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

ORIGINAL APPLICATION NO. 87 OF 2015
(M.A. NO. 262 OF 2015 & M.A. NO. 528 OF 2015)

IN THE MATTER OF:

SOCIAL ACTION FOR FOREST AND ENVIRONMENT (SAFE)
THROUGH ITS PRESIDENT
MR. VIKRANT TONGAD
A-93, Sector-36
Greater Noida
Uttar Pradesh-201308

....Applicant

Versus

1. Union of India
   Through the Secretary
   Ministry of Environment, Forests & Climate Change
   Indira Paryavaran Bhawan, Jor Bagh Road,
   New Delhi-110003

2. Union of India
   Through the Secretary,
   Ministry of Water resources,
   River Development and Ganga Rejuvination
   Sham Shakti Bhawan, Rafi Marg
   New Delhi

3. Uttarakhand Forest Department
   Through Principal Secretary Forest
   Uttarakhand Secretariat
   4, Subhash Road, Dehradun
   Uttarakhand.

4. State of Uttrakhand
   Through its Chief Secretary
   Uttarakhnad Secretariat
   Subhash Road
   Dehradun-248 001
   Uttrakhand

5. District Magistrate
   Pauri Garhwal
   Collectorate Compound
   Pauri Garhwal, Uttarakhand
6. Indian Association of Professional Rafting outfitters (IAPRO)

Through its authorized representative,
Mr. Mani Shankar Ghosh,
Having its registered office at:
29/1-A, Anekant Palace, Rajpur Road,
Dehradun, Uttarakhand- 248005.

7. Himalayan Outdoors Ptv. Ltd.
Through its Authorised representative,
Mr. Prateek Kalia,
Having its registered office at:
Shop No. 8, Om Plaza,
Opposite Madhuban Ashram,
Kailash Gate, Muni Ki Reti, Rishikesh,
Uttarakhand

8. Himalayan River Runners (India) Pvt. Ltd.
Through its authorised representative,
Mr. Yousuf Zaheer,
Having its registered office at:
N-8, First Floor, Green Park,
New Delhi- 110016

9. Aquaterra Adventures (India) PVT. Ltd.
Through its authorised representative,
Mr. Vaibhav Kala
Having its registered office at:
S-507, Ground floor,
Greater Kailash-II
New Delhi- 110048.

10. Snow Leopard Adventure (India)
Through its authorised representative,
Mr. Nandan Singh,
Having its registered office at:
1st Floor, CSC, Sector B-1, Vasant Kunj,
New Delhi-110017

11. Rimo Expeditiors
Through its Proprietor
Mr. Chewang Motup Goba
Having its office at:
Hotel Kanglhachen Complex, Leh,
Ladakh- 194101, J&K.

12. Indo Ganga Holidays Pvt. Ltd
Through its authorised representative
Mr. Manoj Todaria,
Having its registered office at:
29-A-1, Anikant Palace, Rajpur Road,
Dehradun, Uttarakhand.

13. Red Chill Adventure Sports Pvt. Ltd.
Through its Authorised representative,
Mr. Vipin Sharma,
Having its registered office at:
Room No 307 Sai Chambers 783/16,
D.B. Gupta Road, Karol Bagh 110005,
New Delhi.

14. J2 Adventures
Through its Proprietor,
Mr. Tilak Joshi,
Having its office at:
50, Subash Nagar, Dehradun,

15. Riverwilds.
Through tir proprietor,
Partha Pratim Saha
Having its office at:
10/17 A-3, Mehrauli Ward 1,
New Delhi 110030.

16. Questraits Adventures Pvt. Ltd.
Through its authorised representative,
Mani Shankar Ghosh,
Having its registered office at:
5L, Second Floor, Jungi House,
Shahpur Jat, Delhi 110049

17. Alpinestor Holidays Pvt. Ltd.
Through its authorised representative,
Mr. Manjul Rawat,
Having its registered office at:
19 Vikas Lok Lane-1,
Sahastradhara Road,
Dehradun- 248001, Uttarakhand

18. The Adventure Journey
Through its Proprietor,
Mr. Anirudh Rawat,
Having its office at:
Muni-ki-reti, Rishikesh- 249201,
Uttarakhand.

19. Great Northern Himalaya.
Through its Proprietor
Mr. Amit Bhatia,
Having its office at:
604, Rajendra Nagar, Street No. 4,
Lane No 9, Dehradun,
Uttarakhand 248001.

.....Respondents

AND

ORIGINAL APPLICATION NO. 382 OF 2015

Jaswinder Kaur

..... Applicant

Versus

1. Union of India
   Through the Secretary
   Ministry of Environment, Forests & Climate Change
   Indira Paryavaran Bhawan,
   Jor Bagh Road,
   New Delhi-110003

2. Union of India
   Thorught the Secretary,
   Ministry of Water resources,
   River Development and Ganga Rejuvination
   Sham Shakti Bhawan, Rafi Marg
   New Delhi

3. Uttarakhand Forest Department
   Through Principal Secretary Forest
   Uttarakhand Secretariat
   4, Subhash Road, Dehradun
   Uttarakhand.

4. State of Uttrakhand
   Through its Chief Secretary
   Uttarakhnad Secretariat
   Subhash Road
   Dehradun-248 001
   Uttrakhand

5. District Magistate
   Pauri Garhwal
   Collectorate Compound
   Pauri Garhwal, Uttarakhand

6. Uttarakhand Tourism Development Board
   Through its Chief Executive Officer
   Pt. Deendayal Upadhaya Paryatan
   Bhawan Near ONGC Helipad, Garhi
   Cantt. Dehradun-248001
   Uttarakhand

..... Respondents

COUNSEL FOR APPLICANT:
Mr. Ritwick Dutta and Mr. Rahul Choudhary, Advocates

Mr. Raj Panjwani, Sr. Advocate with Mr. Abhyudai Singh, Advocate

COUNSEL FOR RESPONDENTS:
Mr. Vishwendra Verma, Advocate for Respondent No. 1
Mr. Ardhenumauli Kumar Prasad, Ms. Pryanka Swami, Advocates for Respondent No. 2
Mr. Rahul Verma, AAG for State of Uttarakhand, Mr. U. K. Uniyal, AG, Mr. Aditya Garg and Mr. Jiten Mehra, Advocates in Application No. 528/2015-For Respondent Nos. 3 to 5
Mr.B.V. Niren, Advocate for CGSC

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER,

Reserved on: 24th September, 2015
Pronounced on: 10th December, 2015

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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 through its president Vikrant Kumar Tongad has filed the present application being aggrieved by the haphazard and unregulated licensing of the river rafting camps operating in river Ganga from Shivpuri to Rishikesh on one hand which is a serious source of pollution of pristine river Ganga on one hand and encroachment and degrading of various areas on the other hand. The Applicant is an organization working in the field of environmental protection across the country and has raised various issues before different authorities with respect to protection of forest and environment. Vide resolution dated 16th September, 2013 the applicant organisation has empowered its president to file the present application.

2. The applicant has averred in the application that the Himalayas, stretching 3200 km along India's northern frontiers, cradle numerous rivers with slopes which drain them all year around. The abundance of mountains and rivers make these locations as white water destination with plenty of first descend and exploratory possibilities. The initial beach camps on Ganges were established during 1998 with permission by regulatory authority through Ministry of Environment and Forests (for short 'MoEF'). In northern India rafting is commonly exercised on the river Ganges near Rishikesh and the Beas River in Himachal Pradesh. Every year after the rains, sand gets deposited to make clear and distinct formation of beaches on both banks of river Ganga. In recent times, the area has been denoted as eco-tourism zone namely Kaudiyala-Tapovan eco-tourism zone where various activities besides rafting and camping have been permitted.

According to the applicant, during their visit from Shivpuri to Rishikesh they noticed that all along the road there are about 35-40 camping sites and almost 800-1000 River rafting beach camps have been permitted by the State agencies by issuing licenses. Most of these camps were found in Shivpuri area. The camps are located and are operating in a forest area or the river bank. The camps were also found to have tampered with the banks of the river by flattening them.

3. It has been submitted by the Applicant that there are large number of camps in the form of beach camps or otherwise which

are being permitted on 'first-come-first serve basis'. Large number of licenses have been issued by State agencies without appreciating or analyzing carrying capacity. This has caused excessive pressure on the river which the river is unable to bear over a period of time. These sites either do not have or have inadequate sewage and sanitation facilities. Either there are no toilet facilities, making people defecate in the open or where they exist they are in the nature of pit disposal. During monsoon, the discharge remains flow into the river, thereby causing pollution and interfering in the river eco-system. The tourists and rafters also throw polythene, wrappers and various kinds of bottles on the sites and on the river bed which ultimately flow into the river. Ganga is also polluted because of high use of detergents, soaps and shampoo. It is also submitted that the approach of the State Government is clearly violative of the doctrine of public trust as enunciated by the Supreme Court in the case of *M.C Mehta v Kamal Nath and Ors* (1997) 1 SCC 388 and *Centre for environment law v Union of India* (2013) 8 SCC 234.

4. As the camp sites and beach camps have even encroached upon the forest area, many trees have been cut and land is flattened for setting up of such camps. According to the applicant, the agencies are not acting in the interest of the environment on account of vested interest and many influential people who carry on the activities of these camping sites. The rafting camp sites are located upstream and rafters are taken to the camp site in diesel vehicles, creating noise and air pollution. Also, visitors park their vehicles on the camp site and as a consequence a large number of

vehicles arrive at the camp sites every day. Owners and their employees serve food and even alcohol at the camp sites, the leftover of which, flows into the river, thereby causing pollution. The State Government and authorities do not have any mechanism in place for collecting the municipal waste and its disposal in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000.

Another aspect that the applicant has emphasized is that these camps are also adversely affecting the wildlife to a great extent because of increased man animal conflict.

It is submitted on behalf of the applicant that since rafting camps are a 'non-forest activity', therefore it cannot be carried on without clearance from the competent authority under the Forest (Conservation) Act, 1980 (for short 'the Conservation Act').

5. Mushrooming of rafting camps cannot be termed as a sustainable development activity or a permissible eco-tourism activity. The applicant has relied upon certain articles and studies carried out from time to time to support his contention that undisruptive, haphazard and unregulated camping activity is a serious threat to environment, particularly the forest area and pollution of river Ganga. He has relied upon an article published in March 2008 titled, '*Environmental Socio-cultural Impacts of River Rafting and camping on river Ganga in Uttarakhand Himalaya*' which reported that prior to 1996 there were just two river camping sites, one at Kaudiyala-Shivpuri and other at Vyasi. In 1997 there

were 8 sites and they increased to 45 in 2006. The total area allotted for camping site is stated to be 183, 510 sq m on Ganga bed. This increased camping and rafting has already severely impacted the forest between Devpryag and Rishikesh and it included loss of vegetation, soil compaction, disturbance in existing water channel and other evidence of use. A definite reference has been made to the displacement of wildlife because of this activity. River flows alongside the Rajaji National Park giving it a higher sensitivity in relation to bio-diversity and ecology. Furthermore, the area falling on either side of the river is a forest area.

6. In 2011 another report titled '*Socio-environ impact of river rafting industry in Uttarakhand'* it was concluded that due to indiscriminate use of river beds and adjoining areas, vegetation and wildlife is facing threat. It recommended complete regulation of the activity in the interest of environment and that the entire process of redetermination of the manner in which licenses are to be issued and of site selection should be revisited. Wildlife Institute of India (for short 'WII') report recommended for not allowing camping and rafting activities on 13 sites along Rishikesh-Kaudiyala stretch of river Ganga. The study was done for assessing ecological implications of increasing camps and consequent impact on wildlife, identifying issues for triggering comprehensive and systematic study subsequently and providing some insight for officials of Uttarakhand State Forest Department to develop management responses for wildlife conservation and evolve environmental management guidelines for regulating adventure tourism. This

report also reported that the camping activities in wilderness areas may create impediment for free movement of wildlife. It also questioned 13 out of 34 camping sites.

The applicant has also averred that he had submitted an application for certain information under the Right to Information Act, 2005 which was responded to partly by the concerned department from Uttarakhand Tourism Development Board on 16th December, 2014. As per the information provided,the forest department grants permission for river rafting camp if forest land is involved and revenue department grants permission for river rafting camp if revenue land is involved. The forest department did not provide information with respect to the grant of permission to use the forest land under Section 2 of the Forest Conservation Act. The applicant has placed on record, copies of various reports as well as the photographs of the camps which show semi concrete structures in the river bed.

On the above premises, the applicant claims the following reliefs:

> "(i) Direct closer and removal of camps along the river Ganga from Shivpuri to Rishikesh in state of Uttarakhand and direct the State Government to frame proper policy for regulating such activities being carried out as recreation facilities for the tourists.
> (ii) Direct that no camps be allowed to operate in areas which are part of forest land without specific approval under the Forest (Conservation) Act, 1980.
> (iii) Direct that a carrying capacity be undertaken within a specified time frame in order to arrive at a sustainable number of rafting camps which can be allowed including the possibility of centralized rafting camps.

(iv) Direct that those camps which are located in non ecologically sensitive areas and not closed down are made to strictly comply with the conditions given for approval.

(v) Direct for restoration of the area and removal of garbage or any other wastes from the camping site at the cost of the camp owners in accordance with the Polluter Pay Principle.

(vi) Direct and restrict entry of private vehicles and prohibit parking of such vehicles in and around the camp sites and allow only specific designated electric vehicles to ferry tourists from either their respective hostels or a specific starting points where proper parking and other facilities can be provided."

7. This application has been contested vehemently by the State of Uttarakhand and its various departments. During the pendency of this application, Indian Association of Professional Rafting Outfitters (for short 'IAPRO') filed a Miscellaneous Application bearing M.A. No. 528/2015 praying for modification of the order of the Tribunal dated 31st March, 2015 to the extent that they be given permission for running rafting camps and for rafting. In the meanwhile, another application was filed by Jaswant Kaur being Original Application No. 382/2015 titled as *Jaswinder Kaur v. Union of India and Ors.*

8. Supporting the prayers in Original Application No. 87/2015 as well as making further prayer, all these main and miscellaneous applications thus, were heard together and are being dealt with by this common judgment. Before we proceed to notice the stand taken by the respective respondents and the rafting association, we may notice the case put forward by Jaswinder Kuar, applicant in Original Application No. 382/2015.

