2003. The appellant received only one offer, which was considered financially unviable since it envisaged a concession period of 75 years.

11 The appellant decided to alter the nature of the Bus Stand Complex in order to make it financially viable for private entities by issuing a new Request for Proposal on 13 July 2004 for the construction of the modified Bus Stand Complex. Apart from the construction of the bus stand itself on the lower level, the appellant envisaged further construction in the complex of:

(i) a multi-level commercial complex with shops at the road level;

(ii) a dormitory and a budget hotel at the first, second and third levels;

(iii) a dining facility/restaurant/food plaza at the top level; and

(iv) a parking provision for fifty cars at the road level.

The area of the multi-level commercial complex was to be 2779 M^2; of the road level parking, 1100 M^2; and of the bus stand at the lower level, 2580 M^2 (which included 359 M^2 of area for shops/kiosks).

12 On 13 October 2004, the Board of the appellant approved the lowest bid submitted by the second respondent for the construction of the Bus Stand Complex. The second respondent was awarded construction rights through a 'notice of award' dated 18 November 2004. The appellant and the second

[1] In a BOT project, the public sector grantor grants to a private company the right to develop and operate a facility or system for a certain period (the "**Concession Period**"), in what would otherwise be a public sector project. (*See*, 'Concessions, Build-Operate-Transfer (BOT) and Design-Build-Operate (DBO) Projects' available at <https://ppp.worldbank.org/public-private-partnership/agreements/concessions-bots-dbos> accessed on 23 December 2020).

respondent entered into a 'Concession Agreement' on 23 December 2004 under which the concession period commenced from 15 December 2005, and was to be for 16 years, 7 months and 15 days.

13 The second respondent started the construction of the Bus Stand Complex in December 2005 without awaiting the permission of the Town and Country Planning Department ("**TCP Department**"), approving the plans and drawings.

14 On 4 March 2006, the TCP Department received an application seeking approval of the drawings of the Bus Stand Complex. It pointed out shortcomings in the proposed drawings on 10 March 2006. Through further letters between 28 July 2006 to 19 February 2007, it directed the appellant to provide further information and to rectify the shortcomings in the proposed construction. During the midst of this process, the second respondent continued with the construction of the Bus Stand Complex.

15 Finally, through notices dated 5 October 2006, 8 March 2007 and 5 June 2008, the TCP Department called upon the appellant to halt the construction of the Bus Stand Complex. The second respondent nonetheless continued with the construction.

16 On 8 May 2007, the State of Himachal Pradesh sent a proposal to MOEF requesting, *inter alia*, that:

(i) The use of the entire land (measuring 0.573 hectares) which was permitted to be diverted for non – forest use under orders dated 12 November 1997 and 1 March 2001 be changed to the construction of the Bus Stand Complex; and

(ii) The user agency be changed to the appellant.

17 Through its order dated 12 June 2007, MOEF rejected the proposal of the State of Himachal Pradesh. The order was in the following terms:

> "Please refer to your letter No. FFE-B-F(2)-87/97 dated 8th May, 2007 on the above mentioned subject seeking approval of Government of India for changing of land use from construction of parking on 0.093 hectare of forest land and Bus Stand Complex and Hotel on entire 0.573 hectare of forest land for non-forestry propose under Forest (Conservation) Act, 1980 and change in the name of user agency from SDO(Civil) and HP Tourism Department to HP Bus Stand Management and Development Authority.
>
> The request of the State Government has been examined and the competent authority conveys its inability to consider the same and it is therefore, rejected."

18 As explained in greater detail below, when proceedings were initiated before it, CEC directed a halt in construction. The second respondent approached this Court by filing an interim application. By an order dated 7 September 2007, this Court directed that the second respondent can proceed with the construction of the bus stand, observing thus:

> "In this application, the applicant is seeking a direction for construction of a bus stand. It is alleged that the C.E.C. has prevented the applicant from constructing some parking area near the bus stand. We are told that the C.E.C. is proposing to inspect the site and shall give a report. We think that before giving any direction to the applicant, the C.E.C. may hear the applicant and file a report and meanwhile the work relating to the construction of bus stand may continue but no other construction shall be carried out."

The construction of the Bus Stand Complex was then completed by the second respondent on 7 July 2008.

E Proceedings before the first respondent

19 During the construction by the second respondent, the sixth and the seventh respondents approached the CEC by filing an application on 20 April 2007, alleging that the construction of the Bus Stand Complex was in violation of the Forest Act. As stated above, the CEC directed that the construction of the Bus Stand Complex be halted.

20 The second respondent filed an interim application, in which this Court passed an order dated 7 September 2007, which has been extracted above. The second respondent was impleaded in the proceedings before the CEC.

