

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 116 OF 2017

IN THE MATTER OF:

Karukampally Vijayan Biju
S/o Mr. Karukampally Vijayan
Aged about 42 years,
Resident of: Karukampally House
Cherpu, P.O.-Thrissur Distt
Kerala-680561

.....Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Environment and Forests & Climate Change
Indira Paryavaran Bhavan
Jor Bagh
New Delhi-10003
2. Ministry of Agriculture
Through the Secretary
Krishi Bhavan
Dr. Rajendra Prasad Road
New Delhi-110001
3. State of West Bengal
Through the Director of Agriculture
Plant Protection and Quality Control
230-A, Netaji Subhas Chandra Road
Kolkata, West Bengal-700040
4. M/s. Aura Chem Private Limited
Through its Managing Director
A-201, G.E. Link Building
No. 2, Ram Mandir Road
Goregaon West, Mumbai
Maharashtra-400104
5. M/s Solex Chemicals Private Limited
Through its Managing Director
Suite-11, 'A' Wing, 8th Floor
Appejay Business Centre
Appejay House, Block-A
15, Park Street
Kolkata-700016

6. M/s. Manaksia Limited
Through its Managing Director
8/1, Bikaner Building
3rd Floor, Lal Bazar Street
Kolkata-700001, West Bengal

7. M/s Endura SPA
Through its Chairperson
Having its Headquarters at:
Viale Pietramellara, 5 Bologna
Bologna-40121, Italy

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Vivek Chib, Mr. V. Ranjit Shankar, Mr. Ehsan Javed, Mr. Surya Prakash, Mr. Siju Abraham Verghis and Mr. Asif Ahmed, Advocates

COUNSEL FOR RESPONDENTS:

Mr. Attin Shankar Rastogi, Ms. Ashita Chibber, Advocates for Ministry of Environment, Forest and Climate Change

Mr. B.V. Niren, Advocate for CGSC with Mr. Vinayak Gupta, Advocate
Mr. V. Shekhar, Sr. Advocate with Mrs. Priya Puri, Mr. Pankaj Sharma, Advocates

Mr. Swatantra Rai, Advocate

Mr. Ranjay Kr. Dubey, Mr. Mohammed Riyazudeen, Advocates

NGT

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

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

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

Reserved on: 20th July, 2017

Pronounced on: 27th July, 2017

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, a lawyer, claims to be a public spirited citizen and a renowned social worker. The Applicant claims to have authored books elucidating upon the adverse impacts of globalization and has previously been associated with various kinds of social causes, particularly, in the field of environment.

2. In the present application filed under Section 18(1) read with Section 14(1) and Section 15 of the National Green Tribunal Act, 2010 (for short, "Act of 2010"), the Applicant raises a substantial question of environment regarding the implementation of provisions of the Environment (Protection) Act, 1986 (for short, "Act of 1986") and EIA Notification of 2006 (for short, "Notification of 2006"). The substantial question of environment raised in the application is that the manufacturers of 'insecticides' are circumventing the mandatory requirement of obtaining prior Environmental Clearance (for short, "EC") before commencing their manufacturing activity. It is the case of the Applicant that these manufacturers and the concerned authorities are bypassing the strict rigors of Entry-5(b) of the Notification of 2006 and are carrying on the manufacturing activity of insecticides on the

ground that it is not covered under the Entry-5(b) of the Notification of 2006 by giving a narrow interpretation to the word 'pesticides' appearing in the said Entry-5(b). The Applicant though, has primarily impleaded only four companies/firms, being Respondents no. 4 to 7, but it is also claimed by the said Applicant that the Ministry of Environment, Forest & Climate Change (for short, "MoEF&CC"), i.e., Respondent no. 1 should issue directions requiring all the manufacturers of insecticides to obtain prior EC in terms of the Notification of 2006.

3. It is the case of the Applicant that the Respondents no. 4 and 6, in particular and the manufacturers of insecticides at large, are engaged in manufacturing activity without obtaining prior EC from the concerned authorities. It is submitted that the statutory framework as directed under the Insecticides Act of 1968 (for short, "Act of 1968") is limited to regulate the aspect of manufacturing, import and selling of insecticides. It does not regulate the environmental aspect of such manufacturing activity. On the strength of a license granted under the Act of 1968, the manufacturers cannot be permitted to evade the provisions of the Notification of 2006. The use of expansive word 'insecticide' is a species of the genus 'pesticide'. Therefore, an interpretation which defeats the legislative intent of the Parliament is not tenable and should not be adopted.