9. She has submitted that the large scale unregulated river rafting and camping activities is being operated for commercial purposes by various parties along river Ganga from Kaudiyala to Rishikesh, which is severely damaging the environment and river Ganga. According to her, this is essentially a commercial activity which is being allowed in the guise of eco-tourism. The licenses have been issued by the State Authorities without application of mind, proper verification of antecedents of such applicant and without following the requisite legal process. These camps are not only in violation of the Conservation Act but also of the Environmental (Protection) Act, 1986 (for short 'Act of 1986') and Water (Prevention and Control of Pollution) Act, 1974 (for short, "Water Act"). The statutory provisions in regard to addressing the environmental aspects can only be framed by MoEF/Ministry of Water Resources and they alone can formulate a policy for regulation of these activities under the Act of 1986.

10. While supporting the application under Original Application No. 87/2015, she has further averred that River Ganga is a trans-boundary river. It originates from snow glaciers in western Himalyas in Uttarakhand. After flowing approximately 250 kms. it emerges at Rishikesh and then flows South and East through Gangetic plains into Bangladesh and finally into Bay of Bengal. River Ganga besides being a sacred River provides a life line to millions of farmers, a habitat for animals residing in forest and is home to more than a hundred species of fishes and amphibians.

Wild animals and birds are being affected by large scale camping activities conducted along river Ganga from Kaudiyala to Rishikesh.

11. Use of forest land for camping is in blatant violations of the Conservation Act and even violates the Constitutional protection available in relation to environment and ecology. Initial beach camps were established after specific permission was granted by MoEF. Subsequently, MoEF issued a clarification dated 28th August, 1998 where it was stated that the subject of camping sites does not fall within the purview of the Conservation Act because it is an 'eco-tourism activity'. According to the applicant this is an erroneous view, based on complete misunderstanding of the statutory provisions. It is a commercial and non-forest activity in a forest area and in any case after issuance of this clarification, the activity has increased manifold.

12. As per information provided by Conservator of Forest, Bhagirathi circle there were over 2441 tents across 37 river rafting beach camps in 210,043.05 sq m area for 2014-15 in Narendra Nagar wildlife division alone. Number of registered river rafting operators has multiplied several folds from 70 in 2008 to 140 till April 2014. Most of the rafting camp operations are carried out in blatant violation of the conditions accompanying grant of license. According to her, even the sites and permissions are being misused.

13. It is the case of the applicant that under provisions of Section 3 of the Act of 1986, the Central Government is empowered to formulate Rules and Regulations for governing activities which

involve significant implications to the environment. Further, Rule 24 of Uttarakhand River Rafting/Kayaking Rules, 2014 (for short 'Rules of 2014') is without authority and is incompetent. Grant of permit by State Government amounts to grant of license for use of forest land for establishment of camping sites and therefore the order or issuance of permit by State Government without obtaining prior approval of Central Government is in clear violation of provisions of the Conservation Act.

14. The mushrooming of camps in an unregulated manner is blatantly flouting applicable norms and is a serious environmental hazard. The clarification issued by MoEF dated 28th August, 1998 is not in conformity with the Conservation Act. Allowing camps in the present manner has adverse impact on environment, flora, fauna and river Ganga.

15. MA 923/2015 was filed by this applicant to amend the prayer clause on the same facts. This application was allowed vide order of the Tribunal dated 4th September, 2015 and disposed of. The amended prayer by this applicant in this application are as follows:

> In view of the aforementioned facts and circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to pass orders:
> (a) To declare that the clarification issued by the Ministry of Environment Forest and Climate Change dated 28.08.1998 bearing reference number D.O. No. 6-5/89-WB-I, is ultra vires the provisions of the Forest Conservation Act, 1980 and to quash the same;
> (b) To declare that the Uttarakhand Tourism Development Board does not have the authority to frame Rules in respect of forest areas governed by the provisions of the Forest Conservation Act, 1980 and to quash the Uttarakhand River Rafting/Kayaking Rules, 2014, notified

on January 24,2014 by the way of notification bearing number No. 160/VI/2013-01(03)/2013;

(c) To command the Respondent No. 1 in conjunction with Respondent No. 2 and 3 to ensure strict compliance of Section 2 of the Forest Conservation Act, 1980 in its letter and spirit with regard to the permitting of camp centres on the banks of the river Ganga from and particularly the Kaudiyala to Rishikesh stretch and , inter alia, declare that the camp centres which have been allowed on forest land by the Respondent no. 3(though Respondent No. 4 to Respondent No. 6) without seeking prior approval of the Central Government under section 2 of the Forest Conservation Act, 1980 are illegal, viod ab initio and therefore unauthorized.

(d) To declare that no camping sites, which partake the commercial activities are legal and permissible having regard to use of forest land and impact on environment on the banks of river Ganga from Kaudiyala to Rishikesh in particular;

(e) The Hon'ble Tribunal may further be pleased to command the Respondents to stop and remove the camp sites and order their removal from the forest land permanently and to prohibit and close down the camps both on forest and revenue land which being run in derogation of the environment. The restoration. Reforestation of such sites should further be undertaken at the cost of the camp.

(f) To direct the Respondent No. 1 in consultation with the Respondent No. 2 and Respondent No. 3 to frame comprehensive, proper and adequate and strict framework in exercise of statutory duties and powers under the Environmental Protection Act, 1986 within a time bound manner; and

(g) Pass such other Order(s), as this Hon'ble Tribunal deems fits in the facts and circumstances of the case.

16. MoEF had filed a detailed reply in M.A 528/2015 and adopted the same as a reply to the main application as well. During the course of arguments, MoEF, while primarily denying the averments made in the M.A. took the stand that Section 2 of the Conservation Act as amended provides that 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 Central Government any order as contemplated under

those provisions. The relevant portion of this section reads as under:-

> (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 organization 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.

17. For the purposes of this provision, "non-forest purposes" is the basic consideration. MoEF refers to the judgment of the Supreme Court dated 12th December, 1996 passed in Writ Petition No. 202/1995 in the matter of *T.N. Godavarman Thirumulpad v. Union of India* which had directed as under:

> "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected threrewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The terms "forest land", occurring in section 2, will not only include "forest" as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

18. In view of the above, MoEF considered the question whether river rafting requires prior approval under the Forest Conservation

Act or not and this was examined in the year 1998 when MoEF formed the following opinion:

> ".....the subject does not fall in the purview of the Forest Conservation Act, because it is basically an eco-tourism activity. However, it has to be ensured that the Camping sites are selected according to a management plan approved for the concerned protected area/ forest area. Due precautions are also to be taken to ensure that the permission for Camping does not lead ot littering the protected areas/forest areas with non biodegradable waste. Approporiate steps (for) disposal of liquid waste are also taken to prevent pollution in areas in which rafting is done or in the rivers along with which camping is done. No mechanized boats have to be used and adequate measures for safety of the wildlife and the rafter themselves have to be taken. No permanent or pacca structures should be allowed at the camping sites."

19. The above extract has been taken from the letter of MoEF dated 28th August, 1998 addressed to Additional Inspector General of Forests (Wildlife), Principal Secretary, Department of Forests, Uttar Pradesh. Further, according to MoEF a doubt regarding applicability of the Conservation Act to river rafting arose due to the fact that it requires temporary use of forest land for a limited period of time in a year. This matter was again considered by MoEF in 2014 and at that time it formed and communicated the following opinion.

> "Temporary work in forest land which does not involve breaking up or clearing of forest land or portion thereof, or assigning by way of lease or otherwise to the firm, person or organization using such forest land temporarily; and does not create any right on such forest land of such firm, person or organization, will not require prior approval of Central Government under the FC Act. State Governments and Union Territory Administrations may authorize Officers of an appropriate rank, preferably the Divisional Forest Officer having

jurisdiction over the forest land proposed to be utilized temporarily, to accord permission for such temporary activity."

20. The Government of Odisha in their letter dated 20th January, 2015 had requested MoEF to clarify the kind of temporary work to be taken up on the forest land with prior permission of the Divisional Forest Officer of the MoEF. MoEF vide their letter dated 27th March, 2015 finally expressed their view in the following terms.

Annexure: R-1/ 4

Copy
F. No. 11-306/2014-FC (pt.)
Government of India
Ministry of Environment, Forests and Climate Change
(Forest Conservation Division)
Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi -110 003
Dated: 27th March, 2015

To,
The Principal Secretary (Forests)
Government of Odisha
Bhubaneswar

Sub: Guidelines for diversion of forest land for non-forest purpose under FC Act - Exemption from the requirement of obtaining prior approval of Central Government under FC Act for execution of Temporary Work in forest land.

Sir,

I am directed to refer to the Government of Odisha's letter No. 10F (Cons) 37/ 2013 (pt.) 1347 dated 20th January 2015 on the above mentioned subject where this ministry was requested to specify in details regarding the types of work to be considered to be utilizing forest land temporarily and duration of such temporary use, and to say as below:

(i) It may not be feasible to prepare an exhaustive list of temporary works/activities which may be exempted from the requirement of obtaining prior approval of Central Government under the Forest (Conservation) Act, 1980.

(ii) An activity shall be treated as temporary activity for the purpose of afore-mentioned guidelines only if - (i) it does not involve breaking up or clearing of forest land or portion thereof; (ii) it does not involve

assigning by way of lease or otherwise in favour of firms/organization/person using such forest land temporarily; (iii) it does not create any right on such ,forest land temporarily; and (iv) use of such forest land is limited to a period less than a fortnight.

(iii) In case of a doubt whether an activity is to be treated as a 'Temporary Activity'or not, State Governments may seek clarification from the Ministry, on case to case basis, by giving full details of the activity.

Yours faithfully,
(H. C. Chaudhary)
Director

21. In view of the above letter, MoEF in their reply have stated that it also needed to consult the State Government in relation to applicability of the Conservation Act and finalize their statement.

22. Rafting and Beach camping activities in the State of Uttarakhand is governed by different Government Orders 28th October, 1993, March-April 94, 25th September, 1999, Rules of 2014. Though, these Regulations provide strict conditions to be followed by camp operators, however, as per clarifications issued vide MoEF's letter dated 28th August 1998, camping for the purposes of river rafting does not fall within the purview of the Conservation Act because it is an 'eco-tourism activity'.

23. The State of Uttarakhand submitted that there are about 37 beach camps on the reserved forest land of Narendra Nagar Forest Division, 51 beaches in revenue land of Tehri and few beaches in revenue land of Pauri. The camp operators are permitted only to set up temporary tents along the river where there is a natural clearing at specified places. They are always inspected at regular intervals by forest and revenue officials and any violation can result in

cancellation of beach camping and rafting permit and the operator will not be eligible for renewal of their permit. It amounts to no new/fresh license is being issued for beach camping in the area.

24. It is also submitted that flattening of any part of the camp area is prohibited. There is an absolute prohibition against cutting or clearing of any trees or plants for setting beach camp sites. Only such sites are selected for beach camps which have a natural clearing free from foliage.

25. Most beach camps on river Ganga are located off Rishikesh-Badrinath National Highway and vehicles being plied are required to comply with all requisite pollution clearances and certificates prescribed under law.

26. The State further submitted that beach camp operators are prohibited from using firewood for cooking. None of the camp operators in the forest area are allowed to serve/offer alcohol and consumption of any intoxicant is strictly prohibited. At the end of rafting season in May the beach is first inspected by forest department and NOC is issued. In case any camp operator fails to receive NOC from the forest/revenue department, the authorities cancel their permit and the operator is not eligible for renewal of the permit.

27. Tourism and Forest Departments have established Rules and procedures regarding setting up and operation of rafting and beach camping. It was submitted by the State that the applicant has concealed material information as bare perusal of the RTI response

dated 16th December, 2014 reveals that it pertains to Uttarakhand Tourism Development Board and not to forest or revenue department. It was also submitted that the Articles and publications placed on record must be read as a whole. The violation, if any, must be dealt with by the State Government, in accordance with law.

28. An inter-departmental meeting of State of Uttarakhand under the Chairmanship of Chief Secretary was conducted on 8th September, 2010 on Rapid Impact Assessment Report of WII which was released in June 2010. In the meeting, it was decided that the Rapid Impact Assessment Report shall not be used as basis of beach allocation and allocation will be done as per previous years. Further, the Principle Chief Conservator of Forests shall get a study conducted by WII as per determined and demarcated criterion and indicators.

29. It has been submitted by the State that the tourism department grants rafting permit, whereas relevant revenue or forest authorities grant beach camping permit. Thus, there is nothing for any re determination of the manner in which the licenses are to be issued. The suggestions made by the applicant are without any foundation, they do not reflect the correct position and there are sufficient Rules and Regulations in place to protect and preserve natural resources.

30. In the subsequent affidavit filed on behalf of the State it has also been averred that about 37 beach camps in the reserved forest

area operating on regular basis and the permission for same is being granted by Uttarakhand government for September to June every year.

31. Beach camping is governed by Government Order bearing no. 7077/14-2-99-944/88 dated 25th September, 1999 and rafting is governed by Rules of 2014.

32. Process of allotment of fresh permission starts with application from concerned company/firm, applied area is verified by the forest guard and forester along with applicant and Site Inspection Report (for short, "SIR") is sent to Range officer of the area. Range officer then sends recommendation for allotment of beach area through sub-divisional forest officer. Based on recommendation of Range Officer, sub divisional Forest Officer and Divisional Forest Officer, issues NOC for allotment of beach camps. Based on the NOC, conservator of forest gives the permission for beach camping for next season.

33. Similarly, there is a procedure of such permissions for renewal. The staff regularly inspects the beach areas for any violation. Right from 2005-06 to 2013-14 in Shivpuri range number of cases for violations were noticed and compounding fine was imposed. In fact, one case under Wildlife Protection Act, 1972 against three staffs of Himalyan River Runner was also registered. In 2014-15 three beach camps violated certain conditions against which cognizance has been taken by local forest guards and in those cases even renewal has been withheld. Range case no

3/Shivpuri/2015-16 dated 23rd April, 2015 in matter of illegal possession and use of firearms in reserved forests was noticed and case was registered. However, these respondents pray that the Tribunal should not interfere and the application should be dismissed.

34. The State of Uttarakhand has stated that they would not grant any permission for rafting camps till the orders of the Tribunal. The interim order of the Tribunal dated 31st March, 2015 has continued till date and had not been varied by the Tribunal by amendment or otherwise. However, IAPRO has submitted that it consists of 70 rafting and camp operators in Uttarakhand and there are approximately 94 rafting camp operators in Kaudilyala to Rishikesh. It is averred by them that incomplete and incorrect facts have been stated and material information has been withheld from the Tribunal.

35. Rafting season in Kaudilyala to Rishikesh lasts from September to June every year. Rafting camp operators only set up temporary pegged tents which operate without electricity or generators, without running water for showers or toilets and use only dry pit toilet. Rafting and camping industry contributes immensely to local economy thereby, reducing threats on local biodiversity. Rafting camps upon the end of the season are completely removed and sites are inspected by the officers.

