

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

.....

**ORIGINAL APPLICTION NO. 291 OF 2016  
(M.A. NOs. 651, 652, 653 & 654 OF 2016)  
[EARLIER ORIGINAL APPLICATION NO. 159 OF 2014 (CZ)]**

**IN THE MATTER OF:**

Rashid Noor Khan  
S/o Sh. Noor Khan  
Aged 33 years,  
R/o C-399, Rajharsh, Near SAI Hills, Kolar Road,  
Bhopal.

.....Applicant

Versus

1. State of Madhya Pradesh  
Through its Principal Secretary,  
Department of Mineral Resources, Vallabh Bhawan,  
Bhopal.
2. State of Madhya Pradesh  
Through its Principal Secretary,  
Department of Water Resources, Vallabh Bhawan,  
Bhopal.
3. Collector, Bhopal.
4. Mr. Pradeep Khanna,  
Mining Officer,  
Bhopal.
5. Madhya Pradesh Pollution Control Board,  
Through its Member Secretary,  
Paryavaran Parisar, E-5, Arera Colony, Bhopal.
6. Regional Officer,  
Bhopal, Madhya Pradesh Pollution Control Board  
Paryavaran Parisar, E-5, Arera Colony, Bhopal.
7. M/s. Agrawal Infotech  
Through its Partner Sh. Sanjeev Agrawal,  
S/o Sh. S.K. Agrawal,  
R/o 250, Sagar Plaza, Zone-II, M.P. Nagar,  
Bhopal.
8. Sh. Mahesh Manwani  
S/o A.K.H. Manwani,  
R/o E-1/152, Chinar Apartment,  
Arera Colony, Bhopal.

9. Sh. Jaishri Manwani  
W/o Sh. Mahesh Manwani,  
R/o E-1/152, Chinar Apartment,  
Arera Colony, Bhopal.

10. Union of India,  
Through its Principal Secretary,  
Ministry of Home Affairs,  
Government of India, New Delhi.

.....Respondents

**COUNSEL FOR APPELLANTS:**

Mr. Kushagra Pandey, Advocate.

**COUNSEL FOR RESPONDENTS:**

Mr. V.K. Shukla, Advocate, for Respondent No.1-NHAI.

Mr. Rajul Shrivastava, Advocates, for Respondent No.6-MPPCB

Mr. Deepesh Joshi, Advocates for Respondents 7 to 9.

**JUDGMENT**

**PRESENT :**

**HON'BLE MR. JUSTICE SWATANTER Kumar (Chairperson)**

**Reserved on: 8<sup>th</sup> July, 2016**

**Pronounced on: 26<sup>th</sup> July, 2016**

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

The applicant, Rashid Noor Khan, filed a petition under Section 18(1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010 (for short 'Act of 2010') before the Central Zonal Bench of the National Green Tribunal at Bhopal, praying that the Tribunal may direct closure of all the mining operations on the hills situated in Village Damkheda, owned by Respondent Nos. 7 and 8 as per the specifications of the land and give further directions to the Department of Mineral Resources, Government of Madhya Pradesh, not to grant any mining lease in the area, to preserve the eco-system of that area and, directing the authorities to place before

the Tribunal, the details of other illegal mining activities which are being carried out in that area and to direct the State Government not to grant any permission for further construction activity in the vicinity of Kaliyasot River as it would destroy the entire environment and ecology of the area. When this matter came up for hearing, after issuing of notice and upon hearing the parties, the Bench on 29<sup>th</sup> August, 2014 passed the following order:

**“M.A. No. 321/2014**

Applicant has filed this M.A. seeking interim directions that the Respondent Nos. 1 to 4 be directed to ensure that no mining activity is allowed to be carried as it is alleged that the Respondent Nos. 7 to 9 are carrying out such activity without necessary permissions and clearances and accordingly it is submitted that the environment in the area is being degraded.

Learned counsel for the Respondent Nos. 7, 8 & 9 prays time to file reply. The Respondent Nos. 1 to 4 also prays for time to submit the reply.