21 The members of the CEC visited the site of the Bus Stand Complex on 27 September 2007. The CEC heard the parties before it on multiple dates. It also had before it a report dated 18 August 2008 of the Chief Secretary of Himachal Pradesh.

22 The CEC submitted its report dated 18 September 2008 to this Court. The salient findings were that:

(i) The construction of the Hotel-cum-Restaurant structure within the Bus Stand Complex was not permitted, by MOEF's orders dated 12 November 1997 and 1 March 2001. Hence, the construction is in violation of the Forest Act;

(ii) The *post facto* permission sought by the State of Himachal Pradesh from MOEF for changing the use of the diverted forest land was rejected on 12 June 2007;

(iii) The RFP issued by the appellant on 13 July 2004 indicated that a multi-level commercial complex was to be of an area admeasuring 2779 M^2, while the combined area of the road level parking and the bus stand at the lower level was to be 3680 M^2. However, the actual area of the multi-level commercial complex constructed by the second respondent is 3324.89 M^2, which is 545.89 M^2 in excess. Similarly, the actual area of the road level parking and the bus stand constructed is 9945.65 M^2, which is 6265.65 M^2 in excess. This additional construction had been tacitly approved by the Board of the appellant;

(iv) While the RFP issued by the appellant indicated that only two lower levels would be constructed for the bus stand, the second respondent had constructed four additional levels. This had also been tacitly approved by the Board of the appellant;

(v) The above factors establish connivance between the officers of the appellant and the second respondent, in order to benefit the second respondent;

(vi) The construction of the Bus Stand Complex by the second respondent has been done without the prior approval of the TCP Department. The notices issued by the Department to halt construction were ignored;

(vii) Due to the nature of the construction of the bus stand at the lower levels, additional forest area will be required since there was no area for the buses to turn in; and

(viii) No car parking is available for the residents of the hotel in the commercial complex, who would either have to park on the roads or use the road level parking in the complex. This would create traffic congestion and will not increase the net parking available in the area.

23 Based on its conclusions, the CEC issued the following recommendations:

> "22. The above clearly highlights that there has been absolute anarchy in the matter of construction of the parking place and Bus Stand. At the same time there is a very real need at McLeod Ganj for both the Parking place and the Bus Stand Complex on the two pieces of forest land. With a view to finding a way out of this terrible muddle created by the deep vested interests and at the same time ensuring that those who have connived in the serious lapse are not allowed to go scot free the following is recommended:
>
> a) the hotel complex structure should be pulled down immediately and the 0.093 ha. of forest land should be cleared of debris. This should be done within three months. Thereafter a Parking place may be constructed as was originally visualized when the project was approved under the Forest (Conservation) Act, 1980. Prior to that approval of the Town and Country Planning Department may be taken as required under the law. This will send a clear signal to the building mafia and their supporters that such brazen acts of illegal and unauthorized construction will not be tolerated;
>
> b) the serious shortcomings noted in the construction of Bus Stand Complex would need to be with the approval of the Town and Country Planning Department. Towards this end it is proposed that the State Government may constitute a Committee with the Chief Secretary as Chairman with the Principal Chief Conservator of Forests, senior most Engineer in the State PWD and a representative of MoEF as Members. The Director, Town and Country Planning Department, Himachal Pradesh, could be the Member Secretary. The Committee may immediately go into the entire matter and may in a time bound manner within two months propose to this Hon'ble Court how best the Bus Stand Complex can be salvaged from the present mess so that the State Government is able to:
>
> i) ensure best and most efficient use of the Bus Stand so that the maximum number of buses are able to ply from there. While providing for commercial, shops, public toilets,

> restaurants, telephone booths and the like at the Bus Stand the only consideration should be the actual requirements of the travelling public; and
>
> ii) ensure maximum parking place for vehicles;
>
> c) there has been a collective failure and serious lapses on the part of the officials and others of the State Government connected with the unauthorized and illegal construction of the twin project on the two pieces of forest land and reflects on the pathetic state of affairs in the matter of governance. In this background the State Government of Himachal Pradesh has to take the blame and may be directed to deposit an amount of Rupees one crore, in a special fund for the conservation and protection of the forest and wildlife;
>
> d) the State Government may also be directed to simultaneously identify and initiate stringent and deterrent action in a time bound manner against all the concerned persons and officials for complete abdication of their responsibility and accountability in the matter of governance and who are responsible for blatantly allowing the unauthorized and illegal building structures to come up on the two pieces of forest land in flagrant violation of the Forest (Conservation) Act, 1980, the HP Town and Country Planning Act, 1977 and other relevant local laws; and
>
> e) the services of M/S Prashanti Surya Construction Company should be dispensed with and M/s Prashanti Surya should be blacklisted and should also be penalized suitably for the grave illegalities and irregularities knowingly committed to promote his private interests."