36. White water rafting first began in India in 1980s on river Ganga and its tributaries around the Rishikesh Kaudiyala stretch.

In 1990 the Directorate of Tourism UP Hills, Dehradun issued rafting licenses to the rafting operators permitting them to carry on their rafting and camping activities as per norms.

37. IAPRO also relies upon different Government Orders issued by the State of Uttar Pradesh and then by Uttarakhand. It is submitted that IAPRO and its members always brought any threat to the environment to the notice of proper authorities realizing that future of riverside camping as sustainable tourist activity was intrinsically linked with conservation and protection of surrounding ecology. No mechanized boats have been allowed and adequate measures for safety of wildlife are being observed.

38. It is submitted by IAPRO that WII recommendations in the Ecological Impact Assessment conducted in July, 1999 were duly incorporated in the Government Order dated 25th September, 1999. Camping permits for five years were issued by the Forest Department by 2004. Thereafter, yearly permits are being issued. Due procedure is being followed for granting permission and permit for camping. The rafters have to pay Rs. 20,000 per raft/canoe/kayak and environmental fee to Forest Department as per Rules of 2014. Camp operators are charged per square meter rate by forest/revenue department depending on size of each camp site for every camping season. The National Tourism Policy 2002 and the National Environment Policy 2006 also seeks to promote eco tourism activities in India.

39. It is submitted by IAPRO that the dry pit toilets have been found to be a sustainable and eco-friendly method of composting human waste. The dry pit toilet tents are located at a safe distance from the river say 50-60 meters.

40. It is averred by the Association that the Rapid Impact Assessment Report by WII released in June 2010 was conducted in a hurried, partisan and haphazard manner. It should not be made the basis for arriving at any appropriate decision. According to IAPRO this Report has been rejected by the Government of Uttarakhand. The rafting camp operators have accepted bookings for the months of September and October 2015 but as they have been shut down, it is causing them great hardship.

41. It is also submitted that large number of Indian and foreign tourists come to this part particularly for rafting and camping. Tourism is a significant contributor to the GDP of India. However, at the same time there is an urgent need to develop these industries in order to ensure minimum impact on nature and environment. According to these applications, the most important aspects for eco-tourism activity are considered to be that (i) the activity must be non-consumptive/non-extractive; (ii) it must create an ecological conscience; (iii) the activity must hold eco-centric values and ethics in relation to nature; (iv) the activity must take place in low impact facilities which have minimum consumptive requirement; (v) The activity should provide a positive experience for both visitors and hosts; (vi) it should produce direct financial benefits for

conservation; (vii) it must generate financial benefits for both local people and private industry; (viii) it should deliver memorable interpretative experiences to visitors that help raise sensitivity to host countries/regions political environmental, and social climates.

42. It is submitted that in 2014-2015, 57,546 number of people visited rafting camps in the area of Kaudiyala – Rishikesh out of which 3,346 were foreign visitors. The clients at site are given proper briefing in relation to do's and don'ts by camp guides. There is no environmental and ecological threat, most of the camp operators often act as environmental stewards in instilling a sense of appreciation for nature and conservation in the visitors. The rafting camps at Shivpuri have also played host to numerous international and national championships such as the Asian Whitewater Championship (2003), National River Rafting Championship (2003), The Foursquare Whitewater Rafting Challenge Etc. The Rafting and camping activities are separated it would be reduced to joy-ride down the river. It is the case of IAPRO that the rafting camps are providing direct and indirect employment to roughly 60,000 people in the state of Uttarakhand. The major source of pollution of River Ganga are inflow of untreated sewage, cremation, ritual bathing and submerging offerings, road widening along the river Ganga, lack of facilities to handle solid waste in the towns and cities and rampant mushrooming of hotels and ashrams in the state of Uttarakhand. In these circumstances they submitted that the camping and rafting activities should be permitted as it is going on from the past.

43. From the above pleaded case of the respective parties to this *lis*, in our considered view, the following questions fall for determination of the Tribunal:

1. Whether the application is barred by limitation in terms of proviso to Section 14 of the National Green Tribunal Act, 2010?
2. Whether setting up of temporary camps, particularly in the declared forest area amounts to non-forest activity and requires approval of the Central Government as contemplated in terms of Section 2 of the Conservation Act?
3. Whether in the facts and circumstances of the present case, permitting establishment of camps for a major part of the year and year after year amounts to temporary assignment by way of lease or otherwise to a private person of any forest land or portion thereof, in terms of sub-section (iii) of Section 2 of the Conservation Act attracts restriction contemplated under Section 2 of the Conservation Act?
4. Whether it was permissible for the State of Uttarakhand to cover regulation of forests under the Rules of 2014 which were formed under clause (a) and (b) of sub-section 2 of Section 8 of Uttarakhand Tourism Development Board Act, 2001 (for short 'Act of 2001') when the field was already covered under the Central legislation, i.e., the Conservation Act?
5. Whether eco-tourism in the forest area would squarely fall within the ambit and scope of the provisions of the

Conservation Act and the letter dated 28th August, 1998 issued by MoEF is liable to be quashed?

6. Whether camping site is a purely commercial activity and cannot be permitted in the forest land or on the banks of river Ganga, keeping its impact on environment in mind and should be barred?
7. If question no. 6 is answered in the negative, what should be the regulatory regime governing carrying on of such rafting and camping activities?
8. What is the relevancy for determining the conduct of the State Government, private parties and the incidents of violation reported before the Tribunal?
9. What directions should be issued by the Tribunal?

Discussion on the merits of the points of determination referred above.

DISCUSSION ON ISSUE NO. 1

1. Whether the application is barred by limitation in terms of proviso to Section 14 of the National Green Tribunal Act, 2010?

44. None of the respondents have taken up the objection in relation to limitation in their respective replies and that the application of the applicant is barred by time. However, the Learned AAG appearing for the State of Uttarakhand during the course of his arguments raised the plea of limitation. It was contended that the application of the applicant has been filed much beyond the period of 6 months from the date when cause of action first arose and as such the application is not maintainable. Reliance was

placed in that regard upon Section 14 of the National Green Tribunal Act, 2010 (for short, "NGT Act"). On behalf of the applicant, it was contended that the application is based upon recurring cause of action and is within time. It was every issuance and/or renewal of river rafting or camp licence which gives a fresh cause of action. Even according to Rules of 2014 every permit would be a new and distinct cause of action and reliance was placed on judgments of the Tribunal in the cases of *The Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors.* 2015 ALL (I) NGT Reporter (2) (Delhi) 81 & *Goa Foundation Vs. Union of India & Ors.* 2013 ALL (1) REPORTER NGT REPORTER (DELHI) 234 and the Tribunal in the case of *Forward Foundation (supra)* held as under:-

> "24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and

London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

24.1 Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari &Ors. v. Sh. DayaneshwarMaharajSansthan&Ors., AIR 1959 SC 798.

26. In the case of State of Bihar v. DeokaranNenshi and Anr., (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period

of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act oromission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of Maya Rani Punj v. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd.,199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is

continuing source of injury which renders the doer of the act responsible and liable for consequence in law.
27.1. Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr., (2011) 9 SCC 126, Bal Krishna Savalram Pujari &Ors. v. Sh. DayaneshwarMaharajSansthan&Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, KuchibothaKanakamma and Anr. v TadepalliPtanga Rao and Ors., AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action

accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action. To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some

situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of M.R. Gupta v. Union of India and others, MANU/SC/0172/1996MANU/SC/0172/1996 : (1995) 5 SCC 628, the Court held that:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and

subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. MANU/FE/0022/1949MANU/FE/0022/1949 : AIR (1950) F C1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., MANU/DE/9120/2006MANU/DE/9120/2006 : 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, MANU/SC/0327/1997MANU/SC/0327/1997 : (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a

direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose."

45. We do not find any merit in the objections raised on behalf of the State of Uttarakhand. Under Section 14 of the NGT Act, the Tribunal has the jurisdiction to entertain and decide all civil cases where substantial question arises to environment (including enforcement of any legal right relating to environment) is involved and such question arising out of the implementation of the enactments specified in Schedule-I of the NGT Act. Such application is required to be filed within a period of six months from the date on which cause of action or such dispute first arose. The Tribunal would entertain such an application beyond that period but not exceeding 60 days if it is shown that the applicant was prevented by a sufficient cause from filing the application. The 'cause of action first arose' would have to be understood in reference to continuing cause of action, where the cause of action is recurring and is distinct or is a new cause of action. It would be a fresh cause of action giving rise to period of six months from such date in such cases. Rafting and camping is an activity which has been carried

on for years now. The Rules were framed in 2014 by the State of Uttarakhand under which permission and licenses for rafting and camping respectively are to be granted. According to the affidavit filed on behalf of the State, it is an annual feature and permission/license are granted from September to June every year. Thus, every year it is a fresh cause of action. Furthermore, the application even for deciding the question of limitation has to be read and construed in its entirety. In the application, documents and affidavits filed thereto, it has been argued that in the recent years there has been a tremendous increase in rafting and camping authorities leading to pollution of the river, degradation of the forest and generation of large quantity of waste. A larger Bench of the Tribunal in the above referred cases has clearly stated the principle of law that when the application is based on recurring cause of action then fresh cause of action would not be hit by the language of Section 14 of the NGT Act and each fresh event would give a fresh cause of action and consequently the period of limitation of six months.

46. Present application has been filed raising the substantial question of environment as well as enforcement of legal rights arising under the Conservation Act as well as the Rules of 2014. Rule 5, 7 and 8 of the Rules of 2014 specifically provide the period for which permits would be granted. Applications are expected to be moved between 1st April to 30th April. The maximum period for granting permit would be 5 years and the permit will be required to be renewed every year. This is indicative that every renewal and

grant would be a fresh cause of action or a recurring cause of action and not a continuing cause of action. According to the applicant there is indiscriminate, unregulated rafting and camp activity which is allowed by the State authorities without any proper application of mind. There is a continuous violation by polluting river Ganga and its banks. An application under R.T.I had been filed by the applicant to which reply was received from Uttarakhand Tourist Development Board giving details thereof for that year, which is the very foundation of this application. The application was filed before the Tribunal on 26th March, 2015 within the period of six months.

47. Furthermore, the applicant claims and has rightly invoked Precautionary Principle in terms of Section 20 of the NGT Act. The Precautionary Principle can be safely applied to protect and prevent the environment and ecology. The prayer of the applicant is for proper regulation of rafting and camping activity to prevent damage, degradation and pollution being caused in relation to the forest area, river bank and river Ganga. Such an action would not be hit by limitation. Thus, in these circumstances we have no hesitation in holding that the present application has been filed within time.

DISCUSSION ON ISSUE NO. 2 AND 3

2. **Whether setting up of temporary camps, particularly in the declared forest area amounts to non-forest activity and requires or not approval of the Central Government as contemplated in terms of Section 2 of the Conservation Act?**

3. **Whether in the facts and circumstances of the present case, permitting establishment of camps for a major part of the year and year after year amounts to temporary assignment by way of lease or otherwise to a private person of any forest land or portion thereof, in terms of**

sub-section (iii) of Section 2 of the Conservation Act attracts restriction contemplated under Section 2 of the Conservation Act?

48. The study of WII in 2010 categorised the stretch between Kaudiyala and Rishikesh as sub-tropical broad leaf forest. In the case of *Lafarge Umiam Mining Pvt. Ltd. v. Union of India,* (2011) 7 SCC 338 while referring to Section 2 of the Conservation Act the Supreme Court held that this is how the concept of prior approval from the Central Government comes into picture and thus prior determination of what constitute forest land is required to be done. Referring to the directions in the case of *T. N. Godavarman Thirumulkpad* (supra) the Court further directed that the requirements of submitting the approval for forest diversion is exclusively the obligation of the State Government. Restrictions were on the reservation of forest land or use of the forest land for non-forest purposes. Every State Government was expected to identify areas which are forests irrespective of whether they are notified, reserved or cultivated under any law and also identify areas which were earlier forest but stand degraded, denuded or cleared. Every State has been directed to identify and declare the forest land irrespective of ownership. It appears that State of Uttarakhand has not finalised and issued notification for the entire State in terms of the directions of the Hon'ble Supreme Court of India as yet. The stretch from Kaudiyala to Rishikesh would be a deemed forest and would be subject to the provisions of the Conservation Act. According to the applicant the State has taken a categorical stand that for the purposes of camping that the areas

that fall within the forest area are issued permits/licenses by the Forest Department of the State while for the other areas falling in the revenue land, the Revenue Department issues the license. The rafting permission is issued by Department of Tourism and this would clearly mean that State has camps located in both forest as well as revenue lands. One undisputed fact is that all these camps are located within the flood plain or river bed of Ganga. It is on record that there are more than 37 forest area sites for camping and there are nearly 2,463 tents and 51 beaches on the revenue land of Tehri and few beaches on the revenue land of Pauri. Though, according to the applicant the camps are keeping area much in excess of 1500 to 2000 sq. M. per camp and have more than 150 to 200 tents each. It is sufficient to indicate the extent of rafting and camp activity that is being carried on the banks of river Ganga.

49. There is a basic dispute between the parties. According to the applicant, the activity is unregulated, haphazard and polluting river Ganga while according to the State, the activity is completely regulated, non-polluting and is under constant vigilance of the authorities concerned. Keeping in view the rival contentions, when the matter was taken up for hearing on 7th August, 2015 after hearing the Learned Counsel appearing for the parties, the Tribunal raised certain specific queries in regard to the manner and methodology of issuance of such permits as well as the extent to which the activities were to be regulated. In response to the queries made, the State of Uttarakhand filed a detailed affidavit before the Tribunal on 18th August, 2015. Rather than referring to the

contents thereto it is appropriate to reproduce the following part of the said affidavit:

> 3. That thereafter the matter was listed before the Hon'ble Tribunal on 7th August, 2015, the Hon'ble Tribunal heard the matter and made specific queries regarding:-
>
> (i) Whether any inspection was done by the respondents on the beach camping sites prior to granting of permissions for beach camping?
>
> (ii) Whether any survey was done regarding these rafting camps, and after inspection any rafting camp is found violating the terms and conditions or not?
>
> (iii) Whether the persons found violating the conditions are penalized or not, whether any fine has been imposed on them, any violater's permit is cancalled or not, and what action has been taken by the respondents- State against the said violaters [if any]?
>
> (iv) Whether any study or survey has been done before identifying the beach camping sites by the forest department and other concerned respondents?
>
> (v) Whether rapid Impact Assessment report prepared by the Wildlife Institute of India is considered for allocation of the beaches and new beach camping sites?.....
>
> (ii) the first formal permission for the establishment of temporary beach camps in the reserve forest area along the river
>
> Ganga was given by the Government of Uttar Pradesh in 1993(vide letters 6713/14-2-93-944/1988 dated 28th October 1993 and 7429/14-2-93-944/1988 dated 4th April 1994 with certain conditions.
>
> The Principal Secretary, UP Government forwarded a representation to the Ministry of Environment and Forests (MoEF) requesting a reconsideration of its stand on the beach camps on the river bank. The MoEF in its reply expressed the opinion vide D.O. letter no. 6-5/89-WL.I Dated 28th August 1998 that rafting and beach camping activities do not come under the purview of the Forest Conservation Act as it is an ecotourism activity. The letter further stated that it is necessary to have a Management Plan for this area to lay down guidelines to regulate camping. The Wildlife Institute of India conducted an Ecological Impact Assessment of the rafting camps based on a one week field based impact assessment

study in the year 1999 and recommended for river banks to be used as beach camps with various conditions.