4. The Ministry of Agriculture, i.e., Respondent no. 2 on 13th February, 2007 had issued two Certificates of Registration to Respondent no. 6 under Section 9(4) of the Act of 1968 for indigenous manufacturing of two insecticides namely 'D-Trans Allethrin

Technical' and 'Prallethrin Technical'. Respondent no. 4 is an entity controlled by the group of companies owned by Respondent no. 7 which is an Italian company with its headquarters at Italy. The permission for registration had even been declined to Respondent no. 4 *vide* order dated 2nd November, 2007. It is pleaded by the Applicant that Respondent no. 7 through Respondent no. 4 which is owned by Respondent no. 6 transferred its license under the Act of 1968 for manufacturing of 'D-Trans Allethrin Technical' and 'Prallethrin Technical' to Respondent no. 4. As such, Respondent no. 4 is also engaged in manufacturing of the insecticides and is located in the State of West Bengal. That upon coming to know of the fact that Respondent No. 4 has illegally started manufacturing pesticides without having the license granted to the Respondent No. 6 transferred to itself, the Applicant herein obtained certain samples of D-Trans Allethrin and Prallethrin manufactured by the Respondent No. 4 and 5 and sent the said samples to Chennai Testing Laboratory Pvt. Ltd. for their testing. It is submitted that the Report furnished by the said laboratory concluded that both the samples of the insecticides 'D-Trans Allethrin' and 'Prallethrin' do not comply with the allowed safe composition. For 'D-Trans Allethrin', the samples analysis recorded the following:

“.....[t]he samples analysis showed around 29 impurities/compounds in the sample. The permitted composition has only 3 impurities/compounds.

...

Therefore this sample of D-Trans Allethrin is not complying with the allowed safe composition”

5. The Applicant further states that through the process of independent research, has obtained voluminous scientific evidence which highlights these hazardous effects of D-Trans Allethrin and Prallethrin, as detailed below:

D-Trans Allethrin:

- a) A study published by the PAN Pesticides Database, states that the chemical is possibly carcinogenic, and further that wrongful exposure can cause irritation of the skin and eyes, irritability to sound or touch, nausea, headaches, dizziness, vomiting, diarrhea, excess salivation and fatigue.
- b) The New Jersey Department of Health, USA published a report on indicated wrongful exposure could also cause skin allergies, damage to liver and kidneys, seizures or loss of consciousness.

PRALLETHRIN:

- a) A study published by PAN Pesticides Database indicates that exposure to prallethrin could cause irritation of skin and eyes, irritability to sound and touch, headache, dizziness, nausea, vomiting, diarrhea, excessive salivation and fatigue. In extreme cases, fluid in the lungs, muscle twitching or seizures could occur.'

6. The Applicant claims that he has also obtained research material published by Cornell University which further highlights the harmful effects of D-Trans Allethrin on fish and shows that while D-Trans Allethrin is very toxic to fish, Prallethrin is extremely toxic to both bees and fish. Therefore, it is urged that these substances, with proven harmful effects may be released during the process of manufacture into air and water system constitute prima facie violations of the Air (Prevention and Control of Pollution), 1981 and the Water (Prevention and Control of Pollution) Act 1974.

On the basis of the above material, the Applicant has prayed an order prohibiting Respondents no. 4, 5 and 6 from carrying out manufacturing and production of insecticides 'D-Trans Allethrin Technical' and 'Prallethrin Technical' activity without obtaining prior EC under the Notification of 2006. It is also prayed that these respondents should obtain insecticides Registration Certificate from the concerned authorities under the Act of 1968. These respondents should also obtain Consent to Operate for manufacturing of insecticides from the concerned Board.

7. The claim of the Applicant is seriously contested by the private respondents. It is stated in the reply that the present application is motivated as no other manufacturer except the three private respondents have been impleaded in the application. It is stated that Respondent no. 4 has merged with Respondent no. 5 and, therefore, Respondent no. 6 is no longer manufacturing insecticides and as such could not be impleaded as a respondent in this application as it is not a necessary party. Therefore, no relief can be granted against Respondent no. 4. The common stand taken by these private respondents is that the contentions raised by the Applicant both in fact and in law are incorrect. It is submitted that the term 'pesticides' is not defined in the Notification of 2006 or under the Act of 1968. The definition of 'pesticides' is given under the Pesticides Management Bill, 2008 and it is defined there as under:

'(s) Pesticide means any substance or mixture of substances of chemical or biological origin intended for preventing, destroying, attracting, repelling, mitigating or controlling any pest including unwanted species of plants or animals during the production, storage, transport and

distribution of agricultural commodities or animal feeds including substances intended for use as plant growth regulator, defoliant, desiccant, fruit thinning agents, or sprouting inhibitor and substances applied to crops either before or after harvest to protect them for deterioration during storage and transport.'