In the facts and circumstances, we would accordingly allow this application. Accordingly, Respondent Nos. 1 to 4 are directed to ensure that no mining activity is allowed to be carried out and in case there is any equipment or vehicles on the site, the same shall be impounded and shall not be released till further orders of this Court.

Learned counsel Shri Sachin Verma is directed to convey this order to the Respondent Nos. 1 to 4 for immediate necessary action and compliance.

This Application filed by the Applicant is allowed and thus stands disposed of.

**Original Application No. 159/2014**

List on 17<sup>th</sup> September, 2014.”

2. When the matter came up for hearing on 6<sup>th</sup> July, 2015 with regard to the main applications, as is evident from the order, noticing the contents of the Inspection Report submitted by the Ministry of Environment and Forests, the Bench directed that the construction in the disputed area shall remain stayed. It also stayed excavation of any material, cutting of hills or removal of any

material. The respondents were further directed to ensure compliance of the order. This obviously was an interim order as the main applications remained pending for further consideration and final disposal in accordance with law.

3. The above interim order was passed in M.A. No. 321/2014, the application was allowed by the above order and stood disposed of. When the Original Application came up for hearing on 22<sup>nd</sup> September, 2015, it was noticed by the Bench while dealing with the case at that time that the lands in question continued to be recorded as “beed”, which prima facie appears to be Forest Land. However, this fact was disputed by the learned Counsel appearing for the Developers. It was also stated before the Tribunal that Respondent Nos. 7, 8 and 9 were not for mining of minerals but their project was for construction of residential building complex, of rows of houses. It was stated that the word ‘beed/bir’ means pasture or grassland and thus, it would be an agricultural land. A different Bench that heard the matter on 26<sup>th</sup> November, 2015 while referring to the provisions of Madhya Bharat Land Revenue and Tenancy Act and referring to the revenue records observed that the type of construction which was being raised does not require any Environmental Clearance (EC) and essentially by the very character does not envisage any prima facie environmental damage per se, varied the stay on construction by passing the following order, the operative portion of which reads as under:

“What is apparent from the revenue record is that the land in question is a bid land which is now agricultural land and the land is being put to the

construction use after obtaining permission requisite there for. As regards the issue of home for tigers, it is nowhere asserted that the movement of tigers was noticed or the “public notices” as portrayed in the photograph Annexure A-21 were/are displayed on the land in question. We therefore do not wish to continue the stay for the construction except with some rider:

Stay to the construction activity in question therefore shall stand vacated subject to the following conditions:

a. The project proponent the Respondents No. 7, 8 and 9 shall make provision in the construction plans for appropriate rain water harvesting system and get it approved from CGWA.

b. The Project Proponent Respondents No. 7, 8 and 9 shall make provision in the construction plans so as to ensure that no untreated sewage is released either on the land or water body and get drainage plan approved from MPPCB in that regard.

2 There shall be no dumping of soil/ burden etc. in Kaliasot river in whatsoever manner.

3 There shall be no release of untreated sewage in Kaliasot river.

4 There shall be no construction on the portion of the land beyond the land of the Respondents No. 7, 8 and 9 situated at 276 meters from Kaliasot river.

5 The Respondents No. 7, 8 and 9 shall leave enough green spaces for growing trees and shall plant trees as advised by the Forest Department State of M.P.

6 Construction carried on shall be subject to final outcome of this Application.

List the case on 12th January, 2016.”