24 The second respondent then filed another application before this Court for setting aside the report issued by the CEC. The second respondent argued that they had not been provided a fair hearing, and had the right to file a detailed reply.

25 By an order dated 5 October 2015, this Court transferred the proceedings to the NGT.

F Proceedings before the NGT

26 In its impugned judgment, the NGT noted that the following facts were indisputable:

> "A. At no point of time there was any permission, sanction or approval granted by the Competent Authority in the State Government and/or Central Government under the Act of 1980 and even (under) other relevant laws for the hotel and shopping complex.
>
> B. Right from the initial stages, the hotel and shopping complex were never a part of the project for which the Government departments and/or the project proponent even submitted applications for grant of approval/sanction from the Competent Authority. MoEF&CC vide its letter dated 12th June, 2007 had specifically declined the permission for conversion of the forest land for any other non forest activity. Once such permission for hotel and shopping complex was declined, the project proponent could not have been taken up and commenced any activity.
>
> C. The project proponent not only started the construction without obtaining appropriate approval and sanction from the concerned State and the Central Government, but had also worked in collusion with some of the authorities who consented [to] the commencement of construction temporarily which was entirely uncalled for and in fact was illegal."

27 The NGT further noted that the approval accorded by the MOEF on 12 November 1997 was only for construction of a 'parking place' at McLeod Ganj. Further, on 1 March 2001, approval was accorded only for construction of a 'bus stand' at McLeod Ganj. The State of Himachal Pradesh had no power to authorize the construction of the Hotel-cum-Restaurant structure and, therefore, the construction was entirely illegal. It further endorsed the findings by the CEC and observed:

> "3. It is clear from the above report of the CEC that there are serious violations of law. It is a project coming up in the forest

> area without Forest Clearance, and even the consent to establish and/or operate has not been granted by the concerned Board. Moreover, this project is bound to have an adverse impact on environment and ecology. The recommendations of the CEC clearly state that the whole complex should be pulled down and only a parking place must be constructed as was originally visualized, for which the Forest Clearance under the Act of 1980 has been granted. The CEC also blames the concerned authorities by suggesting that there has been collective failure and serious lapses on part of the State Government and its officials connected with the unauthorized and illegal construction of the project, which was constructed on the two pieces of land. The Report also observed that the State Government should be directed to deposit Rs. 1 Crore in a special fund and the project proponent should be blacklisted and penalized suitably for the grave illegalities and irregularities committed by him."

28 The NGT characterized the construction of the Hotel-cum-Restaurant structure as an intentional violation that exhibited "*violation of law coupled with serious adverse impacts on environment and ecology of the eco sensitive area*"[2]. It held that just as seeking an Environmental Clearance under MOEF's Notification dated 14 September 2006 is a precondition to the commencement of the project, which cannot be derogated from, seeking a Forest Clearance under Section 2 of the Forest Act was a necessary precondition in the present case before construction could have begun. It drew on this Court's jurisprudence on the precautionary principle, polluter pays principle and the principle of sustainable development.

[2] Para 27 of the impugned judgment.

G Report of the District and Sessions Judge, Kangra

29 In furtherance of this Court's order dated 16 May 2016, the District and Sessions Judge submitted his enquiry report on 9 October 2018. The report is based on documentary evidence and statements from sixteen witnesses.

30 In his report, the District and Sessions Judge has found that the Bus Stand Complex:

(i) Has been constructed on forest land, in violation of the provisions of the Forest Act;

(ii) Has been constructed without requisite permissions being obtained from the TCP Department;

(iii) Does not conform to the plans prepared by third-party consultants hired by the appellant, which were submitted during the RFP;

(iv) Has not been properly maintained, and is plagued by issues of seepage; and

(v) Suffers from architectural defects due to which it is extremely difficult for buses to turn into the bus stand from the main road.