8. Entry-5(b) of the Notification of 2006 does not specify the word 'insecticides' and by implication it cannot be held that it includes insecticides. It is stated that 'agriculture' is the lynchpin of the Indian economy. This necessitates the use of high yielding variety of seeds, balanced use of fertilizers, judicious use of quality pesticides along with education to farmers and the use of modern farming techniques. The pesticide manufacturing consists of chemical synthesis of active ingredients for crop protection, which is very often the synthesis of complex organic chemical compounds and subsequent formulation of these active ingredients. Thus, the pesticides are chemicals used in agriculture and Entry-5(b) should be read in that light. The Technical EIA Guidance Manual clearly specifies that the products manufactured by Respondent no. 5 do not fall within Entry-5(b) of the Notification of 2006. These private respondents are manufacturing 'D-Trans Allethrin Technical' and 'Prallethrin Technical' as shown in the Registration Certificates and even according to the WHO specifications and evaluations for public health pesticides on Prallethrin, are stated to be toxic to bees and fish but of low toxicity to birds. The products manufactured by the respondents do not require any prior EC.

9. Respondent no. 2, i.e., Ministry of Agriculture has taken the stand that insecticides, broadly known as pesticides, are toxic substances, capable of causing hazards. Therefore, their import,

manufacture, sale, transport, distribution and use are regulated under a comprehensive legislation, namely, the Insecticides Act, 1968 and the Rules framed there-under. The Act provides for a statutory scientific body, namely, Registration Committee constituted in terms of Section 5 of the Act of 1968 after scrutinizing their formulae and verifying claims made by the parties concerned. For safety and efficacy of pesticides and also to avoid arbitrariness, the guidelines have been prepared by the Registration Committee under different categories and which are in public domain.

10. Respondent no. 1, i.e., MoEF&CC has taken a clear stand that under Entry-5(b) of the Notification of 2006, 'insecticides' are covered. It is stated that manufacturing or production units of pesticides industry and pesticide specific intermediates (excluding formulations) could commence only after receipt of the prior EC from the Central Government. The chemicals under question, namely, 'D-Trans Allethrin Technical' and 'Prallethrin Technical' are the types of insecticide; hence covered under Entry-5(b). In paragraph 4 of their reply, MoEF&CC stated as follows:

“Pesticides” are chemical compounds that are used to kill pests, including insects, rodents, fungi and unwanted plants (weeds). Pesticides are used in public health to kill vectors of disease, such as mosquitoes, and in agriculture, to kill pests that damage crops. By their nature, pesticides are potentially toxic to other organism, including humans, and need to be used safely and disposed of properly.”

At this stage, we would like to notice that we have recorded the facts which are necessary and relevant for the purpose of deciding the main issue arising in the present case, which is whether or not insecticides

are covered under the expression ‘pesticides’ appearing in Entry-5(b) of the Notification of 2006?

11. It also requires to be noted at this stage that the present Applicant on the above facts had approached the Hon’ble Supreme Court of India by filing Writ Petition (Civil) No. 730 of 2016, which was dismissed as withdrawn with liberty being granted to the Applicant *vide* order dated 27th September, 2016 which reads as follows:

“Upon hearing the counsel the Court made the following order:

After arguing the matter for some time, learned counsel for the petitioner seeks leave to withdraw this writ petition reserving liberty for the petitioner to seek such other relief as may be permissible in law in appropriate proceedings before the appropriate forum.

The writ petition is dismissed as withdrawn with the liberty prayed for.

We make it clear that we express no opinion on the merit of the contentions urged before us.”

In view of the liberty granted by the Hon’ble Supreme Court, the Applicant has filed the present application.

12. In order to answer the above-stated issue, first of all we need to refer to Entry-5(b) appearing in the Notification of 2006 which reads as follows:

Project or activity		Category with threshold limit		Conditions, if any
		A	B	
1				
(1)	(2)	(3)	(4)	(5)
		Manufacturing/Fabrication		
5(b)	Pesticides industry and pesticide specific intermediates (excluding formulations)	All units producing technical grade pesticides		

13. A bare reading of the above Entry shows that the expression 'insecticide' is not specifically mentioned in the Entry-5(b). The only question that needs to be answered by the Tribunal is whether or not the expression 'pesticide' would deem to include insecticide. The word 'insecticide' needs to be read into Entry-5(b) by virtue of necessary implication.

14. MoEF&CC is the regulatory authority. In terms of the provisions of the Act of 1986 and the Notification of 2006, it is for MoEF&CC to regulate the entire application and grant or otherwise of the EC under these laws. The Notification of 2006 has been issued by the MoEF&CC, in exercise of the powers conferred upon it by sub-Section-1 and Clause-5 of the sub-section-2 of Section-3 of the Act of 1986 and Clause (d) of sub-rule 3 of Rule-5 of the Environment (Protection) Rules, 1986. These are the provisions which empower MoEF&CC to regulate various environmental aspects stated therein. The Notification of 2006 makes it mandatory for every industry or an activity or a project which is covered under the Entries of the Notification of 2006 to obtain prior EC to carry on any such activity or commencement of the project. It is a condition precedent.