(iv) At present, beach camping in the above area is governed by G.O. No. 7077/14-2-99-944/88 dated 25th September 1999 and rafting is governed by Uttarakhand River Rafting / Kayaking Rules 2014.

8. That the point wise reply to the abovementioned five queries as raiseg by this Hon'ble Tribunal are under:

(i) The procedure for granting fresh permission for beaching camping is laid down as under:

A. The process of allotment of fresh permission starts with the application for the same from the concerned company/firm.

B. The applied area is verified by the forest guard and the forester along with the applicant and the site inspection report(SIR) is sent to the range officer of the area.

C. The Range officer then sends his recommendation for allotment of beach area through the sub divisional forest officer.

D. Based on the recommendation of the range officer and sub divisional forest officer, divisional forest officer issues NOC for the allotment of beach camp to the concerned person/company.

E. Based on the above NOC, the Conservator of Forests gives the permission for beach camping for the next season. Copy of the application, SIR of Forest Guard and Forester, recommendation of Range Officer and Sub Divisional Forest Officer, NOC given by DFO and permission given by Conservator of Forests with regards to Shri Dharmendra Singh Negi c/o Him Ganga Adventure, Kailash Gate is annexed as ANNEXURE A¬1 to the present affidavit for kind perusal of this Hon'ble Tribunal.

The procedure for renewal for old permission for beaching camping is laid down as under:

A. The season for Rafting/Kayaking in the river Ganges is from 15th September to 15th June every year. Beach camps areas in Narendra Nagar Forest Division are parts of the reserve forest area of Nirgarh, Bramhapuri, Shivpuri, Kaudiala and Singtali forest blocks under Shivpuri range of the division.

B. The forestblocks/compartments are directly monitored and inspected by concerned forest guards and foresters .The forest guards and foresters areauthorised to inspect and take iegai

action in cases OT violations under Indian Forest Act 1927 amended in 2001.

C. The process of renewal of permission of beach camp area starts before the start of the monsoon season, when the beach camp operators leave the area before the start of the Monsoon. The regular inspection of the beach camp areas is made by the local forest guard and forester of the area for the whole season to ensure the compliance of the conditions stipulated in the permission. The Beach camp operator informs the forest department before leaving the beach. In this the camp operator provides various information in prescribed format and applies for the No objection certificate for the next season.

D. Based on the above application and information provided by the beach camp operator, the forest guard and the forester of the area inspects in beach camp and reports to the Range officer about the general compliance of the conditions stipulated in the permission granted by the Conservator of Forests.

E. The Range officer sends his report through Sub divisional forest officer to Divisional Forest Officer(DFO).

F. Based on the recommendation of the Sub divisional forest Officer, UFO issues the No-objection Certificate to the concerned person/company.

G. Based on the above NOC, the Conservator of Forests gives the permission for beach camping for the next season. Copy of application for NOC for renewal, information in given formats, SIR by Forest Guard and Forester, recommendation of Range Officer and Sub Divisional Forest Officer, NOC of Divisional forest officer and permission given by conservator of forests with regards to Ms. Log out at work, Mussorie is annexed as ANNEXURE A-2 to the present affidavit for kind perusal of this Hon'ble Tribunal.

III. That the Range officer and the other staff of the area regularly inspect the allotted beach areas as part of their regular duty and takes cognizance of any violation of any condition stipulated in the permission. As per the records of the Shivpuri range, in year 2005-06, six cases of violations were reported in which a total of Rs. 47288 was recovered as compounding amount under Indian Forest Act 1927 (IFA); in year 06-07, four forest offences were reported. All the cases were compounded under IFA with a total compounding fine of Rs. 9000. In 2007-08, five cases were

reported. which wereCompounded with a total fine of Rs. 27000. In 2008-09, one case was reported which was compounded with a fine of Rs. 10000. In 2009-10, 15 cases were reported. Which were compounded with a total compounding amount of Rs. 15000. In 2010-11, two cases were reported which were compounded with compounding fine of Rs. 6800. In 2012-13, one case was reported which was compounded with fine of Rs. 5000. In 2013- 14, four cases were reported which were compounded with compounding fine of Rs. 20000. In 2006-07, one case under Wildlife Protection Act 1972, was registered against three staff of Himalayan River Runner. The case is under trial at District court, Tehri.

In the year 2014-15, 3 beach camps have violated certain conditions and against the said violations cognizance have been taken by the local forest guards. The details of the forest offences registered are:

(a)Range case no. 3/Shivpuri/2015-16 dated 23-04-2015 against Mr. Yogesh Bahuguna c/o Ms. GarhwalAdventure,Kailash Gate, in matter of illegal possession and use of fire arms in reserve forests.

(b) Range case no. 4/Shivpuri/2015-16 dated 05-06-2015 against Ms. Pratima Shah c/o Ms. River wIld in matter of encroachment in the reserve forests

(c)Range case no. 5/Shivpuri/2015-16 dated 06-06-2015 against Ms. Shiv Ganga adventure, Dhalwala in the matter of unauthorised use and intention of encroachment of the beach area.

Forest offence have been registered in all the above three cases of violations. The detailed enquiry is in progress in all the cases and due penal action will be taken under Indian Forest Act 1927 as amended in 2001. Appropriate action regarding cancellation of the beach permits will be taken by the forest department at the time of allotment of beach camps for the season 2015-16 for the above violations. At present the [No objection certificate] has been withheld by the Divisional office pertaining to all the above three cases of violations.

VI. Each year, after the monsoon season beach camp sites located in the reserve forest area of the abovementioned forest blocks are identified by the field staff of the forest department and intimated to the higher officers. No separate study or survey is conducted by any other authority other than

forest department. However, detailed study of the area was done by Wild life Institute of India, Dehradun in 1999 regarding the beach camping in the area.

VII That in the civil areas of District Tehri and Pauri, the permits are given by the concerned District Magistrate

VII An inter departmental meeting of the State of Uttarakhand under the Chairmanship of Chief Secretary was conducted on 08.09.2010 on the rapid impact assessment report of the Wildlife Institute of India released in June, 2010 in the meeting it was decided that the Rapid Impact Assessment report shall not be used as the basis for the beach allocation and the allocation of the beaches will be done as per the previous years. Accordingly the beaches are allotted to the rafting permit holders who were allotted beaches in the earlier years. The Principal Chief Conservator of Forests shall get a study conducted by the Wildlife Institute of India as per some determined and demarcated criterion and indicators and appropriate decision shall then be taken in this regard.

10. That in view of the abovementioned facts, the respondent Nos.3 to 4 [State of Uttarakhand] is very serious pertaining to the issue involved in the present matter, with regard to protection of environment and it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to dismiss the present original application.

50. From the above affidavit it is clear that efforts are being made to regulate and channelize the procedure for grant of permits for establishment of camps and regulate the activities. There are serious violations committed by different parties. The State of Uttarakhand had issued permissions to carry on the non-forest activity in the reserved forest area under the provisions of relevant laws. It had also made a reference to MoEF vide its letter dated 31st July, 1998. This letter was responded by MoEF vide letter dated 24th August, 1998. MoÉF expressed the view that camps on sandy stretch of river banks for rafting does not fall under the provision of

Conservation Act and it is basically an eco tourism activity. However, it had to be assured that camping is according to the Management plan approved for the concerned area/forest area. Besides stating other restrictions and precautions that the State of Uttarakhand would take, it was specifically stated that no permanent or Pakka structure would be allowed at the camping sites. Thereafter, MoEF vide its letter dated 7th October, 2014 issued guidelines for diversion of forest land for non-forest purposes or execution of temporary work in the forest land. This was a letter generally issued by MoEF as it had received representation from different quarters. Vide this letter it clarified that the work which does not involve any tree cutting, is a temporary work and the approval as contemplated under Section 2 of the Conservation Act is not required. However, it clarified that temporary work in the forest land which does not involve breaking up or clearing of any forest land or portion thereof assigned by way of lease or otherwise to any person or using forest land does not create any right on such forest land or such will not require prior approval.

51. Principally, it was on the strength of these two letters issued by MoEF that the State of Uttarakhand had been issuing permits and do not insist upon approval from the Central Government in terms of Section 2 of the Conservation Act. Interestingly, both these letters had been issued by the Additional Inspector General (Wildlife) and the Director, MoEF respectively. However, much prior thereof on 23rd May, 1990 MoEF had written to the State of Uttar Pradesh that camping on sandy stretch of the river would be source

of pollution and threat to the forest on the river bank. After lapse of 8 years on 31st July, 1998 the State of Uttar Pradesh upon receiving letter from the Rafting Company requested that the camps may be allowed on the sandy stretch of the river Ganga. The letter dated 31st July, 1998 reads as follows:

No.4790/14/14-2-98-944/88

Geroge Joseph
I.A.S
Principal Secretary

Phone :0522288244
Fax :238010

Forest Department
U.P. Government
Lucknow

Dated: July 31, 1998

The Secretary,
Environment and Forest,
Govt. of India,
New Delhi.

Subject: Camping on sandy stretches by river rafting teams

Sir,

Please refer to the Ministry's letter No. 11-2/90-FC dated May 23, 1990, which says as follows:

"Camping on sandy stretches of the river would be a source of pollution and a threat to the forest on the river bank. If rafters have to make night halts, this would be on the habitations on the roadside where food and fuel is available.

Rafters have represented to the State Government that Ganges, as in their view, it does not cause any pollution.

I am forwarding the representation from a rafting company. You may like to reconsider the issue and permit camping on the river banks.

I will be grateful if a quick decision is taken in the matter as the season for rafting is approaching fast.

Yours faithfully,
Sd/- illegible
(P. George Joseph)
Principal Secretary"

52. From the above correspondence of MoEF it is clear that till 1998 the view of MoEF was that camping should not be permitted in the sandy banks of the river and the forest area. However, the letter dated 28th August, 1998 made some variations as already stated above.

53. The letter of the Ministry of 27th March, 2015 which we have already reproduced above gives a final stand of the Ministry. According to this letter, the approval of the Central Government would not be necessary in terms of Section 2 of the Conservation Act only if it satisfies the conditions stated in that letter. Temporary utilisation of the forest area, though could not be stated with exactitude. Still, it was clarified that temporary use could be where it was a temporary activity and did not involve breaking up or clearing of any forest land or portion thereof and does not involve assignment by way of lease or otherwise in favour of third party. It does not create any right on such forest land for using forest land temporarily and use of such forest land is limited to a period less than fortnight. MoEF further cautioned the State Government that it should seek clarification from MoEF if there were any doubts in that regard. MoEF, of course, denied preparing an exhaustive list for temporary work or activity which could be exempted.

54. From the above correspondence between the State Government and MoEF, it is clear that prior approval is required in regard to the diversion of the forest land for non-forest activity for temporary purposes. However they have submitted that detailed

consultations with State Government of Uttarakhand are required to check whether this would apply to carrying on of camping activity at the river bank and in the adjacent forest areas or not. Even while issuing the letter dated 27th March, 2015 itself anticipated doubts from the State Governments particularly in relation to the activity to be treated as temporary activity.

55. Now, we may refer to the statutory provision under the Forest Conservation Act, Section 2 of the Conservation Act deals with restrictions on de-reservation of forests or use of forest land for non-forest purpose. This Act had been enacted to provide for conservation of forest and for matter communicated there-under or ancillary thereto. The framers were impressed by the reasoning that de-reservation causes ecological imbalance and leads to environmental deterioration. Use of forest land for non-forest activities was one of the major concern and reasons stated in the objects of the Act. In the case of *Ambica Quarry Works vs. State of Gujarat* (1987) 1 SCC 213 *and Nature Lovers Movement vs State of Kerala* (2009) 5 SCC 373 it was clearly held that primary purpose of the Act is to prevent further de-reservation and ecological imbalance. Further that the State Government cannot suo-moto de-reserve or reserve the forest land and permit the use for non-forest purpose without obtaining prior approval of the Central Government.

56. The language of the section 2 of the Conservation Act opens with a non obstante clause, which not only provides precedence to

the law against the law enforced in the State and completely mandate the State Government or any other authority to take permission from Central Government to permit de-reservation of forest or use of forest land for non-forest purpose. All reserved forests or any portion thereto were covered under this restrictions. It would be clear that there are two different aspects covered under this provision. One relates to de-reservation of the reserved forest while the other is with regard to use of the forest land for non-forest purposes. In other words it is not only the de-reservation of the forest i.e. conversion of the forest area which would mean like de-forestation of an area for a permanent project like establishment of the industry or construction of Hydro power projects or other projects. Without the act of de-reservation, using the existing forest for a non-forest purpose would also fall within the restrictions contemplated under Section 2 of the Conservation Act. In either of this event, the State Government or the authority would not be in a position to issue any permission without prior approval of the Central Government. The other class of cases where these restrictions would operate are where any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or any authority, cooperation, agency or any other association etc. not owned, managed or controlled by the State Government. The legislature has gone to the extent of specificaly explaining what non-forest purpose would mean for the purpose of Section 2. The legislature has further taken the action of removing ambiguity in the language of this provision by adding an

explanation. It is a settled principle that the explanation is an appendix to the section to explain the meaning of the words contained in it. It becomes a part and parcel of the enactment; the meaning to be given to the explanation mostly would depend upon its terminology. The explanation shows a purpose and a construction consistent with that purpose can reasonably be placed upon it. That construction will be as against any other construction which fits in with the description or the avowed purpose of explanation. (refer *Dattatraya Govind Mahajan v State of Maharashtra* (1977) 2 SCC 548). As explanation is to illustrate the main provision, it should be read in harmony and clarify ambiguity in the section. Explanation is not a substantive provision by itself, it is entitled to explain meaning of the words provided in the main provision of the section and normally it should not widen the ambit of the Section.