31 The District and Sessions Judge concludes that the second respondent could not have engaged in this illegal construction without the connivance of the officials of the following departments: *(i)* the appellant; *(ii)* Himachal Pradesh Tourism Department; *(iii)* TCP Department; *(iv)* Forest Department; *(v)* Municipal Committee and Municipal Corporation; *(vi)* Revenue Department; and *(vii)*

Electricity Department. The report states this in the following terms:

> "28. I have no hesitation to conclude that the officials/officers of all the departments were hand in gloves with the M/s Prashanti Surya Construction Company, in order to give undue advantage to M/s Prashanti Surya Construction Company including the financial benefits. For the same these officers/officials are liable. It is a case of serious lapse and failure on the part of officers/officials of State Government, who were duty bound to take prompt and immediate action to stop the un-authorised and illegal construction of the structure in dispute. So, it is my humble submission that concerned Disciplinary Authority/Authorities of the State Government be directed to take deterrent action against the defaulting officers/officials. It appears that the CEO and Board of Directors suo moto assumed the powers to change the conceptual plan and allowed the construction work of illegal structure on the spot by throwing into the air the statutory provisions of law. Moreover, the structure of bus stand on the spot has not been properly erected. As submitted here in above, due to pillars, there was lack of sufficient space for turning the buses and at the same time there is no separate entry and exit point of the buses. The structure has not been properly maintained and seepage was found on the spot. There is no separate place for idle bus parking. So, it appears that the Bus Stand Authority' has got no control over the maintenance of the bus stand structure and it is not paying any heed in this regard. In view of my submissions, it is a case of open favoritism of M/s Prashanti Surya Construction Company. All the concerned Authorities were well aware of the legal requirements, but they preferred to continue with the illegal construction without following the legal requirements. It cannot be believed that the construction work on the spot continued from mid 2005 to beginning 2009 without connivance [sic of] the aforesaid Government Agencies and these officials/officers."

H Submissions of counsel

32 Challenging the impugned judgment of the NGT, the appellant has made the following submissions:

(i) The appellant had been legitimately provided the land for the construction of the Bus Stand Complex, when the forest land was diverted for "non-forest purposes" through orders dated 12 November 1997 and 1 March 2001 issued by the MOEF;

(ii) The appellant included the Hotel-cum-Restaurant structure in the Bus Stand Complex to make it more commercially viable, for which it then assigned the rights to the second respondent without assigning it any interest in the land;

(iii) While this was in public knowledge from the beginning, the sixth and seventh respondents did not raise any objections then but only did so belatedly when the construction of the Bus Stand Complex was already underway;

(iv) In relation to the violations of the Himachal Pradesh Town and Country Planning Act, 1977 ("**TCP Act**"):

(a) once the project was handed over to the second respondent, it was their responsibility to get appropriate permissions;

(b) arguments in relation to violation of the TCP Act were not raised by the sixth and seventh respondents before the CEC or the NGT;

(c) the NGT cannot, in any case, consider violations of the TCP Act; and

(d) the Deputy Commissioner Kangra had recommended, by a letter dated 13 April 2007 addressed to the Director of the TCP Department for relaxation in respect of the parameters since this was a first of its kind parking complex at a hill station which regularly suffers from traffic congestion.

(v) Section 14(3)(e) of the HP Bus Stands Act empowers the appellant to establish and maintain hotels and restaurants at or near bus stands. There was no secrecy or wrongdoing in awarding the project to the second respondent, it having made the lowest bid. The project was to be constructed on a BOT basis and would be handed back to the State of Himachal Pradesh at the end of the concession period;

(vi) Since by the orders dated 12 November 1997 and 1 March 2001 permission had already been obtained to divert the land for a "non-forest purpose", no further consents from the MOEF were needed for the construction of the Hotel-cum-Restaurant. Even so, the State of Himachal Pradesh, by way of abundant caution, moved an application to seek its consent for change of land use for the construction of a Hotel-cum-Restaurant structure within the Bus Stand Complex. On 12 June 2007, the application was not dismissed on merits through a speaking order, but only owing to an "*inability to consider the same*" since proceedings were ongoing before the CEC; and

(vii) The Explanation attached to Section 2 of the Forest Act expressly provides that "non forest purpose" means the breaking up or clearing of any forest

land or portion thereof for any purpose other than re-afforestation. As a result, the incidental and ancillary facilities of the Hotel-cum-Restaurant structure in the Bus Stand Complex were sanctioned by the clearances already granted.

33 Supporting the submission of the appellant, the second respondent submits that:

(i) It decided to participate in the project because it was not limited to the bus stand, but also included the management of the Hotel-cum-Restaurant which made it commercially viable. Under the Concession Agreement, the second respondent was to build the bus stand, parking and Hotel-cum-Restaurant which it would retain until the year 2022, following which it would stand transferred to the State of Himachal Pradesh. According to the second respondent, this was done through a transparent process;

(ii) The CEC incorrectly decided the application filed by the sixth and seventh respondents without properly understanding the second respondent's reasons for constructing the additional floors in the structure, which was due to the strength and condition of the soil. The same error was made by the NGT in its impugned judgment;