15. The MoEF&CC being a regulatory authority, has taken a clear stand in para-4 of its reply referred (supra) that the expression and definition of term 'pesticide' includes insecticides, herbicides, fungicides and rodenticides. In other words, according to the regulatory body the expression 'pesticide' is inclusive of the expression insecticides. It being so, the concerned industry is required to take prior EC from the MoEF&CC/SEIAA, as the case may be. The

contention of the private respondent that the term 'insecticide' does not appear in Entry-5(b) of the Notification of 2006 and unless specifically added by an amendment, the view of MoEF&CC would be irrelevant, and has no merit. The opinion of a regulatory authority certainly is relevant when the Tribunal is interpreting and examining the scope of Entry-5(b), particularly, when such view is in consonance with the scientific principle and general understanding of the subject.

16. The Applicant has referred to various studies which show that the insecticides containing 'D-Trans Allethrin Technical' and 'Prallethrin Technical' are injurious to human health and environment. It is necessary that they should be placed under proper regulation before they can be permitted to be manufactured and directly or indirectly released into the environment.

17. The Applicant has also placed on record analysis reports to show that the samples of the insecticides manufactured by the respondents, i.e., 'D-Trans Allethrin Technical' and 'Prallethrin Technical' do not comply with the safe composition and that impurities were found in the samples. These chemicals and their wrongful exposure can cause various illnesses and damage to human body. Of course, an attempt has been made by Respondent no. 5 to show that they are manufacturing products which are used for making mosquito repellent coils, mats, vaporizers and kachhua chhap agarbatti are not pesticides. The respondents have placed reliance upon the Technical EIA Guidance Manual that the chemicals, manufactured by the said respondents, do not have any adverse affects on the health. This is challenged by the Applicant on the ground that chapter 3 of the

Technical EIA Guidance Manual relied upon by the Respondent no. 5 is not the correct copy and the Guidance Manual on the net clearly show that 'D-Trans Allethrin Technical' and 'Prallethrin Technical' have adverse impacts on human health.

18. The MoEF&CC also published a Technical EIA Guidance Manual for pesticides industry and specific intermediates. In this manual under Table 3.1 enumerating production and table 3.2 showing consumption of imported pesticides, Allethrin has been shown as pesticides. Pesticides are chemicals used in agriculture and Entry-5(b) of the Notification of 2006 must be construed accordingly.

Merely if a particular chemical is not used only for agriculture purposes, it would not be a reason *per se* to exclude the insecticide from the ambit and scope of the expression 'pesticides'. Prallethrin is the common name for mixture of 8 stereo isomers. These very chemicals could be used even for manufacturing of pesticides. The primary factor would not be mixture or content of the chemical but its environmental impacts for the purpose of Act of 1986 and the Notification of 2006.

19. The reference made by the respondents in its reply to the report of the World Health Organization (for short, "WHO") shows that Prallethrin is very toxic to bees and fish but of low toxicity to birds. As it is not intended for use in agriculture, adverse environmental effects and human dietary exposures are not expected. Prallethrin is used in public health against mosquitoes, houseflies and cockroaches. Another document filed by the respondents itself on record is the WHO specifications and evaluations of pesticides for public health.

Under the chapter Prallethrin the information about this chemical, in relation to public health, is described under the head of pesticides.

20. There is no dispute about the fact that these respondents are manufacturing 'D-Trans Allethrin Technical' and 'Prallethrin Technical', which would squarely fall within the ambit and scope of pesticides. Insecticides are chemicals which would by necessary implication be deemed to be included in the expression 'Pesticides'. The pesticide is a genus and insecticide is the species. We are unable to find any infirmity in the stand taken by MoEF&CC for scientific, legal or any reasons otherwise.

21. This view is fully substantiated by the judgement of the High Court of Orissa at Cuttack in the case of '*Sonic Electrochem (P) Ltd. vs. State of Orissa and Others*', (1994) 92 STC 117. In this case, the High Court was concerned with the validity of an order of assessment where the official respondents had declined to grant exemption from taxation to the petitioner on the ground that 'mosquito repellent mat' which the company was manufacturing under the trade name 'Jet' containing 'De-Allethrin 4%' being insecticide was not covered by the expression 'pesticides' which was entitled to exemption under Section 9A of the Orissa Sales Tax Act, 1947. The Court while repelling the argument raised on behalf of the official respondents held as under:

"5. In view of the certificate issued by the authorities under the Insecticides Act as well as the licence issued in favour of the petitioner, we sustain the finding of the appellate authority that what is manufactured by the assessee is an "insecticides" and, therefore, the only question that arises for consideration is whether "insecticides" can be taken to be a species of the genus "pesticide". Mr. Mohanty for the petitioner contends that the expression "pesticide" is a wheel

which includes several radial arches within itself called “fungicides”, “bactericides”, “nematocides”, “insecticides”, “herbicides”, “algicides”, so on and so forth and in that view of the matter, when the exemption notification exempts “pesticides” from the purview of taxation, there is no justification to exclude “insecticides” from the same. The learned Additional Standing Counsel appearing for the Revenue, on the other hand, contends that the expression “pesticides” should have the meaning “the chemicals which destruct pests and which are used for the purposes of agriculture” and therefore, an “insecticides” cannot be included within the expression “pesticides”. At this stage, it would be appropriate for us to notice that though the appellate authority in his order dated September 18, 1992, in disposing of the appeals as per annexure 2 had indicated that to give relief to the agriculturists “pesticide” was withdrawn and was made tax free with effect from April 5, 1986, but no material could be produced before us by the learned counsel appearing for the Revenue to indicate the aforesaid intention in the notification of exemption. In other words, the aforesaid observation of the appellate authority is based on no evidence. The ordinary meaning of the word “pest” as given in chamber’s Twentieth Century dictionary is:

“Any deadly epidemic disease; plague; anything destructive; any insect, fungus, etc., destructive of cultivated plants:.....”

and meaning of the word “pesticides” is “pest killer”. This being the ordinary meaning of the word “pest” and “pesticides”, we really fail to understand how “pesticides” will not include “insecticides” within it. If one of the meanings of the word “pest” is “any insect” and the meaning of the word “pesticides” is “pest killer”, then obviously, any material which is an “insect killer” being an “insecticides” would come within the expression “pesticides”. In “The New Pesticide User’s Guide” by Bert L. Bohment, Professor and Agricultural Chemicals Co-ordinator, College of Agricultural Science, Colorado State University, U.S.A. the picture of a wheel has been given with all its radial arches with the nomenclature “The All-inclusive Pesticide Wheel” and “insecticide” has been noted in one of the arches. In that book, the author has stated that “the term ‘pesticide’ also applies to compounds used for repelling, attracting, and sterilizing insects”. The learned author has stated that during the early years of pesticide

development, farmers were considered to be the primary users. However, as new chemicals were produced and new methods of formulation were developed and new application techniques discovered, new audiences found uses for pesticides, and today, pesticides are still a major part of agriculture's production tools, but have also found uses by industry, State and Federal Governments, municipalities, commercial pesticides applicators, and the public as a whole including home-owners and backyard gardeners. It has also been stated in the aforesaid book that many species of insects are important pests which affect almost all of men's activities and there are well over one million known species of insects in the world, but very small percentage of these are considered as economically important pests. The expression "pesticide" has been defined in the aforesaid book in the "*Glossary for Pesticide Users*" as follows:

"Pesticide (economic poison) As defined under the Federal Insecticide, fungicide, and Rodenticide Act, economic poison (pesticide) means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, or weeds, or any other forms of life declared to be pests; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant."

6. The Asian Development Bank has published a book called "*Handbook on the use of Pesticides in the Asia-Pacific Region*" wherein it has been clearly stated:

"For the purpose of this handbook, pesticides include insecticides (to control insect pests), herbicides (to control weeds), fungicides (to control fungal diseases) nematocides (to control nematodes) and rodenticides (to control rats)."

7. In the Encyclopedia Americana, "pesticides" are classified according to the type of organisms they attack; for example, substances that kill insects are known as insecticides; agents that kill fungi are known as fungicides. In this view of the matter, once the goods manufactured by the assessee are held as "insecticides" by the appellate authority, as has been stated earlier, there is no justification to exclude the same from the exempted article "pesticides". Since "pesticides" include "insecticide", we are unable to give a restricted meaning to the expression "pesticide" as has been done by the appellate authority. The authorities

having exempted “pesticides” from the levy of tax in exercise of powers under section 6 of the Orissa Sales Tax Act without having any limitation with regard to the kind of “pesticides”, it is difficult for us to give a limited meaning to the aforesaid expression “pesticides”. In our considered opinion, “insecticides” being also a species of “pesticides” would be entitled to the exemption from levy of tax in view of the notification of the State Government under section 6 of the Orissa Sales Tax Act and since the appellate authority has come to the conclusion that the goods manufactured by the assessee are “insecticide”, the said item is entitled to exemption in question. We would accordingly set aside the orders passed by the assessing authority as also the appellate authority in relation to assessment years 1989-90 to 1991-92 and direct that the assessing officer should make a fresh assessment bearing in mind the law laid down by us in this judgement.”

22. The reasoning given by the High Court can be safely adopted by the Tribunal to arrive at the conclusion that the expression ‘pesticide’ takes within its ambit insecticides as well. The expression ‘pesticide’ appearing in Entry-5(b) must receive liberal construction. The Act of 1986 and the Notification of 2006 is social welfare legislation and has been primarily enacted to protect the environment and public health. An interpretation which would further the cause and object should be adopted in contradistinction to an interpretation which would frustrate the object of the Act.