57. The explanation to Section 2 of the Conservation Act is intended to elucidate what is non-forest purpose. It is stated to mean breaking up or clearing of any forest land or portion thereof for cultivation, any purpose other than re-forestation but would not include any work relating or ancillary to conservation, development and management of forest and wildlife as stated in the explanation. Thus, the explanation on the one hand provides what is non-forest purpose while on the other specifically excludes what is not to be treated as a non-forest purpose. Forest purpose is primarily to ensure conservation, development and management of the forest and that the activity which does not falls within the ambit and

scope of this work would and should be taken as non-forest activity and/or user for non-forest purpose.

58. The Learned Counsel Mr. Sibal appearing for IAPRO vehemently contended that the provisions of Section 2 of the Conservation Act are not attracted when the activity of camping is carried on. It is neither assignment of the forest area nor a non-forest activity. According to him there is no breaking of the forest area or clearing of any forest area. It is his contention that while interpreting Section 2 of the Conservation Act the Principle adjudicated generally would be applied and the expression 'or otherwise' appearing in Section 2 of the Conservation Act would have to take colour from the expression 'assigned by way of lease'. Assignment would be to create an interest for the property granting permit for camping but it is not creating an interest in the property. Therefore, it is not necessary that it will not be required for the State Government to get approval of the Central Government before issuing such permits.

59. Further, he also submitted that the provisions of Section 2 of the Conservation Act are not attracted when activity of camping is carried on even in the forest area. It is not covered under any of the restrictions stated in Section 2 of the Conservation Act. The contention is that it is neither a non-forest activity carried out in the forest area nor assignment in terms of Section 2 (iii) of the Conservation Act. It is further the case of the Association that there is no clearing of forest or breaking up while such activity is carried

on. Since no interest in the property is created by granting permission for camping, there cannot be any assignment. The expression appearing in Section 2(iii) of the Conservation Act 'or otherwise' would have to take colour from the term assigned by way of lease in view of the principle of *ejusdem generis*. On the strength of these contentions, it is finally submitted that the State Government would not be called upon to get approval of the Central Government as contemplated under Section 2 of the Conservation Act for the purpose of issuing such permits. The contention that at best, it is a license not amounting to carry out a limited activity with no interest in the property which is also indicative that such matters would not be covered under these provisions. Reliance in support of the contentions has been placed upon the judgment of the Hon'ble Supreme Court of India in the case of *United Bank of India v Pijush Kanti Nandy and Others* (2009) 8 SCC 605, *Bharat Petroleum Corporation Limited v Chembur Service Station* (2011) 3 SCC 710 and *Pradeep Oil Corporation v. Municipal Corporation of Delhi*, (2011) 5 SCC 270.

60. The State of Uttarakhand has also raised similar arguments that it is not a non-forest activity but an eco-tourism activity and permission of MoEF is not required. According to the stand taken by MoEF, it is stated that keeping in view the nature and period for which such activity is carried on and the conditions in which it is carried on satisfies the ingredients of Section 2 of the Conservation Act. This being the non-forest activity permission of MoEF in principle would be necessary. According to the applicants, all land

in this area is a forest land. It has been so recorded or even if not so recorded, the stretch between Kaudiyala and Rishikesh on either side of Ganges can be categorized as sub-tropical Broadleaf Forests, equivalent to Champion & Seth's 5B/C-1A: Dry sal bearing forest as described in the Rapid Impact Assessment Report conducted by WII. The activity of camping is a non-forest activity that is being carried on in the forest area which is impermissible without permission and sanction of the authority is required. Furthermore, there is clear breaking up of the forest land in physical and scientific terms. The activity of camping is being carried on for a major part of the area and continuously and permanent, semi-permanent structures are raised and is being used for commercial purpose bringing it within the ambit of Section 2 of the Conservation Act. The expression 'or otherwise' is an extension of the words used prior to this expression and or otherwise or is a disjunctive word and on proper interpretation the approval of the Central Government does becomes necessary. To buttress their submissions, the applicant places reliance upon the judgment of the Hon'ble Supreme Court in the case of *Lafarge Umiam Mining Pvt. Ltd.* (supra), *Lilavati Bai v State of Bombay,* AIR 1957 SC 521, *Animal Welfare Board of India v. Nagaraja& Ors,* (2014) 7SCC 547, and *Maharashtra University of Health Sciences and others v. SatchikitsaPrasarak Mandal & Ors,* (2010) 3 SCC 786.

61. In order to examine the merit of the respective contentions raised before us first and foremost, we need to analyze the language of Section 2 of the Conservation Act.

62. From the bare reading of the above provision, the noticeable feature of the section is that it opens with a non-obstante clause and gives it precedents not only over the other provisions of the Act but even over the law for the time being in force in a State. To put it simply, the State laws have to give way to implement the provisions of Section 2 of the Conservation Act as it is being the central law covering the field. 'Notwithstanding' clause in statutes impacts the provisions and renders them independent of other provisions contained in the law even if the other provisions provide to the contrary. The provisions will have overriding effect. Non-obstante clause is used by the legislature in contradistinction to subject to the other provisions of this clause is to mandate that the provision should prevail, despite anything to the contrary in the provisions not mentioned in such non-obstante clause and even other laws wherever stated. The Hon'ble Supreme Court of India in *Brij Rai Krishna v. S.K. Shaw and Brothers* (AIR 1951 SC 115) has held that the expression "Notwithstanding anything contained in any other law" prevents reliance on any other law to the contrary.

63. The purpose is to protect the application of such provisions, despite contrary language is appearing in other provisions of the Act or even in other laws in force. The legislative intent is to ensure that the *non-obstante* clause and the law contained therein should have full operation or that the provision embraced in the *non-obstante* clause would not be an impediment for operation of the enactment.

Reference can be made to the case of *R.S. Raghunath v. State of Karnataka and Anr*, (1992) 1 SCC 335.

64. Thus, it is clear that provisions of Section 2 of the Conservation Act, therefore, must have precedence over any other law for the time being in force in the State of Uttarakhand. The essence of Section 2 of the Conservation Act is to be examined in light of the preamble of the Act. This Act was enacted to provide for conservation of forest and for matters connected there with or ancillary or incidental thereto. It is not a matter which is confined merely to the conservation of forest but it expands its operation and enforcement to matters which are ancillary or incidental thereto. The provisions of Section 2 of the Conservation Act, therefore, have to be so construed in a manner as to achieve the object of the Conservation Act and an interpretation which would frustrate or cause impediment in execution or implementation of the law as envisaged in this Act has to be rejected. The intension of sub-section (ii) is to place restriction on de-reservation of the forest or use of forest land for non-forest purpose. As such, the activities are not prohibited, they are regulated by imposition of restrictions in accordance with law. These restrictions have a dual check and balance method. Firstly, the State has to propose the activity and the conditions which need to be imposed for permitting such activity. Second is that the Central Government has to accord its approval for such activity which would culminate by issuance of order by the concerned State Governments in terms of Section 2 of the Conservation Act. In the present case, we are primarily

concerned with the interpretation of Section 2(ii) and (iii) read with explanation to the section. Section 2(ii) contemplates imposition of restriction and passing of an appropriate order by the State Government where any forest land or portion thereof may be used for any non-forest purpose, Section 2(iii) requires that a the forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or the specified entities which are not owned and managed by the government. The legislature in its wisdom has gone a step further and added an explanation to Section 2 by Amending Act of 69 of 1988 (w.e.f. 15th March, 1986). It states what will be the non-forest purpose. According to the explanation, 'non-forest purpose' means the breaking up or cleaning of any forest land or portion thereof for cultivation of tree, coffee, rubber, palm trees, horticulture plants. etc. Clause (b) of explanation is of far reaching consequence as it mandates that any purpose other than re-afforestation would be a purpose which is non-forest purpose. They have explained what is 'non-forest purpose' and it provides a further clarity by specifically stating as to what activity would not be included as a non-forest activity. All these classes of works are stated for conservation and protection of forest and wildlife. It is stated that if the work relates to, or is ancillary to conservation, developments and management of forest and wildlife namely establishment of check posts, fire lines, wireless communications and construction of fencing, bridges, culverts, dams, waterholes, trench marks, boundary marks, pipelines or like purposes then it will not be a non-forest purpose. In clarification to

the explanation, the significant expression is 'or other like purpose' which call for interpretation. This leaves no doubt that, it is required to be a purpose which ought to be like the purpose specified by the legislature. It is a situation where the principle of *ejusdem generis* would be appropriate and the words 'or other like purpose' would mean and get colour from the preceding expression. If the proposed activity does not have similar ingredients, requirements and nature then it would be an activity which will per se become an activity of non-forest. Giving it any other meaning would lead to complete frustration in implementation of what has been stated i.e. non-forest purpose.

65. At this point, it would be appropriate to refer comparatively to the provisions of the State and the Central law that would have bearing on the matters in issue. These provisions even if are not overlapping *strict-senso* but they have the effect of diluting if not wiping out the effect of the Central law. They would further help in determining as to whether the activity in question is purely temporary or has essence of continuous activity in reference to the law in question. We may reproduce the provisions as follows:-

Comparative chart of the provisions relating to camping activities in Uttarakhand

Forest (Conservation) Act, 1980	**River Rafting/Kayaking Rules Remarks**
2. Restriction on the dereservation of forests or use of forest land for	**Uttarakhand River Rafting/Kayaking Rules, 2014** Rule 7: Grant of Permit

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	1) After the recommendations of the Technical Committee, new applicant shall be issued a permit for a minimum of 2 rafts and maximum of 5 rafts during Ist and IInd year for a period of one year. Thereafter, based on merits and demerits, permit shall be issued for 5 years. In case of rejection of any application, the applicant shall have to be informed with reason for non-acceptance. 2) The operator's already holding permit for more than 5 rafts shall keep on holding the same until the permission expires/cancelled/rejected. 3) Every eligible applicant shall be issued a separate permit for each river and the operators already plying shall have to seek separate permit for each rivers after notification of these Rules. 4) The permit issuing authority shall issue river wise permit based on the carrying capacity of each river. 5) The applicant shall be granted permit for a maximum period of five years/seasons which will be necessary to be renewed every year.

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 purpose of this section, "non-forest purpose" means the breaking up or	6) In respect of carrying capacity of each river, the applications received in excess, their selection shall be made through lottery or

clearing of any forest land or portion thereof for- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural 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 wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks,	auction. Rule 10: Responsibilities and duties of permit holder/operator 7) Every permit holder/operator/river guide shall ensure that rafting/kayaking activities will be carried out in accordance with the bearing capacity prescribed by the manufacturing company or as per the bearing capacity determined by the Technical Committee. Rule 25: Permission for temporary camps 1) Under Rule 7 permit holder shall apply to the concerned department/concerned District Magistrate for revenue land seeking permission for temporary beach camping on forest/revenue land situated along with the river banks. Private land owners along river bed will be considered for grant of permission of establishment beach camping for rafting/kayaking on priority basis keeping in view the bearing capacity of the river.

boundary marks, pipelines or other like purposes.	
	The Uttarakhand River Rafting/Kayaking (Amendment) Rules, 2015 Rules 7(5) are substituted with the following provisions and Rule 7(7) has been added 7(5) The applicant shall be granted permit for a maximum period of five years/seasons. 7(7) In case of rest capacity of carrying capacity of river Ganga the priority shall be given to those firms who are conducting rafting in other rivers in Uttarakhand State.

From the above comparative table, it is clear that the provisions of the State Law, if not in direct conflict, are at substantial variance to the extent that they cannot be harmonized or reconciled to achieve the object of the central law.

66. In the above context, let us now examine the nature of the activity that is admittedly being carried on under the name and style of camping activities. It is an activity which is being carried on from September to June that means, an average ten months in a year. There are structures of permanent, semi-permanent and temporary nature raised on the sites in question which vary from 20000 sq. m. to 50000 sq. m. on the sites. According to the

applicant, these sites are located on the banks of the river, somewhere in the middle of the river or the forest area or adjacent to the river bank. According to the State of Uttarakhand, although the activity is for ten months in a year but no permanent or semi-permanent structures are permitted to be raised. They are expected to put tent etc. only on the area for camp activity which is 20000 sq. m. to 50000 sq. m. Similar is the stand taken by IAPRO and other authorities of the State. Of course, it is un-disputed that it is a commercial activity having financial implications, investment and large incomes. According to the applicant, it is a commercial activity *simplicitor* while according to others it is eco-tourism.

67. At this stage, we are not getting into correctness of these details which we will discuss in the latter part of the judgment. It suffices to note that admittedly it is an activity which has impacts on environment and ecology and bio-diversity of the river. There are allegations and even records to suggest that number of camping areas have been found to be offending the conditions imposed by the State Government. Cases of breach had been registered against them and in a case even fire-arms were found to be in possession of the visitors coming to these camps. Photographs have been placed on record to show that there is permanent, semi-permanent and temporary structures raised and large scale tenting is done in the river bed. This activity from its nature, substance and actualities extending on the site clearly show that it is a non-forest activity for a non-forest purpose. This activity cannot be said to be included as relating to or co-ancillary to conservation, it is not for development

and management of wildlife, it is nowhere achieving, much less, similar to the activities specified in the explanation to Section 2 of the Conservation Act which makes it an activity which is not non-forest activity. To fall in the explanation it has to be one of the stated activity or an activity which in absolute terms, nature and performance would be similar thereto. Once it is held that the activity of camping on the forest land or any portion thereof is a non-forest activity and for a non-forest purpose, the provisions of Section 2(ii) of the Conservation Act would be applicable and it would be expected of the State Government to issue permission/order in terms thereof only upon taking approval of the Central Government. The activity of camping does not have fundamental ingredients and the specified works which have been stated in exception to the explanation. They are nowhere within ambit of the excluding clause. On the contrary they would squarely fall within the scope of clause (b) of the explanation. Clause (a) even states an activity like cultivation of tea, rubber and coffee even horticulture has been treated to be non-forest activity, where the forest is broken up cleared of any forest land for these activities. Clause (b) of explanation emphasizes that any purpose, which is other than re-afforestation would be a 'non-forest purpose'. The law clearly reads against any such restricted activity like camping and certainly re-afforestation is not one of the main or even incidental purpose of this activity.

68. Taking with all its dimensions, the manner and the way as to how it operates, we are unable to accept the contention that it is not a non-forest purpose or activity.