(iii) The allegation that the appellant acted in a biased manner are unfounded. The appellant is a nodal independent statutory authority for maintenance of modern commercial bus stand infrastructure. The appellant is empowered under Section 14(3)(e) of the HP Bus Stands Act to establish and maintain hotels and restaurants at or near bus stands. At the relevant time, the

appellant did not have adequate financial resources to construct bus stands on its own and so it took a policy decision for their construction by seeking private participation on a BOT basis;

(iv) 'Not an inch of forest land' was encroached upon other than what was permitted by the MOEF. Further, on the lower parcel of land, minimum trees were felled by the forest department and on the upper portion of land there were no trees. The felling and removing of the trees was done strictly in accordance with the permission granted;

(v) The District and Sessions Judge ignored the public nature of the project and that the land will revert to the State of Himachal Pradesh after the concession period. There is nothing to suggest that the second respondent constructed the project with the objective of obtaining wrongful gain or undue advantage. The second respondent has invested more than Rs. 19 crores in the public project in question, with a major chunk of it being sourced through bank borrowings. Under the financial scheme of the project, 70% of the revenue was to be recovered by the second respondent from the Hotel-cum-Restaurant and 30% from the operation of the bus stand. Hence, since the Hotel-cum-Restaurant has not been operationalized, the second respondent, after making the investment in the project, has not been able to receive proportionate returns and has been forced to face a financial crisis, for no fault of its own;

(vi) The second respondent is no longer managing or operating the parking space and the bus stand after the District Magistrate, Kangra by an order

dated 7 June 2019 under Section 144 of Code of Criminal Procedure, 1973, constituted and authorized an Executive Committee to take control of the parking space and run it free of cost in public interest. Further, the District Magistrate, through an order dated 31 July 2019, notified the space available at McLeod Ganj Bus Stand as public parking place under Section 117 of the Motor Vehicles Act, 1988, in the interest of the efficient organization of the transport system;

(vii) The NGT erred in not directing the Central Government to consider the possibility of granting *ex-post facto* clearance to the Hotel-cum-Restaurant structure of the Bus Stand Complex under Section 2 of the Forest Act, given that the construction of the Hotel-cum-Restaurant structure took place pursuant to a tender floated by a statutory authority;

(viii) The NGT overlooked the fact that the CEC's report dated 18 September 2008 was prepared without following the principles of natural justice. This was because it was prepared on the basis of the second affidavit dated 18 August 2008 filed by the Chief Secretary of the State of Himachal Pradesh, which was not served upon the second respondent; and

(ix) The NGT should have considered that the appellant had made a representation to the second respondent in the Concession Agreement that all the necessary permissions have been obtained by it for the execution of the Bus Stand Complex.

34 The State of Himachal Pradesh has made the following submissions:

(i) The Bus Stand Complex had all requisite permissions, and had been constructed lawfully without the conferment of undue benefits to the second respondent;

(ii) The report of the District and Sessions Judge dated 9 October 2018 is flawed because:

(a) the appellant did not ask for permission from the MOEF, since such permission was already available;

(b) the project was constructed in accordance with approved plans, and keeping in mind the topography of the area; and

(c) the maintenance of the project could not be questioned because its upkeep had to be abandoned in 2009 after the litigation began.

(iii) As regards the findings in the report of the District and Sessions Judge dated 9 October 2018, the reason why no consent for the construction of the Hotel-cum-Restaurant structure was separately sought was because the appellant was under the impression that the consent for diverting forest land for a "non-forest purpose", granted by the MOEF by its orders dated 12 November 1997 and 1 March 2001, was sufficient.

35 The State of Himachal Pradesh argues that this is a case involving procedural lapses, as opposed to illegality. The setting up of such projects in the State is a gigantic task given the peculiar topography and other conditions existing there. The project, if allowed to be continued/completed, will not only provide facilities of a modular bus stand to the people of the town but also, the provision of a commercial complex will cater to economical services to

commuters, besides providing opportunities of employment to the local population. However, if the structure is ordered to be demolished at this stage, it is likely to cause environmental damage since it will be difficult to dispose of the huge debris emanating from the demolition as the area is congested and covered with extensive vegetation. Some part of the proceeds received as income from the commercial complex may be utilized to compensate the loss that might have been caused to the environment and ecology of the area due to the construction of the Bus Stand Complex.

36 The State of Himachal Pradesh later submitted before this Court on 3 November 2020 that it had taken steps for initiating prosecutions for violations of the provisions of the Forest Act. It placed on record, through an affidavit, the steps taken by it.

37 Opposing these submissions and arguing in support of NGT's impugned judgment, the CEC submits the following:

(i) The forest land was permitted to be diverted for "non-forest purposes" only for the construction of a bus stand and parking space. However, the appellant expanded the scope to include a Hotel-cum-Restaurant without prior permission;

(ii) The second respondent started construction of the Bus Stand Complex without approval of the drawings and plans by the TCP Department, which later pointed out issues with the plans; and

(iii) On 12 June 2007, MOEF rejected the request of the State of Himachal Pradesh for the extension of the use of the forest land for anything other than a bus stand and a parking space.