23. At this stage, we may also refer to a judgement of the Tribunal in the case of *M/s. Ardent Steel Limited vs. MoEF & Ors.*, Appeal No. 05 of 2014, 2014 ALL(I)NGT REPORTER (2) (DELHI). In this case, the Tribunal was concerned with the question whether Entry-3(a) of the Schedule to the Notification of 2006 (metallurgical industries) (ferrous and non-ferrous) includes ‘stand alone’, iron ore, pelletization plant or not. If the answer was in the affirmative, the Appellant would be liable

to take prior EC. The Tribunal after discussing object and reasons of the Act of 1986 and the relevant laws concluded that the Entry-3(a) is to be given a liberal interpretation, keeping in view the legislative intent and the 'stand alone' iron ore pelletization plant was held to be covered under the Entry-3(a). It will be useful to refer to the following parameters of this judgment:

“13. First and foremost, we must examine as to how an Entry in a social welfare legislation like the Act of 1986 should be interpreted and what principles of interpretation are to be applied while dealing with such an Entry. We may at this stage refer to a recent judgment of the Tribunal of “Haat Supreme Wastech Pvt. Ltd. v State of Haryana, 2013 All (I) NGT Reporter (2) (DELHI) 140”, where the Bench of the Tribunal was concerned with interpreting another Entry of the same Schedule i.e. Entry 7(d) of the Schedule to the Regulations of 2006-“Common hazardous waste treatment, storage and disposal facility.” It will be useful to notice the following discussion from the said judgment:

“The Act of 1986 and the rules afore-referred, in particular Rules of 1998, are socio-welfare legislations as they have triple objects: firstly, they are welfare legislations in as much as they mandate the State to provide clean and decent environment. Secondly, they provide for remedies which could be invoked by different stakeholders and even by any aggrieved person and thirdly, the consequences of violating the environmental provisions including punitive actions. Thus, while interpreting the relevant provisions, these concepts have to be appropriately considered by the Tribunal. The object of these provisions being wholesome environment, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied. While dealing with a social welfare legislation, the provisions and the words therein are to be given a liberal and expanded meaning. Of course, liberal construction does not mean that the words shall be forced out of their natural meaning but they should receive a fair and reasonable interpretation so as to attain

the object for which the instrument is designed and the purpose for which it is applied. Both the object and purpose of an Act in relation to its application are thus, relevant considerations for interpretation. The Courts have also permitted departure from the rule of literal construction so as to avoid the statute becoming meaningless or futile. In the case of *Surjit Singh v. Union of India* (1991) 2 SCC 87 and *Sarajul Sunni Board v. Union of India* AIR 1959 SC 198, the Supreme Court has also held that it is not allowable to read words in a statute which are not there, but where the alternative allows, either by supplying words which appear to have been accidentally omitted or by adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words. It is also a settled canon that in case of a social or beneficial legislation, the Courts or Tribunals are to adopt a liberal or purposive construction as opposed to the rule of literal construction.

These well-known principles of interpretation have to be applied, but with caution. Construction favorable to achieve the purpose of enactment but without doing violence to the language is of paramount consideration. In the case of *Shivaji Dayanu Patil & Anr. v. Vatschala Uttam More* (1991) 3 SCR 26a, the Supreme Court while dealing with a beneficial provision of the Motor Vehicles Act, 1939 held as under:

“It is thus evident that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.”

The doctrine of reasonable construction implies that the correct interpretation is the one that best harmonizes the words with the object of the statute. Lord Porter in *Bhagwan Baksh Singh (Raja) v Secretary of State*, AIR 1940 Privy Council 82, stated: “right

construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration.” The Tribunals will also keep in mind that the application of a given legislation to new and unforeseen things and situations broadly falling within the statutory provisions is within the interpretative jurisdiction of the courts. In the case of Charan Lal Sahu v Union of India, AIR 1990 SC 1480, the Hon’ble Supreme Court while dealing with the provisions of the Bhopal Gas leak disaster and directing the government to give interim relief to the victims as a measure in articulate premise from the spirit of the Act, declared this approach to the interpretation of the Act as constructive intuition which in the opinion of the court was a permissible mode of viewing the acts of the Parliament.

Keeping in view the legislative intent, object of the Act and the Rules framed thereunder and the purpose sought to be achieved, recourse to any of the above doctrine would be appropriate. Certainly, it is the obligation of the respective governments to prevent and control pollution on one hand and provide clean environment to the public at large on the other. The industrial development cannot be permitted to ignore environmental interests and damage the ecology or ambient environmental quality irretrievably. The units of plants which violate the prescribed standards and cause serious pollution, are to be dealt with strictly in accordance with the prescribed penal or other consequences which may even include the closure of a unit. The rules primarily provide a regulatory regime that is required to be adhered to for the purposes of permissive industrial activity. All these regulatory regimes whether relating to municipal waste, hazardous waste or biomedical waste, owe their allegiance to the substantive provisions and object of the Act of 1986. Reasonable construction is intended to provide a balance between the industrial development and the environment. Principle of ‘constructive intuition’ would also have its application to the provisions of the Act, the Rules and particularly the Notification of 2006 in relation to dealing with the entries provided in the Schedule. The liberal construction rule would help in giving a purposeful meaning and interpretation to the provisions of the Act and the Rules for attainment of the basic object, i.e. cleaner environment.