69. Another limb of the submission on behalf of the respondents, particularly IAPRO is that since it is not assignment by way of lease or otherwise, there being no interest in land, it would not be covered under Section 2 (iii) of the Forest (Conservation) Act. Even if we accept this contention, the consequences will not be different as we have already held that this activity would be covered under the restriction of Section 2 in terms of Section 2(ii) of the Conservation Act. Still we will proceed to discuss even this contention of the respondents. It is correct that where in forest land or any portion thereof may be assigned by way of lease or otherwise to private persons or specified persons not controlled or governed by the management, the provisions of Section 2 of the Conservation Act would operate. It is also correct that the permission granted by the State Government does not tantamount to lease as understood under the Transfer of Property Act, 1882. There is a clear distinction between lease and license. Lease has been defined under Section 105 of the Transfer of Property Act, 1882 while section 52 of the Easement Act, 1882 explains the word license. They are as follows:

> "105. Lease defined. – A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of corps, service or any other thing of value, to be rendered periodically or on specified occasions to the

transferor by the transferee, who accepts the transfer on such terms

On the other hand, Section 52of the Easement Act, 1882 reads as under:

"52. 'Licence' defined. – Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does no amount to an easement or an interest in the property, the right is called a licence."

70. A license granted creates a right in the licensee to enter into the land and enjoy it. The right of the licensee is a restricted one. A lease on the other hand would amount to transfer of property. A license has to be granted and this permission granted by the State of Uttarakhand to carry on camp activity is nothing but a license or a permission to carry on the non-forest activity in a forest land.

71. The Karnatka High Court in the case of *Magarahole Budakattu Hakku Sthapana Samiti v. State of Karnataka,* AIR 1997 KAR 288 while dealing with the expression assigned by way of lease or otherwise held as under:

"27. Now, I proceed to ascertain the meaning of the expression "assigned by way of lease or otherwise". In the context of the statutory provisions, the word "assign" would mean "to make over a right or interest to another" (*See Mozley's and Whiteley's Law Dictionary*). According to Black's Law Dictionary as well, the word has the same meaning for the present purposes. Therefore, the restrictive Sec. 2 of the 1980 Act will apply to making over of a right or interest by the State Government or other authority, by way of lease or otherwise to any private person including a company in or over any forest land or in portion thereof. In the said sense, interest in an immovable property can be assigned by way of conveyance by any of the modes recognised under the Transfer of Property Act, 1882 namely, sale, lease, mortgage, charge, ascent, gift, disclaimer, release or any other assertion of property or any interest therein by an instrument except a will. The

other two types of assignment of rights in an immovable property have been recognised under the Easements Act, 1882. These are easementary rights and rights as a licensee. These rights have been defined in the following manner:

"Sec.4-"Easement"

An easement is a rights which the owner or occupier of a certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or prevent and continue to prevent from something being done, in or upon, or in respect of, certain other land not his own."

"Sec. 52-"Licence"

Where one person grants to another or to a definite number of persons, a right to do, or to continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

28. From the above, it is clear that Sec. 2(iii) of the 1980 Act restricts the right of the State Government to transfer or create any right in or over a forest land or a portion thereof either by of lease or otherwise. The expression "otherwise" will, in my opinion, include assignment of rights even by way of casement or licence.

29. Application of law to the present facts

30. Keeping in view the facts as stated above, it cannot be seriously disputed that the State Government has, assigned a portion of the forest land by way of lease or otherwise thereby creating a right in the properties in question which forms a part of the "national park"-cum-"reserve forest" in favour of the fifth respondent, which is a private company, without seeking prior approval of the Central Government. There is an absolute prohibition on the grant of such rights under Sec. 20 read with Sec. 35(3) of the Wildlife (Protection) Act, 1972. As such the grant of lease in question is void and cannot be acted upon by the fifth respondent. Further, the transaction is also hit by Sec. 2 of the Forest Conservation Act, for want of prior approval of the Central Government."

72. The expression 'or otherwise' is intended to provide for something more and different than what is a lease as provided under the expression specifically used in Section 2(iii). The Section contemplates that forest land or any portion thereof may be

assigned by way of lease or otherwise to any private person. 'Assignment' as per dictionary meanings is a task or piece of work allocated to someone as a part of job or course of study. The Oxford English Dictionary (3rd ed. 2010) defines 'Assignment' as an act of making a legal transfer of a right or liability; a document affecting a legal transfer of a right or liability. The Law Lexicon (3rded 2012) defines 'Assignment' as the term assignment, as ordinarily used, signifies the transfer, between living parties, of all kinds of property, real, personal and mixed, whether in possession or action and whether made by delivery, endorsement, transfer in writing, or by parole, and includes as well the instruments by which the transfer is made and the transfer itself. The Supreme Court in the case of *The Commissioner of Gift Tax, Madras v. N.S. Getty Chettiar* (1971) 2 SCC 741, stated that 'Assignment' means the transfer of the claim, right or property to another. Lease creates an interest in the property while license creates a right *simplicitor*. It cannot be stated that a licensee of a forest area/forest land would not be covered under Section 2 of the Conservation Act. It is a permission granted vesting of certain rights to use the said forest area subject to a restriction and limitation imposed in the permission. Of course, it does not create any interest in the property like passing title to the licensee of a person in whose favour the permission is granted.

73. The expression 'or otherwise' is an explanation of the word 'of lease' and not only means lease in other form, the expression 'or otherwise' would fairly take into its ambit, grant of a permission or a license. The contention that while interpreting the word 'or

otherwise' the Tribunal should apply principles of doctrine of *ejusdem generis* and hold that the expression 'or otherwise' is to take colour and should mean lease alone or something which is similar to the terms cannot be upheld. In the case of *United Bank of India* (supra), the Supreme Court was dealing with the Pension Regulations of the bank and while dealing with the expression 'qualifying service' held that it would be applicable to the persons/service rendered while on duty, and persons not in service are not entitled to the benefit. The term 'otherwise' appearing in the rule should be read *ejusdem generis*. It cannot be construed that a person not in service, would be deemed to be in service because of this expression. In para 15 of the judgment, the Supreme Court held as under:

> "15. The meaning of the word "otherwise" as given in *Advanced Law Lexicon* (3rd Edn., 2005) is as under:
>
> > "*Otherwise*-By other like means; contrarily; different from that to which it relates; in a different manner; in another; in any other way; differently in other respects in different respects; in some other like capacity."
>
> As a general rule, "otherwise", when following an enumeration, should receive an *ejusdem generis* interpretation (per Cleasby, B. *Monck v. Hilton.* The words "or otherwise", in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned, (Cent. Dict.) [See *R&B Falcon (A) Ply Ltd. v. CIT.]*

74. Even while keeping the principle as enunciated by the Supreme Court (supra), the respondents including the private respondents cannot evoke any advantage. Firstly, the judgment of the Supreme Court was dealing with different jurisprudence i.e. the service regulations for a limited class of people. Secondly, the

Supreme Court stated that the expression 'otherwise' could not create a class, which will be beyond the scope of the principal expression i.e. the 'qualifying service' which had been defined under Regulation 2000 of those Regulations. The 'qualifying service' had been independently defined meaning the service rendered while on duty 'or otherwise' and Rule 29 provided the conditions in which a voluntarily retiring employee should satisfy/specify certain requirements to claim benefit of pension. Thus, the word 'otherwise' was not used in the same provision, still the Supreme Court stated the principal as afore-noticed.

We have to construe the word 'or otherwise' with reference to the provisions of the Conservation Act, scheme, purpose and object of the Act and that too in light of the facts and circumstances of the present case. The widest term that could be used by the legislature is lease. Lease would cover all cases, where right in property is transferred by different forums/forms known to Transfer of Property Act, 1882. The word 'otherwise' has to be construed as an extension of lease because anything else would otherwise be covered under lease and there was no occasion to add words 'or otherwise'. Intent of the legislature is very clear that it wanted to create another kind of cases which were not lease but still would be covered under Section 2 (iii) on the principle of extension. In the case of *Lilavati Bai v State of Bombay,* AIR 1957 SC 52, while dealing with the words 'or otherwise' Supreme Court held that the legislature has been cautions and thorough-going enough to bar all avenues of escape by using the words 'or otherwise'. Those words are not

words of limitation but of extension so as to cover all possible ways in which vacancy may occur. Applying the said dictum of the Supreme Court in the present case, it is clear that the intention was to cover all cases of forest land being used for non-forest activity/purpose. It was to ensure that no cases escape the restriction of these laws. The cases will obviously be those which fall beyond the word lease. The grant of permission or license as afore-discussed would be the cases falling in the extension yet not covered by the expression 'lease'. While applying the principal stated in *Lilavati Bai* (supra), the Supreme Court applied the same with further expansion in *Animal Welfare Board of India v. Nagaraja & Ors.,* (2014) 7 SCC 547, where the Court was dealing with the Notification issued by MoEF and the corrigendum issued by the Government of Maharashtra in relation to Section 11 of the Prevention of Cruelty to Animals Act, 1960. The case related to cruelty to animals who were being used in bullock cart race. While dealing with the expression 'or otherwise' in Section 11(1)(a) it was observed that such 'or otherwise' was intended to prevent the animals from unnecessary pain or suffering to the animals and the expression was not limited and intended to cover all situations where animals suffer pain. These expressions are purposefully included and not without any basis. It is also a settled principle that where the words are clear and there is no obscurity and intention of legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending the statutory provisions. In such case the principle of *ejusdem generis* is not

attracted. The Supreme Court in the case of *Maharashtra University of Health Sciences and others v. Satchikitsa Prasarak Mandal &Ors,* (2010) 3 SCC 786 held as under:

> "38. Therefore, the doctrine of *ejusdem generis* cannot be pressed into service to defeat this dominant statutory purpose. In this context we may usefully recall the observations of the Supreme Court of United States in *Helvering v. Stockholms Enskilda Bank* 293 US 84, 88-89, 79 L Ed 211, 55 S Ct 50, 52 (1934) as under:
>
> > "....while the rule is a well established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, *we must give effect to the conclusion afforded by the wider view in order that the will of the legislature shall not fail."*
>
> (Emphasis supplied)
>
> 39. Therefore, with great respect, this Court is constrained to hold that the Hon'ble High Court possibly fell into an error by holding that the Grievance Committee has no jurisdiction to entertain the complaints made by 5th and 6th respondent since they are not approved teachers. Various other factual aspects were considered by the High Court but since the High Court has come to a clear erroneous conclusion that Grievance Committee has no jurisdiction in dealing with the complaint filed by the 5th and 6th respondent, the very basis of the High Court judgment is unfortunately flawed and cannot be sustained."

75. The doctrine of *ejusdem generis* has to be applied in the case of ambiguity of the expression, unclear legislative intent and where such interpretation would further the cause of statute/provision in which the expressions are used. In our view, none of these

essentials are satisfied in the present case. The expression 'otherwise' is intended to cover all other modes by which a forest land can be put to a non-forest use or purpose. This approach would further find support from the fact that under the explanation, the legislature has even provided what non-forest purpose means and further taken caution of even specifying what will be included therein. Specifying the users with such certainty and clarity, leaves no scope for introducing or taking away any of the expressions used by the legislature and rule of plain construction would serve the purpose keeping in mind that these are socio and environmental welfare legislation.

76. Another contention submitted accordingly to the respondents, particularly the private respondents is that since it is a license *simplicitor* and that too very limited one, licensee would not be covered under the expression 'or otherwise'. This license does not create any interest in the property which is the very essence of invoking the provisions of Section 2 of the Conservation Act. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of *Pradeep Oil Corporation v. Municipal Corporation of Delhi*, (2011) 5 SCC 270. In that case the Hon'ble Supreme Court was concerned with a question if the property tax could not be levied on licensee who had raised construction of petroleum storage depots and they had been subjected to property tax. It was observed that license was not assignable, but was revocable. Even in this case the Hon'ble Supreme Court while specifying the distinction between lease and licence as afore-noticed

held that it was for the appellant to show that despite the right to possess the demised premises exclusively, right or interest in the property had not been created. However, it was observed further that maintenance facilities were to be provided and the definition of land building in the Delhi Municipal Corporation Act, 1957 should be given its fullest effect and even an Oil Tanker was held to be construction and therefore, it was liable to tax as claimed.

If we apply this very judgment relied upon by the private respondents, the principle stated therein is rather against them. Even in the present case the area in question is exclusively in the possession of the persons to whom permit is issued. They enjoy exclusion of all others and the visitors are only those, who are permitted both to the nature and interest upon the property and enjoy the same, subject to the payment of such amounts as are imposed by them alone. Consequently, it is an activity where temporary or even semi-permanent structures are raised and activity carries on from year to year. Now, permits have been granted for 5 years which can be renewed year to year. Thus in our considered view, this judgment does not further the case of the respondents.

77. The Rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but its only permissible inference is that in the absence of an indication to the contrary, and where context, object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it

becomes the duty of the courts to give those words their plain and ordinary meaning. Lord Scarman said "if the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation is a useful servant but a bad master". (Refer: *Kavalappara Kottarathil Kochuni v. State of Madras,* AIR 1960 SC 1080, p. 1103: 1960(3) SCR 887; *Tribhuwan Parkash Nayyar v. Union India,* AIR 1970 SC 540, p. 545: (1969) 3 SCC 99 (the rule is neither final nor conclusive). *Mangalore Electric Supply. Co. Ltd. v. C.I.T., West Bengal,* AIR 1978 SC 1272, p. 1275(1978) 3 SCC 248; *Grasim Industries Ltd. v. Collector of Customs Bombay,* AIR 2002 SC 1706, p. 1710: (2002) 4 SC 297 & *Lilawati Bai v. State of Bombay,* AIR 1957 SC 521,p.529:1957 SCR 721*; Hamdard Dawakhana v. Union of India,* AIR 1965 SC 1167, p.1172:(1965) 2 SCR 192*; Grasim Industries Ltd. v. Collector of Customs Bombay, supra & Quazi v. Quazi,* (1979) 3 All ER 897, p.916:1980 AC 744:(1979) 3 WLR 823 (HL)).

78. Another contention on behalf of the respondents and private respondents to escape their responsibility in terms of Section 2 of the Conservation Act is that the activity does not result in breaking up much less non forest use of forest land or portion thereto for the activity. In support of their contention that this does not tantamount to non forest use of forest land or any part thereto reliance has been placed upon the judgment of Madras High Court in the case of *S. Jayachandran, Joint Secretary, TN Green Movement*

v. UoI, 2000-1-L.W.301. This contention is again without merit. The view of the Madras High Court was in relation to film shooting in the forest area of Ooty. The petitioner had approached the Court against the respondents for carrying on such activity as well as to dismantle the film sets erected. In those facts, the Madras High Court took the view that breaking up of a forest area involves extensive digging etc. and mere carrying on of film shooting with temporary sets would not fall in that category. It was noticed in this judgment that extensive digging of wells or foundation of houses or tiling the land for the purposes of cultivation in a forest area may amount to breaking up of the forest land. The breaking up should be such, as to have some degree of permanence and there should be danger of deforestation by the activity. Firstly, this judgment on facts and on principle of law, both has no application to the present case. Admittedly, the camps are made in the area of 20,000-50,000 sq. mtr. or falling within the category of reserved forest land. The photographs also show that some basic foundation are laid for the purposes of fixing up of tents which is not a temporary measure but is of semi-permanent nature and various services are provided for the visitors to these camps. The camps are operational for ten months of a year and this process is continuing from year to year.