38 Supporting the submissions of the CEC, the sixth and seventh respondents submit:

(i) The de-reservation of forest land for the construction of the Hotel-cum-Restaurant structure in the Bus Stand Complex was in violation of: *(i)* Section 2(i) of the Forest Act; and *(ii)* the order dated 13 November 2000 issued by this Court in **Centre for Environmental Law, WWF - I** vs **Union of India**[3], which held that further land shall not be de-reserved pending further orders from this Court;

(ii) As such, the actions of the appellant and the second respondent in deliberately violating the provisions of the Forest Act constitute a violation of the "environmental rule of law" enunciated by this Court in **Hanuman Laxman Aroskar** vs **Union of India**[4]; and

(iii) The entire Bus Stand Complex was constructed without requisite permissions under the TCP Act.

39 The MOEF has accepted the report submitted by the District and Sessions Judge in its entirety and stands by its findings.

40 The rival submissions now fall for our consideration.

[3] Writ Petition (Civil) No. 337 of 1995
[4] (2019) 15 SCC 401

I Analysis

41 The construction of the Hotel-cum-Restaurant structure in the Bus Stand Complex is illegal and constitutes a brazen violation of law. The permission which was granted by MOEF on 12 November 1997 was only for construction of a 'parking place' at McLeod Ganj. Similarly, the permission granted on 1 March 2001 was granted for constructing a 'bus stand' in the same area. At no point was any permission granted for the construction of a hotel or commercial structure. NGT's finding on this count commends acceptance. The appellant, on being granted permission to engage in construction for a specified purpose, unlawfully utilised that permission as the basis to construct a different structure which was not authorized. It has done so in disregard of the provisions of the Forest Act.

42 Section 2 of the Forest Act reads as follows:

> "2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—
>
> (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
>
> (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
>
> (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
>
> (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

> Explanation.— For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—
>
> (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;
>
> (b) any purpose other than reafforestation,
>
> but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

The provisions of Section 2 mandate strict and punctilious compliance. Mere substantial compliance is not enough. The construction of the Hotel-cum-Restaurant structure is entirely illegal, having been carried out in clear breach of this mandatory statutory stipulation. That officials of statutory bodies of the State Government have connived at the violation of law is a reflection on the nature of governance by those who are expected to act within the bounds of law.

43 The report of the CEC is a serious indictment of the actions of the appellant. The CEC report indicates that: *(i)* the construction of the Hotel-cum-Restaurant structure in Bus Stand Complex was illegal; *(ii)* the land was a reserved forest; *(iii)* there was no valid permission for diversion for the land for the construction of the Hotel-cum-Restaurant structure; *(iv)* Forest Act consent was taken only for the parking facility and the bus stand; *(v)* there was no valid approval from the TCP Department of the plans of the entire Bus Stand Complex; and *(vi)* the finally constructed Bus Stand Complex is not in conformity with the appellant's own proposed plans in the RFP.

44 The findings which were arrived at in NGT's judgment are supported by the report submitted by the District and Sessions Judge. The report presents a striking analysis of the manner in which the Hotel-cum-Restaurant structure was constructed in breach of statutory requirements and how this was made possible by the connivance of multiple state actors. The relevant findings from the report are excerpted below:

> "4. The EPC has prepared the conceptual plan Ex. Cl I4A, but the bus stand authority went on to flout the aforesaid conceptual plan and on its own and decided to construct bus stand-cum-parking and hotel complex on two pieces of forest land under BOT basis. No sanction or approval was obtained by the Bus Stand Authority under the provision of Forest (Conservation) Act, 1980 for diversion of forest land to use the same for non - forest purpose. The Government of India Ministry of Environment and Forest, turned down the request to use the forest land for non-forest purpose and change the name of user agency from SDO(C) and H.P. Tourism Department to Bus Stand Authority vide copy of letter Ex. Cl03.
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> ...
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> 7. The illegal construction of disputed structure was raised with sole motive to give undue advantage to M/s Prashanti Surya Construction Company and for the same Bus Stand Authority is primarily responsible and in addition to that the officers/officials of other concerned departments are also responsible.
>
> ...
>
> 12. In this case the Bus Stand Authority did not inform in writing the Director of Town and Country Planning Department, regarding the construction work in question as discussed here in above in the aforesaid statutory provisions. Said information should have been given by the CEO of the Bus Stand Authority in the year of 2005 when the construction work started on the spot. So, the CEO of Bus Stand Authority in the year 2005, is responsible for ignoring the statutory provisions of Section 28 of the H.P. Town and Country Planning Act."