From the above discussion, it is clear that to an Entry of the Schedule of a social welfare legislation, the principle of reasonable and/or liberal construction should be adopted to ensure that the object and purpose of the Act is undefeated by such interpretation. Most suitable interpretation would be one which would further the cause of the Act and ensure prevention and control of pollution rather than provide escape route to the industry from taking anti-pollution measures and complying with the provisions of the Act.”

“14. As far as the Entry 3(a) of the Schedule to the Regulations of 2006 is concerned, another reason for the Tribunal to adopt a liberal or wider interpretation of it is that the process of pelletization is that of a low grade iron in our country, that is not set for great use. Large capacity for pelletization and beneficiation is aimed at utilizing the lower grade iron ore and are presently under way. The Standing Committee on Coal and Steel of the Lok Sabha vide its 38th Report vide primarily examined the review of export of iron ore policy and observed: “we seek pelletization as a necessary form of upgrading the existing low quality ore”. This clearly shows that pelletization is a process adopted for upgradation of low quality iron ore to make it fit for use in the process of making steel finished products. It is thus only a stage of the composite and complete process of making final steel products from the iron extracted from the mines.”

“15. As noticed above, pelletization is a part of a larger process of manufacturing or making steel items for human consumption or otherwise and is a process which acts as the feeder to the further process for extraction of iron and steel from iron ore and no other purpose. It certainly causes serious pollution and thus requires to be checked and controlled at the very threshold. There is nexus between carrying on the process of pelletization and causing pollution. Thus, it gives rise to environmental issues which must be dealt with in accordance with law. The vision of the Act of 1986 would come into place once such nexus is established and substantial questions in relation to environment arise. In the case of *Kehar Singh v State of Haryana*, 2013(1) – All India (NGT) Reporter 556, the Tribunal took a view that the cause of action must have nexus to such disputes which relates to the issue of environment / substantial question relating to environment or any such proceeding to trigger the prescribed period of

limitation and held that cause of action must be read in conjunction with and should take colour from the expression 'such dispute'. 'Such dispute' must be one which is relatable to environment. In that case, the Tribunal concluded that publication of Section 14 Notification under the Land Acquisition Act would not trigger the limitations in terms of Section 14 of the NGT Act. Similarly in the present case, when direct nexus between the carrying on of the business and resultant pollution is established and the process in its entirety is covered under the Entry, then such Entry, i.e. Entry 3(a) of the Schedule to the Regulations of 2006 would receive a wider connotation and would take within it the process of pelletization as part of primary metallurgical activity. Of course the matter would be different and the Entry may not receive such interpretation if pelletization was not an integral part or was in no way relatable to the entire process of making steel. Further, the process of pelletization results in consequential environmental impact as far as pollution is concerned but both these factors are conspicuous by their very absence in the technical and scientific material placed before us."

"29. We have already noticed various technical literatures placed by the parties before us or otherwise, that clearly show that the process of pelletization is a serious air pollutant. There is a definite and increasing trend in this process to purify the iron ore and to convert it into fine iron ore pellets which are to be then used for the purposes of manufacturing/ making of varied steel items. The Regulations of 2006 is a Notification of wide spectrum to make it mandatory for the specified project and industries to seek Environmental Clearance in the interest of the environment. The said Notification having been issued under the provisions of the Act of 1986 has to be read and construed with reference to the provisions of the said Act, its objects and purposes. Compliance to the provisions of the Regulations of 2006 is independent of compliance to other environmental laws in force. The legislature in its wisdom has placed this additional obligation upon the project/industry/unit which are seriously polluting industries, to ensure environmental protection. As per the law stated in the case of Kehar Singh (supra), precept to provide interpretation is to examine true nexus between the environmental pollution and the prevention and control thereof, in terms of the statutory provisions. We may examine Entry 3(a) of the

Schedule to the Regulations of 2006 even with the aid of 'Doctrine of Purposive Construction'. The law has been enacted with the object of prevention and control of pollution. The intent of Entry 3(a) is to cover the entire process of metallurgical industry and to prevent and control the pollution of various kinds that arises from such process. This was the mischief that was sought to be checked. There should be higher standards of checking environmental pollution by the industries involved in primary or secondary metallurgical processes.