79. Although a forest is usually defined by the presence of trees, under many definitions an area completely lacking trees may still be considered a forest if it grew trees in the past, will grow trees in the future, or was legally designated as a forest regardless of

vegetation type. As per Section 2 (ii) of Conservation Act provides that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. For the purpose 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, horticultural crops or medicinal plants; (b) any purpose other than re-afforestation.

80. Breaking up of forest land would mean its fragmentation in to two or more parts that loses continuity with each other. The breaking up of a forest can occur as a result of an obstruction created in such a manner that the two segments of the previously single strip gets separated from each other and exchange of biomass (especially animals) is obstructed/made difficult. As a matter of fact, this is possible only when such an obstruction is of permanent nature, e.g., construction of a wall, wide multi-lane tarred road with heavy traffic movement, creation of agriculture/horticulture land or human settlements/industrial complexes or raising of fencing in between the two segments. Further, breaking up of the forest ecosystem would occur only when the extent of these activities is quite significant and affects a large area. A few residential houses or a few small agriculture / horticulture fields here and there, for example, may not result in the breaking up/fragmentation of a forest.

81. A question which arises for consideration is whether setting up of rafting camps along the beach of river Ganga and its tributaries qualifies as breaking up of the forest as comprehended under Section 2(ii) of the Conservation Act or not. The contention of the respondents is that setting up of the camps of temporary type as such cannot be treated as breaking up of the forest. They contend that the camps laid on the river beach are of temporary nature and do not remain for the whole year. Therefore the activity is not in any manner violation of the Conservation Act. The petitioners, on the other hand, plead that the density of the tents together with the number of camps along the beaches for the most part of the year make the activity a permanent obstruction and hence qualifies it to be taken as a means of breaking up the forest.

82. Here we may note that the term 'forest' is used for a distinct type of ecosystem and does not include just trees or plants but comprises a great range of flora and fauna diversity, which are interdependent other and together with the abiotic features of the area form the ecosystem are called forest. Each individual constituent of this biodiversity is important in its own terms in ways we may not currently understand, as interdependent species have evolved over millions of years to interact and flourish.

83. The term 'breaking up' has to be understood with the object of the Conservation Act in mind. The primary purpose of the Act as already noticed is conservation of forest and to deal with matters incidentally and ancillary thereto. When we talk of breaking up a

forest it does not mean simplicitor, physical breaking up of the forest area, but the impact of the activities on the eco system of the forest area. If in the forest area there is a substantial obstruction caused by raising of temporary or semi-permanent construction and these places are used for regular living of human beings and incidental activities are carried on, it certainly possesses an obstruction to the wildlife and eco system of the forest area and to the ecology of the area. This case cannot be compared to the case of *S Jayachandran, Joint Secretary, TN Greens Movement* (supra) rather if the activity of camping is carried on for ten months every year it has certain degree of permanency as understood and digging of the area is carried on. Thus, even according to that judgment, it would be breaking up of the forest area. Furthermore, this is an act being carried on by the private respondents with the permission of the State and is certainly not an act/purpose of reforestation. Thus, we are unable to accept this contention of the respondent.

In view of the above discussion, we would answer both the issues under consideration against the respondents. The cases of camping activities in the reserved forest areas are activities which are for non-forest purpose or are non-forest activity in the forest area. These cases would attract the provisions of Section 2(ii) and (iii) of the Conservation Act. It is obligatory upon the State of Uttarakhand to seek approval at least as a matter of scheme from MoEF and then issue orders/permits in terms of Section 2 of the Forest Conservation Act.

DISCUSSION ON ISSUE NO. 4 AND 5

4. Whether it was permissible for the State of Uttarakhand to cover regulation of forests under the Rules of 2014 which were formed under clause (a) and (b) of sub-section 2 of Section 8 of Uttarakhand Tourism Development Board Act, 2001 when the field was already covered under the Central legislation, i.e., the Conservation Act?

5. Whether eco-tourism in the forest area would squarely fall within the ambit and scope of the provisions of the Conservation Act and the letter dated 28th August, 1998 issued by MoEF is liable to be quashed?

84. We would take up both the above issues together for discussion as they are inter-linked. Camping and rafting stated to be ecotourism activity is carried on under the slogan 'back to nature'. Ecotourism is about uniting conservation communities and sustainable travel. It is defined as responsible travel to natural areas that conserves the environment and improves the welfare of the local people. There are certain principles of ecotourism like; minimise physical, socio, behavioural and psychological impacts, building environmental and cultural awareness and respect, providing positive experiences for both visitors and hosts, providing direct financial benefits for conservation, design, construction and operation of low-impact facilities, recognizing the rights and spiritual beliefs of indigenous people etc..

85. Ecotourism may be treated as form of tourism involving visiting fragile, pristine and relatively undisturbed natural areas, intended as a low-impact and often small scale alternative to standard commercial (mass) tourism. Ecotourism is generally marked as 'eco-friendly' or environmentally sound. This is indeed the idea of ecotourism: low-impact, low-consumptive, and

environmentally sensitive. (Refer: Lumsdon, L.M. and Swift, J.S. (1998) Ecotourism at a Cross roads: The case of *Costa Rica. J. Sustainable Tourism* 6 (2):155-173).

86. Examples of negative environmental impacts of tourism to the protected natural areas have been listed as: overcrowding, environmental stress, trail erosion, deterioration of vegetation, noise pollution, contamination of air, water and land, forest fires, wildlife mortality, health hazard, habitat destruction, deforestation, erosion, ecological changes, behavioral changes of animals, groundwater pollution, scarring of landscape, etc. **[***Boo, E. (1990) Ecotourism: The potentials and Pitfalls, Volume 1. Washington: WWF***]**. In view of the above definition of the term 'eco-tourism' the question arises whether the State Government treated the rafting and camping activity in the concerned area as an activity under eco-tourism and whether the advice received from MoEF in 1998 in respect of allotment of camps for the rafting was followed by it. If the answer is yes, then what steps were taken by the government in that direction. It is a known fact that prior to 1996 there were just two river camping sites (one at Kaudiyala-Shivpuri and the other at Vyasi) in the impugned area between Kaudiyala and Rishikesh in the Garhwal region of Uttarakhand (Latitude 30°4′27″N – 30°7′23″N and Longitude 78°29′59″E – 78°18′51″E) **[***see Farooquee et al, 2008: in Current Science VOL. 94 (5): 587 – 594***].** The number increased to 8 in 1997 and to 12 camping sites in 1999 **[***Johnsingh&Rajvanshi, 1999: Ecological Assessment of the Rafting Camps on the River Ganga; Wildlife Institute of India, 11+viii pp***]** and then to 26 camping

sites in 2006 and to as many as 34 camping sites in 2010 [*Rajvanshi et al, 2010: A Rapid Impact Assessment of the Rafting Camps along the Kaudiyala – Rishikesh stretch of River Ganges, Uttarakhand; Technical Report, Wildlife Institute of India 70pp*]**.** The IAPRO confirms that 94 rafting camp operators are working in the Kaudiyala – Rishikesh segment of the river. Even according to State authorities (Respondents 3 to 5) presently there are about 37 beach camps operating on the reserve forest land of the Narendra Nagar Forest Division, 51 beaches in revenue land of Tehri and a few beaches in revenue land of Pauri district. According to these respondents as per the State Government Policy, the camp operators are given permission to set up temporary pegged-tents in areas along the river wherever there is a natural clearing at specified places from mid September to June. There is no document on record that would indicate that there is any application of mind in the allotment of camp sites and no survey/study has ever been conducted by any Government agency to check the feasibility of different areas for camping sites. Instead it becomes quite apparent from the documents that the State Government has been allotting the camping sites over the years on demand from the concerned campers, without bothering to check the feasibility of the sites and the overall carrying capacity of the river segment in question in respect of the camping activity. In traditional ecological usage, carrying capacity has been defined in a general way as the total number of individuals of a species that can live in an ecosystem (or habitat) under certain conditions. The carrying capacity of a

biological species in an environment is the maximum population size of the species that the environment can sustain indefinitely, given the food, habitat, water and other necessities are available in the environment. There are other contexts as well in which carrying capacity has been used. For instance, it has been used to refer to the ability of foundations, materials or structures to accommodate a given load, in terms of either weight or volume and to the numbers of cars a freeway can carry smoothly.

87. In recreation planning and management, carrying capacity has received much attention only since the 1960's, but the concept is much older. Ohmann (1973) states that overcrowding in National Parks in the U.S.A. and consequent loss of wild land values were noted early in the 1930's **[***Ohmann L. F. (1973) Ecological carrying capacity. USDA Forest Service General Technical Report NC-9: 24 – 28***]**. As early as 1960 the Californian Public Outdoor Recreation Plan stated as one of its basic hypotheses "that each recreation resource type within a region has a maximum user carrying capacity, (number of users per acre per day and season); when used beyond this capacity the character and quality of the resource are altered or destroyed". Within the U.S. Forest Service, research workers had by 1964 struggled to define and assess the implications of the concept of carrying capacity for either recreational land or wilderness areas. Ecological consideration of carrying capacity determination includes the impact of recreational activities upon the environment. Ecological studies have been concerned mainly with the need to prevent or limit damage to

natural or semi-natural habitats that may include areas of great intrinsic ecological interest, while still allowing some limited, or at least controlled, recreation use. The relevance of the concept of carrying capacity to the concept of sustainability adds to its value as an organizing management framework. Implementing the sustainability concept, environmental values should not be used up faster than they are produced. The capability of the resource base to continue to provide for recreational use is generally viewed through the concept of carrying capacity **[***Traklois, D. (2003) Carrying Capacity – An Old Concept: Significance for the Management of Urban Forest Resources. NEW MEDIT 2 (3): 58 – 64***].**

In the above scenario of allotment of camping sites along the river, a study on carrying capacity would include collection of the data in respect of (i) ecological features of the concerned area, (ii) habit and habitat of important fauna, especially animals listed under various schedules of Wildlife Protection Act, 1972, (iii) total number of sites available for the camping in the river segment in question, (iv) impact of the camping activity on the local biodiversity, especially the higher animals, including reptiles, birds and mammals as well as (v) mitigative measures required to minimize the negative impacts. There is no document on the record that would suggest that such a study was undertaken by the State Government at any point of time.

88. It may be noted that WII conducted a survey of the rafting camps located in the Rishikesh – Kaudiyala segment of the River

Ganga during 1999 on the advice of Forest Department of Uttar Pradesh Government. During this survey, it was noticed that some camps were violating the norms set in respect of toilets and solid waste disposal. Further, while a few camps had flush toilets instead of dry toilets, some camps disposed of the solid wastes very carelessly. Even the camps that used dry toilets had put these toilets only about 20m away from the water mark. Plastic waste was not properly disposed off. **[**see *Johnsingh & Rajvanshi, 1999: Ecological Assessment of the Rafting Camps on the River Ganga; Wildlife Institute of India, 11+viii pp***]**.

89. However, not much attention was given to the recommendations made in the WII 1999 study and the violations committed by the camp holders continued as is quite evident from the later reports. For example, *Farooquee* et al. (2008) observed that "almost all camp operators use more area of the beach than what was actually allotted to them. According to them most of the toilet tents are situated near the living tents and are not more than 10 m away from the sand back; in many cases they are situated right on the sand itself. The location of toilet tents in most cases is within the submergence levels of the Ganga during the rainy season. Though some dry soak pits have been made according to the norms, most of them get submerged under water during the rainy season and wash away the old deposits. It is well known that the level of river rises by 5 to 6 m during the peak rainy season, and almost all toilet tent locations get submerged under water during this season. Similarly, though fishing is prohibited, some tourists have been

observed with fishing rods at various locations on the river during peak camping season. Even detergents were used to clean the utensils". **[***seeFarooquee et al. 2008: Current Science, VOL. 94 (NO. 5): 587 – 594***.].** Similarly, *Mahapatra* et al (2011) also reported violations in respect of the camps **[see** *Mahapatra, et al 2011: in International Journal of Environmental Sciences Volume 1 No.5: 757 - 771***].**

90. The guidelines framed by the Ministry of Tourism, Government of India for the development of campsites clearly state that "carrying capacity must be kept in mind for wildlife/adventure (Land, Water and Aero-sports)/new destinations. There should be a minimum separation of 500 meters between campsites and no more than two campsites in an area of one sq kilometer should be there. The maximum number of campsites for a destination must be planned ahead as a part of the camping master plan. Congestion of campsites in popular areas must be avoided at all costs." However, the State Authorities never thought it worthwhile to have a detailed study of the wildlife habitat of the region and the carrying capacity of the said river segment in respect of rafting and establishment of campsites. Instead, the only consideration for these authorities seems to have been the generation of funds, as is evident from the shooting up of the allotment cases of campsites.

91. On the basis of a rapid on-spot survey of various camping sites located between Kaudiyala and Rishikesh during 2010, WII Research Team observed that location as well as size of 13 of the 34

campsites allotted during 2010 were questionable on account of their negative impacts on wildlife and their habitat. [see *Rajvanshi et al, 2010: A Rapid Impact Assessment of the Rafting Camps along the Kaudiyala – Rishikesh stretch of River Ganges, Uttarakhand; Technical Report, Wildlife Institute of India 70pp*]**.** However, the State Government decided to ignore the findings and continued to allot the camping sites with least regard to the negative impacts on the wildlife occurring in the concerned area, which forms part of the Forest ecosystem.

92. The area under dispute is reported to be harbouring 15 prominent mammal species [besides thousands of other organisms yet to be even completely listed]. All these animals have their peculiar requirements that would be provided by the habitat in which they existed for millions of years. Most of these organisms would frequent the water front available in the form of the river for meeting their water requirement. Presence of tents and the people in considerable number that too with varied interests each new day, for almost ten months in a year would surely act as a barrier to these animals and consequently affect their normal behaviour. Animal behavior refers to the activities animals perform during their lifetime, including locomotion, feeding, breeding, capture of prey, avoidance of predators, and social behavior. Habitat selection refers to the animal's choice of a place to live. Two types of factors affect where animals of a particular species live. First are the animal's physiological tolerance limits, which are determined by the species evolutionary history and may involve temperature, humidity, water

salinity, and other environmental parameters. Within those constraints, a second set of psychological factors are important: Animals make choices about where to reside based on available food resources, nest sites, lack of predators, and past experience. *Farooquee* et al (2008) have reported 15 wild mammal species from the area surrounding the campsites. As can be seen from the Tabulated data below, most of these mammals are included in Schedule I – IV of the Wildlife Protection Act of India and require protection.