4. It is evident from the operative part of the order dated 26<sup>th</sup> November, 2015 that it was also an interim order which was specifically kept subject to the final outcome of the main application. Again when the matter came up for hearing on 12<sup>th</sup> January, 2016 before the same Bench which had passed the order dated 6<sup>th</sup> July, 2015, it discussed some of the contentions in relation to the submissions made by the learned Counsel appearing

for the parties in the main application (Original Application No. 159/2014) and it passed an order expressing its inability to agree to the order dated 26<sup>th</sup> November, 2015. The following is the relevant extract of the order dated 12<sup>th</sup> January, 2016:

“In the meanwhile, on 26.11.2015 this Tribunal while considering the matter has allowed conditionally permission for raising construction in the area. We, the members, are unable to persuade ourselves to agree with said order dtd. 26.11.2015 and we accordingly direct the Registry to place entire matter before the Hon’ble Chairperson for consideration and if necessary constituting a larger Bench for deciding the matter. The Registry is accordingly directed to send the record of this matter to be placed before the Hon’ble Chairperson for constitution of larger Bench for hearing and deciding the matter.

The matter may be listed after orders from the Hon’ble Chairperson are received.”

5. This is how the matter has been placed before the undersigned (Chairperson, National Green Tribunal) for orders. The Bench that passed the order dated 12<sup>th</sup> January, 2016 has directed the Registry to place the matter before me for consideration and, if necessary, constitute a Larger Bench for deciding the matter. So the primary question will be whether it is necessary to constitute a Larger Bench in the facts and circumstances of the present case or not.

6. The provisions of the Act of 2010 which would have bearing on the matter in issue, in the present application are Section 21 of the Act of 2010 and Rule 3 and 5 of the NGT (Practices and Procedure) Rules, 2011. It will be appropriate to refer to these provisions at this stage.

**“21. Decision to be taken by majority. –** The decision of the Tribunal by majority of Members shall be binding:

Provided that if there is a difference of opinion among the Members hearing an application or appeal, and the opinion is equally divided, the Chairperson shall hear (if he has not heard earlier such application or appeal) such application or appeal and decide:

Provided further that where the Chairperson himself has heard such application or appeal along with other Members of the Tribunal, and if there is a difference of opinion among the Members in such cases and the opinion is equally divided, he shall refer the matter to other Members of the Tribunal who shall hear such application or appeal and decide.”

**3. Establishment of Tribunal.-**The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

**5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member.-**(1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:

Provided that, a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,-

- (a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or
- (b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

7. The above provisions bring to the fore, the powers of the Chairperson to constitute Benches, distribution of business amongst different benches, direct the cases to be heard by a larger bench wherever necessary and that the decision of the Chairperson in that regard shall be final. In the case of “Wilfred J. & Anr. v Ministry of Environment & Forests & Ors., 2014 ALL (I) NGT REPORTER (2) (DELHI) 137, decided on 17<sup>th</sup> July, 2014, a larger bench of the Tribunal had taken the view that in terms of Rule 5(2), the Chairperson is empowered to direct hearing of cases or class of cases by a Bench consisting of more than two Members wherever it is considered necessary. The power of the Chairperson to transfer cases in accordance with the Rules is free of any other restriction. The purpose is for better attainment of the ends of justice and for better administration of justice. Adopting the principle of Purposive Construction, it was stated that it is a settled law of interpretation that an interpretation which would further the cause and object of the Act and would render it more practical and effective in the interest of justice administration, should be preferred to the one that would invite results to the contrary. The bench held as under:

“40. The Courts are vested with the power of judicial review in relation to legislative acts and even in relation to judgments of the Courts. The power of judicial review has been exercised by the Courts in India sparingly and within the prescribed constitutional limitations. The Courts have also taken a view that functions of the Tribunal being judicial in nature, the public have a major stake in its functioning, for effective and orderly administration of justice. A Tribunal should have judicial autonomy and its administration relating to dispensation of justice should be free of opinions. (Ajay Gandhi v. B. Singh, (2004) 2 SCC 120). The National Green Tribunal has complete control over its functioning and all the administrative powers, including transfer of cases, constitution of benches and other administrative control over the functioning of the Tribunal, are vested in the Chairperson of the NGT under the provisions of the NGT Act.