45 NGT acted within its mandate in a case of this nature, where the appellant actively allowed the perpetration of a structure in breach of environmental norms. Not looking askance at the construction of the Hotel-cum-Restaurant structure, in an area which the NGT rightly describes as the “lap of nature”, will put us on the path of judicially sanctioned environmental destruction.

I.1 Environmental rule of law

46 In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focussing on the structural norms which guide institutional decision making, rule of law frameworks recognise the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A

modern rule of law framework is hence comprehensive in its sweep and ambit. It recognises that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

47 The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi–disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the

destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open,

accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance – of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

48 In its decision in **Hanuman Laxman Aroskar** vs **Union of India** (supra), this Court, speaking through one of us (DY Chandrachud, J.) recognized the importance of protecting the environmental rule of law. The court observed:

> "142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.
>
> 143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike
>
> …
>
> 156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making

> are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution."

49 In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme ("**UNEP**") has presciently stated[5]:

> "If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals.
>
> ...
>
> Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law."

50 The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on

[5] UNEP, 'Environmental Rule of Law First Global Report' (January 2019), pgs viii and 223.

the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal of Environmental Law (2014), Bruce Pardy describes this conundrum in the following terms[6]:

> "Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.
>
> ...
>
> Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations."

51 However, even while using the framework of an environmental rule of law, the difficulty we face is this – when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.

[6] Bruce Pardy, 'Towards an Environmental Rule of Law', 17 Asia Pacific Journal of Environmental Law 163 (2014).

52 In an article in the Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio[7]:

> "One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made."

The point, therefore, is simply this – the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.

53 In the case before us, it is not possible for us to determine in quantifiable terms the exact effect of the construction of the Hotel-cum-Restaurant structure by the appellant and the second respondent on the ecology of the area. Both of them have tried to argue that the number of trees felled by them, in the case of the present construction, is what it would have been, had they only built a bus stand and a parking space. However, what we can record a determination on is

[7] Arnold Kreilhuber and Angela Kariuki, 'Environmental Rule of Law in the Context of Sustainable Development', 32 Georgetown Environmental Law Review 591 (2020).

the way in which the appellant and second respondent have gone about achieving this object. Specifically, the parties have engaged in the construction without complying with the plans drawn by the appellant's third-party consultants, which were agreed to by them in the RFP. The construction proceeded even when the TCP Department tried to halt it, refusing to approve its plans. Even the *post facto* refusal by the MOEF for changing the nature of the diverted forest land was not enough to stop the parties. Ultimately, when they were forced to halt the construction by the CEC, they proceeded with it under the guise of an order of this Court which permitted only legal construction. A combination of these circumstances highlights not only conduct oblivious of the environmental consequences of their actions, but an active disdain for them in favour of commercial benefits. While the second respondent was a private entity, they were actively supported in these efforts by the appellant. Hence, it is painfully clear that their actions stand in violation of the environmental rule of law. Whatever else the environmental rule of law may mean, it surely means that construction of this sort cannot receive our endorsement, no matter what its economic benefits may be. A lack of scientific certainty is no ground to imperil the environment.

I.2 Role of courts in ensuring environmental protection

54 In a recent decision of this Court in **Bengaluru Development Authority** vs **Sudhakar Hegde**[8], this Court, speaking through one of us (DY Chandrachud, J.) held:

[8] 2020 SCC OnLine SC 328

> "107. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth…
>
> 108. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions…
>
> 109. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."

55 In **Lal Bahadur** vs **State of Uttar Pradesh**[9], this Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in **State of Meghalaya & others** vs **All Dimasa Students**

[9] (2018) 15 SCC 407.

Union[10], this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.

56 The UNEP report (supra) also goes on to note[11]:

> "Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm."

57 In its Global Judicial Handbook on Environmental Constitutionalism, the UNEP has further noted[12]:

> "Courts matter. They are essential to the rule of law. Without courts, laws can be disregarded, executive officials left unchecked, and people left without recourse. And the environment and the human connection to it can suffer. Judges stand in the breach."

58 The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the 'shield' of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations.

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[10] (2019) 8 SCC 177.
[11] *Supra* at note 5, pg 213.
[12] UNEP, *Global Judicial Handbook on Environmental Constitutionalism* (3rd edition, 2019), pg 7.