30. The MoEF has been vested with the powers to issue directions, specify measures and even frame regulations for carrying out the object and purposes of the Act of 1986. In a sense, it is the Ministry that is required to perform expert functions under the provisions of the said Act. After considering various aspects and consulting various experts in and outside the Ministry, it has come to the conclusion that Entry 3(a) would cover pelletization plants and they would be required to take Environmental Clearance. Besides the fact that it is the declared interpretation by the body vested with such powers, even we as a Tribunal consisting of Expert Members would have no hesitation in accepting the said view for the reasons afore-stated. The Learned Counsel appearing for the Applicant while relying upon the Judgment of the Supreme Court in the case of Ram Chandra Mawa Lal and others v State of Uttar Pradesh and others, 1984 [Supp] SCC 28 contended that the conflict between the laws i.e. the State Board opinion and MoEF should be resolved by giving precedence to the State Board opinion being the State subject. We do not think this contention has any merit. Firstly, there is no conflict between the Central and the State law and as such the case of Ram Chandra Mawa Lal (supra) has no application what so ever to the facts of the present case. Here we are concerned with the opinion expressed by State Boards and the final view taken by the MoEF. Having considered various aspects we are unable to find any inconformity in the final view taken by the MoEF holding that Entry 3(a) takes in its ambit pelletization plants as well.

We may usefully refer to the Judgment of the Bombay High Court in the case of Shankar Raghunath Jog v Talaulicar and Sons Pvt. Ltd, 2011 (5) All Maharashtra Law Reporter 803, where the Court took the view that "it is settled law that for the purposes of interpretation of the statute, the

entire statute has to be read in its entirety. The purpose and the object of the Act must be given its full effect. Furthermore, in the case of the present nature involving environmental issues, the principles of purposive construction must come into force. Considering the said aspects, Para III of the said EIA Notification, 1994 would have to be construed with reference to the context vis-à-vis the other paras of the said Notification of 1994 so as to make it consistent with the purpose and object of the said Act of 1986.” It may be noted here that the Notification of 1994 was substituted by the Regulations of 2006.”

24. Similar view was also taken by the Tribunal in the case of ‘*Vikrant Kumar Tongad vs. Noida Metro Rail Corporation and Ors.*’, M.A. No. 1093/2015 in O.A. No. 478/2015, 2016 NGTR (2) PB 234 while interpreting Entry-8(b) of Schedule to the Notification of 2006, the Tribunal held that the township and area development project would cover the project in question as well, by applying purposive and liberal construction.

25. It cannot be disputed and in fact, has not been disputed that the process adopted in manufacturing of such chemicals would have environmental impacts. Viewing it from another angle, no prejudice is caused to the private respondents and manufacturers like them, if they are called upon to take prior EC. Protection of environment is enforcement of the fundamental right to decent and clean environment. State and the regulatory authorities are under obligation to ensure that economic gains should not be permitted to defeat the interest of environment. Environmental protection is of paramount concern. Once the manufacturers of these chemicals satisfy the regulatory authority that they have taken all protections and precautionary measures to ensure that they would not cause any

pollution or degradation of environment, they are free to manufacture the stated insecticides in accordance with law.

26. However, in the facts and circumstances of the case, they cannot escape compliance to the provisions of the Notification of 2006 on the ground that insecticides are not pesticides. The prohibitory relief claimed by the Applicant cannot be granted for variety of reasons. Firstly, these units have been operating for long time and after complying with the relevant laws. Not only the Applicant but even the concerned authorities, to some extent, were under the impression that such manufacturing units may not be covered under the Entry-5(b) of the Notification of 2006. Furthermore, the Applicant itself has approached the Tribunal after lapse of considerable time, but however, have saved the limitation on the ground of continuing cause of action. Since the Tribunal has decided the question of law by this judgement, it would not be just, equitable and fair to shutdown their manufacturing units at this stage. They should be provided an opportunity to comply with the laws of environment and take appropriate precautionary and preventive steps without any further delay. Thus, for these reasons, we do not consider it necessary to pass any prohibitory orders against the private respondents.

27. For the reasons afore-stated, we partially allow this application and dispose of the same with the following directions:

1. We decline the prohibitory relief claimed by the Applicant directing Respondents no. 4, 5 and 6 and other such manufacturers of the insecticides not to carry on such manufacturing activity.

2. We direct and hold that the expression 'pesticides' squarely takes within its ambit and scope the expression 'insecticides' as well. Resultantly, all the manufacturers of insecticides and particularly the private respondents are liable to take prior EC in terms of the Notification of 2006.
3. We direct MoEF&CC to issue a public notice and a general circular to all the Pollution Control Boards and other competent authorities informing them about this judgement of the Tribunal and providing a period of six weeks to the private respondents and all other manufacturers of insecticides to apply for obtaining the EC for manufacturing of such insecticides. If such applications are filed within the specified time, MoEF&CC shall process the same and pass appropriate orders expeditiously.
4. If the units manufacturing insecticides do not apply for EC within a period of six weeks from the date of pronouncement of this judgement, MoEF&CC and all other concerned authorities shall take appropriate action in accordance with law against such manufacturers of insecticides.

28. With the above directions, this application is disposed of. The parties to bear their own costs.

**Swatanter Kumar
Chairperson**

**Raghuvendra S. Rathore
Judicial Member**

**Bikram Singh Sajwan
Expert Member**

New Delhi
27th July, 2017