148. (C) On the cumulative reading and true construction of Section 4 (4) of the NGT Act and Rules 3 to 6 and Rule 11 of Rules of 2011, the Chairperson of NGT has the power and authority to transfer cases from one ordinary place of sitting to other place of sitting or even to place other than that. The Chairperson of NGT has the power to decide the distribution of business of the Tribunal among the members of the Tribunal, including adoption of circuit procedure in accordance with the Rules. An applicant shall ordinarily file an application or appeal at ordinary place of sitting of a Bench within whose jurisdiction the cause of action, wholly or in part, has arisen; in terms of Rule 11 which has an inbuilt element of exception.”

8. These above referred provisions operate in different fields. Rule 3 provides as to what will be the constitution of the bench of the Tribunal essentially, i.e. it must be a bench of one Judicial and one Expert Member. The Chairperson shall have the powers to distribute the work. Rule 3 and 5 relate to the strength of the Bench which will hear the matter, constitution of such Bench as well as reference to a larger bench.

9. In terms of the above mentioned provision, if there is a difference of opinion among the Members hearing the application or

appeal and if the opinion is equally divided, then the matter would have to be heard upon reference by the Chairperson of the National Green Tribunal, who shall then decide the application/appeal. However, if the Chairperson is a Member of the Bench itself which had the difference of opinion and the opinion is equally divided, then the matter will be referred for hearing and decision to the other Members of the Tribunal. No Reference under Section 21 of the Act of 2010 has been made to the Chairperson. Even if for the sake of argument, it is taken that the case is intended to be covered under Section 21 of the Act, then some basic ingredients of the Section are to be satisfied in the light of the facts and circumstances of the present case. It must be noted that the order dated 6<sup>th</sup> July, 2015 is an interim order and so is the order dated 26<sup>th</sup> November, 2015. Both these orders have been passed by a Bench of two Members and have been passed as interim orders which have to remain in force till the final decision of the application. The interim orders passed in the application (the main case) differently by different Benches necessarily need not be termed as conflicting orders, which would require the reference under Section 21 of the Act of 2010. In my considered opinion, there are twin reasons for the Chairperson, National Green Tribunal, not to pass any order of specific reference or Constitution of the Larger Bench in the facts and circumstances of the present case. Firstly, both the orders in question are interim orders passed by different Benches, which would be operative only till the final decision of the Original Application. Secondly, both these orders

are appealable in terms of Section 22 of the Act of 2010 and none of the parties have chosen to invoke the appellate jurisdiction of the Supreme Court in terms of Section 22 of the Act.

10. Interim orders are passed on the basis of prima facie opinion which is tentative in all respects. These orders are passed as a temporary arrangement to preserve the subject matter of the proceedings and the status quo till the matter is decided finally. The intention is to ensure that the matter does not become either infructuous or *fait accompli* before the final hearing. Thus, the interim relief is not conclusive and must essentially merge into the final judgment of the Court or Tribunal as the case may be. This principle is repeatedly stated by the Supreme Court. Reference can conveniently be made to the judgment of the Supreme Court in the case of *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (2009) 5 SCC 694; *Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors.* (2001) 5 SCC 568. Thus, in my considered view and for the reasons afore-recorded, there is no occasion for the Chairperson, NGT, either to constitute a Larger Bench or treat it as a Reference under Section 21 of the Act of 2010. Let the matter be heard by the Bench that is dealing with the matter and the Bench is requested to dispose of the matter finally at the earliest. Till then, the interim order dated 26<sup>th</sup> November, 2015 will remain in force.

11. In the present case, on the one hand, the parties to the lis have not challenged the interim order dated 26<sup>th</sup> November, 2015 while on the other hand there is no conflict of opinion between

Benches which is equally divided between the Members of the same Bench. The property demands that the order of 26<sup>th</sup> November, 2015 should continue to operate subject to the final decision of the main application.

12. With the above directions, the matter is accordingly answered and the Registry is directed to send back the files of the Original Application and the Miscellaneous Applications for hearing before the appropriate Bench at the Central Zonal Bench, Bhopal, which will be listed on 28<sup>th</sup> July, 2016.

New Delhi  
26<sup>th</sup> July, 2015

**Swatanter Kumar  
Chairperson**

**NGT**