I.3 Illegal activities on forest land

59 We are not traversing unexplored territory. In the past, this Court has clamped down on illegal activities on reserved forest land specifically, and in violation of environmental laws more generally, and taken to task those responsible for it. In a recent three-judge bench decision of this Court in the case of **Hospitality Association of Mudumalai** vs **In Defence of Environment and Animals**[13], this Court was confronted with a situation involving illegal commercial activities taking place in an elephant corridor. Justice S. Abdul Nazeer, speaking for the Court, held as follows:

> "42… the "Precautionary Principle" has been accepted as a part of the law of our land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for living creatures. The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation."

60 In **Goel Ganga Developers India Pvt. Ltd.** vs **Union of India**[14], this Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, speaking through Justice Deepak Gupta, held as follows:

> "64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of

[13] 2020 SCC OnLine SC 838.
[14] (2018) 18 SCC 257.

> cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more."

61 In **M.C. Mehta** vs **Union of India**[15], a two judge Bench of this Court held that the land notified under Punjab Land Preservation Act, 1900 in the Kant Enclave was to be treated as "forest land". As a result, any construction made on the land or its utilization for "non-forest purposes" without Central Government approval was violative of the Forest Act and therefore illegal. The relevant excerpt of this Court's decision, speaking through Justice Madan B. Lokur, is as follows:

> "132... R. Kant & Co. and the Town and Country Department of the State of Haryana being fully aware of the statutory Notification dated 18-8-1992 and the restrictions placed by the notification. R. Kant & Co. and the Town and Country Department of the State of Haryana were also fully aware that Kant Enclave is a forest or forest land or treated as a forest or forest land, and therefore any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980. Notwithstanding this, constructions were made (or allowed to be made) in Kant Enclave with the support, tacit or otherwise, of R. Kant & Co. and the Town and Country Department of the State of Haryana. They must pay for this."

[15] (2018) 18 SCC 397.

62 In the present set of appeals, the forest land was allowed to be used by the MOEF for the specific purposes of constructing a 'parking space' and 'bus stand' in McLeod Ganj. MOEF made a conscious decision not to modify the terms of this permission, even when granted an opportunity to do so. Hence, any construction undertaken by the second respondent, even with the tacit approval of the appellant being a statutory authority under the HP Bus Stands Act, will be illegal.

I.4 Jurisdiction of NGT

63 An ancillary issue now remains for our consideration, which is whether the NGT could have adjudicated upon a violation of the TCP Act, which is not an Act present in Schedule I of the NGT Act. In a recent two-judge Bench decision of this Court in **State of M.P.** vs **Centre for Environment Protection Research & Development**[16], one of us speaking for the Court (Justice Indira Banerjee), held as follows:

> "41. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.
>
> 42. In view of the definition of "substantial question relating to environment" in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.
>
> 43. For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any

[16] (2020) 9 SCC 781.

> legal right to environment and such question should arise out of implementation of the specified enactments.
>
> 44. Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."

The provisions of the TCP Act required the appellant and second respondent to take prior permission from the TCP Department before changing the nature of the land through their construction. Non-conformity with this stipulation led to a violation of their environmental obligations. In any case, this question is academic because the NGT's impugned judgment grounds its decision in the appellant and second respondent's violation of Section 2 of the Forest Act, which is an Act present within Schedule I of the NGT Act.

J Conclusion

64 Based on our analysis above, we uphold the directions which have been issued by the NGT in its judgment. By the earlier orders dated 16 May 2016 and 9 September 2016, this court only stayed NGT's direction in relation to the demolition of the Hotel-cum-Restaurant structure. The appellant has tried to argue against the demolition of the Hotel-cum-Restaurant structure in the Bus Stand Complex, submitting that it may be allowed to stand for their use. However, we cannot accept this submission. Doing so would legalise what is an otherwise entirely illegal construction, the reasons for which have been adduced by us in the judgment above.

65 Hence, we direct that the process of demolishing the Hotel-cum-Restaurant structure in the Bus Stand Complex be commenced within two weeks

from the date of the judgment and the structure shall be demolished by the second respondent within one month thereafter. In the event of default, the Chief Conservator of Forest along with the administration of district Dharamshala shall demolish the structure and recover the cost and expenses as arrears of land revenue from the second respondent.

66 Further, as directed by the NGT, the State of Himachal Pradesh and the second respondent can utilise the parking space and the bus stand in the Bus Stand Complex, after the demolition of the Hotel-cum-Restaurant structure. However, this has to be in accordance with orders dated 12 November 1997 and 1 March 2001 issued by the MOEF, *i.e.*, it shall not be used for any purpose other than parking of cars and buses, as the case may be.

67 The appeals are accordingly disposed of.

68 Pending application(s), if any, stand disposed of.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[Indu Malhotra]

…….....J.
[Indira Banerjee]

New Delhi;
January 12, 2021.