Sl. No.	Name of species	Schedule of Wildlife Act, 1972
1.	Leaopard (Panthera pardus)	I
2.	Rhesus macaque (Macaca mullata)	II
3.	Langur (Presbytis entellus)	II
4.	Fox (Vulpes Bengal ensis)	II
5.	Jackal (Canis aureus)	II
6.	Black Bear (Salenar ctos thi betanus)	II
7.	Barking deer Grazing (Muntiacus muntjak)	III
8.	Sambar (Cervus unicolor)	III
9.	Goral (Nemor haedus goral)	III
10.	Wild boar (Sus scrofa)	III
11.	Black napped hare (Lepusnigricolis)	IV
12.	Porcupine (Hystrix indica)	IV
13.	Mongoose (Herpestes edwardsi)	
14.	Wild cat (Felis Bengal ensis)	
15.	Common otter (Lutra lutra monticola)	

93. The State of the Uttarakhand has also issued three Government Orders upon which the reliance was placed during the course of arguments. First Government Order was issued in 28th October, 1993 and modifications were made to the Government Order which provided that river rafting and river site camping

would be allowed in reserved forest area subject to the conditions which include river rafting, camping be set up only in the areas which have been identified by Divisional Forest Officer and term of permit would be decided by the Ministry of Tourism. It also placed some restrictions in regard to the persons not to use firewood for purpose of cooking, use dry pit toilets and use dug pits for disposal of wastes. Another Government Order was issued in March-April, 1994 by the Government. This was to be taken for prior permission for establishment of such camps near the river. Spent half burnt wood and coal had to be buried in a dug hole and not to be thrown in the river. This Government Order also directed that the permit should be issued for a period of five years maximum and would be renewed every year by the forest department. To this and in view of the MoEF's letter dated 28th August, 1998, the Government Order dated 25th September, 1999 was issued by the Government. In this the recommendations of WII of June 1999 were incorporated for issuing permits for camping etc. This Government Order also provided that use of generators for lighting and Diesel/Petrol / Kerosene fuel, water pumps are not allowed. At night time, light is allowed within the tents only and no bright light is allowed. Use of radio, video, tape recorder or playing any music was not permitted. The garbage had to be disposed of at designated spots and it had to be ensured that there is no littering on the camping site and the garbage should not be thrown in to river. The guidelines for camping, Government Orders and Rules of 2014 which were amended by Rules of 2015 inter-alia provided that camp fire shall

only be permitted on Saturdays and Sundays and permit for camping would be given for 5 years but it will be necessary to be renewed every year. This condition was amended to say that the permit would be for a maximum period of 5 years or season. The requirement of renewal was deleted. These show the nature of the activity as well as the dimensions of the regulatory regime.

94. Above are the provisions of law and government orders which govern the grant of permits for carrying of rafting and camping activity even in the forest area. We have already discussed in great detail the camping activity in forests and its impacts on environment, ecology and bio-diversity of the river. This being undisputedly a forest area, covered under Section 2 of the Conservation Act. The earlier letters of the MoEF taking the view that forest clearance in accordance with the provisions of the Conservation Act is not required for this activity are not legally tenable. The letter dated 28th August, 1998, in so far as it states that this activity does not fall within the ambit and scope of Section 2 of Conservation Act is issued on an erroneous understanding of law. We have already discussed that the camping activity is duly covered under Section 2 (ii) and (iii) of the Conservation Act.

95. The stand of the MoEF in its letter dated 27th March, 2015 is in consonance with the provisions of Section 2 and the scheme of the Conservation Act.

It is an ecotourism activity which is being carried on commercial basis. The period involved cannot be termed as

temporary. As noticed above, the leases are being granted for a tenure of 5 years and activities are carried on effectively for ten months over a year. The structures being raised are of temporary and semi-permanent nature. It is an activity in the forest area, covering an area of 20,000-50,000 sq. mtr. in each site. Wires are laid down and electricity is supplied. All other facilities are provided, thus it is obviously a non-forest purpose/activity in the forest area and is not the purpose covered under the explanation of Section 2 of Conservation Act. The cumulative effect is that the approval of the Central Government, even as a policy matter would be necessary. Compliance to the provisions of Section 2 in these cases is mandatory. The letter of MoEF dated 28th August, 1998 is clearly in conflict with the statutory provisions. An office letter cannot waive what is statutorily covered under the Conservation Act. This Act even does not vest any power in MoEF to exclude non-forest activities in a forest area which do not fall within the specified category in the section itself. The letter of the MoEF dated 28th August, 1998, suffers from basic infirmity of lack of jurisdiction. It is a settled principle of law that statutory provisions cannot be amended or varied by office letters, much less the letters which could not be implemented when they are in not conformity with the statutory provisions. The letter dated 28th August, 1998, therefore, is liable to be quashed and cannot be given effect to. Another legal aspect in the present case is that State of Uttarakhand has admitted to do indirectly what it cannot do directly. The State of Uttarakhand is under legal obligations to

strictly adhere to the Forest and Conservation Act and cannot avoid the approval of the Central Government in that behalf for carrying on of such activity. Firstly, the Act of 2001, does not empower the State Government to frame rules or regulations in exercise of its delegated legislative powers in relation to the forest land or forest areas which are covered under the Conservation Act. Secondly, under the power of delegated legislation in terms of Section 8 of the Act of 2001, Rules of 2014 as amended by 2015 can only be framed in so far as they aide or provide for implementation of the statutory provisions contained in the Act of 2001. In exercise of its delegated legislative powers the State Government cannot encroach upon the field which is otherwise covered by the Central legislation i.e. the Conservation Act, we have already discussed and held that the Forest and Conservation Act, will have precedence over any law of the State. Thus the provision which empowers the State Government under the Act of 2001 to grant permission for camping activity in the forest area which is a non-forest activity would be ultra virus the provisions of the Conservation Act. The power to grant permits and licenses to certify and allow tourism related enterprises and to determine the terms for registration, grant of permission, recognition of institution and fee will have to confine itself within the ambit and scope of the Act of 2001. They cannot transgress into the valid cover provided by the Conservation Act, whether for a non-forest activity/purpose or otherwise. Whether utilisation of the forest area has to be permitted or not must essentially follow the legislative provisions contained under Section

2 of the Conservation Act. The Central Government must grant its prior approval in that regard and such condition should regulate measures as they may be necessary for the purposes of protecting the forest and environment both. The Entries in the III[rd] list of the Constitution are to be treated as fields for legislative competence. They have to be interpreted while keeping the national guidelines in mind. They demarcate the field in which the State or the Centre would have jurisdiction. They are closely linked and are supplementary to one another. Because of transgressing legislative competence in exercise of delegated legislation the State of Uttarakhand has created authorities in the State itself, while in terms of the Forest and Conservation Act, it is the Central Government which plays a vital role to grant of approval for carrying on of such activity in the forest area. Whenever there is conflict between the powers to be exercised by the Centre and State the power of the Centre and the field covered by the Central Legislation shall prevail in accordance with law. If a field is covered by the Central Legislation which have been covered at any prior point of time, then the State Legislation must give way for implementation of the Central Legislation. 'Forest' falls in item No. 17(a) of List III i.e. Concurrent List. Thus the field is already covered field and cannot be brought into service in any case because of the non-obstante clause contained in the Conservation Act. The laws of the State would have to be implemented with precedence to the Central Law and in consonance thereto.

96. In view of the above discussion, letter of the MoEF dated 28th August, 1998 is liable to be quashed which we so directed. Furthermore, the Rules of 2014 as amended in 2015 so far as Rules 7(ii), (v), 24 and 25 which deal with the implementation and proposal to grant permits for carrying on of camping activity (non-forest purpose) in the forest area are concerned, they are in conflict with the provision of Section 2 of the Conservation Act and hence are ultra virus and cannot be implemented. It is obligatory upon the State of Uttarakhand at best as a matter of policy to seek prior approval of the Central Government before issuance of any permit for said camping activity.

DISCUSSION ON ISSUE NO. 8

8. What is the relevancy for determining the conduct of the State Government, private parties and the incidents of violation reported before the Tribunal?

97. We prefer to deal with question no. 8 before we answer question no. 6 and 7 as question no. 8 has a direct bearing on them.

98. The conduct of the State and the parties would be of considerable significance while deliberating upon this issue. It is on record before us that there are nearly 37 camping sites besides the one which are falling in the revenue area. There are nearly 2463 tents on these sites. According to the State these sites are completely regulated and inspections are carried out on regular intervals by the officers of the Forest and Revenue Department particularly at the end of the license period. It was contended with some vehemence that there is six layer system for granting these

licenses and it provides proper check and balance so that this activity does not have adverse impacts on environment and ecology. This contention of the State unfortunately is not substantiated by the record produced before us including the one relied upon by the State Government. The theory of six layer system for consideration of application and grant of permits/permissions appears to be a great misnomer. We had called for the original files of the few cases to examine how this process takes place. Not even a single file was found to be complete and in compliance with the Government Order issued by the State Government itself, much less in conformity with the provisions of the Conservation Act.

99. The applications were allowed within 24 hours of their filing. In other words, the so called six layer system was categorized in favour of the applicants within 24 hours or 3 days as the outer limit. This system is expected to provide for inspection by the ground staff of the Forest Department, its submission to the higher authorities who are expected to grant their consent and then it is required to be submitted to the Divisional Forest Officer of the concerned area who then is expected to make due recommendations to the Chief Conservator of Forest who would then grant or permit to be granted the permission for carrying on the camping activity in the forest area. It is unfortunate that the projection of law by the departments of the State of Uttarakhand is entirely opposite to the reality on the ground. The record of these applications before the Tribunal clearly demonstrates complete go by to the prescribed guidelines and the statutory requirements.

100. As far as conducting of inspection at the regular intervals by the staff of the forest /revenue department is concerned even on this aspect much is required to be done. According to the Government, they have come across number of enterprises committing breach of the conditions stated in the permission. They have registered PRO cases for various offenses under the Indian Penal Code, 1860, Conservation Act and for violation of the conditions of the permission. Strangely in one of these cases registered against the guest/enterprises it even came to light that they were possessed of a firearm and there were threats of it being used. Further, the violation related to various aspects like Non-collection and disposal of Municipal Waste Encroachment in the reserve forest and unauthorised use of forest area and encroachment of beach area.

101. These breaches were noticed in the area of Shivpuri, and the cases are stated to be pending adjudication. According to the applicant there are large number of cases which do not even come to the notice of the authorities and they relate to spoiling the beach camp area, raising of construction, throwing of waste even in the river and obstructing the course of the river as well. The enterprises who are given permission have also violated the conditions of the permission. The photographs that have been placed on record collectively as Annexure- A (II) show that the tents and even temporary and semi permanent structures have been raised right in the river bed even and in the middle of the river. There is large number of tents and the waste from toilets is shown to be directly

entering the river. The Google images have been filed on record by the applicants, which show not only the camping sites are within the flood plain but even constructed on the banks of river Ganga just below the Haridwar-Rishikesh-Badrinath Road. The rafting camps are not even 10-15 m away from the actual flow area of the river. There is a rollercoaster camp installed right in the river bed and bonfire appears to be a regular feature where people are burning forest wood. The Google images stated to have been taken on 4th September, 2015 when the matter was being heard, large scale camping on the river side. From these images it appears that there are large number of camping sites and it is doubtful that the State has been able to present on record the actual figure of the camp sites and area occupied by them and extent of their activities. Of course, it is contended by the respondents that there is nothing in the area of the river Ganga. Patently with reference to these Google images it does not appears to be correct. All these activities and the manner in which they are being conducted at the respective sites clearly show the violation of law and they are squarely covered under the exception shown in the letter of the MoEF dated 27th March, 2015.

102. We must notice the contents of the "Rapid Assessment Report along the Kudiyala-Rishikesh stretch of River Ganga, Uttarakhand". This was a report prepared by the WII in June, 2010. They had carried out a survey of actual site of the area and noticed that tourism is the largest service industry with the contribution of 2.63 per cent to the national GDP and 8.78 per cent of the total

employment in India. 'White water Rafting' on river Ganga in Uttarakhand being a very popular water sport attracts adventure seekers from far and wide. There were just 2 camping sites one between Kaudiyala-Shivpuri and other at Vasai in up-stream from Rishikesh, as noticed in 1994. These were increased to 12 in 1999 and finally there are 34 camping sites as noticed in 2010. They noticed environmental impacts of Rafting Camps. The study that the Institute conducted was in area located in Garwhal region of Uttarakhand between 30^0 4` 27// N- $30^0$7` 23// N and 78^0 29` 59// E- $78^0$ 18` 55// E. It is located upstream between Rishikesh and Kaudiyala, in the foot of Himalayas. As already noticed they described this stretch as subtropical broadleaf forest. Many species of wildlife in the forest were noticed. They even surveyed the site and principal objective was to make snapshot observations of the camping sites in and around, along the river.

103. The various camps, their location and characteristics were noticed and team made recommendations as to which of the sites would be recommended for camping with adequate case on different issues. These locations were found to be extended to 50 m from the edge of the river. The camps were found to be even at a distance of 300 m from the other camps. Some sites were recommended while others were found not worthy of being recommended on different grounds. There were sites which were partly on the beach and partly on the vegetable grounds. Some sites were found to be on 3 km and even more distance from the river bed. They made comments about all the 34 sites. The team noticed wildlife along the

river rafting stretch. On 3 sites animal presence was noticed. These locations were considered to be sites which were being used by wildlife. They also offered comments on each of the site with reference to wildlife values. Nearly, 14 sites were found to be unsuitable in this regard. It was advised that best codes as were available for planning environment sustainability in tourism projects should be followed. It was observed that Minimum Environment Impact Plan should be prepared. Various points indicated in relation to travel and camp, on durable services, disposal of waste, minimizing the impact of fire, respect to wildlife and be considerate to host and other visitors. These guidelines were required to be incorporated in the permission to regulate adventure tourism in Uttarakhand. We may extract the relevant part of this Rapid Impact Assessment Report.

CONCLUSIONS AND RECOMMENDATIONS

Consideration of the environmental aspects of rafting camps needs to cover both possible aspects (i.e. opportunities and potentials for sustainable use of environmental assets) as well as the negative impacts (e.g. problems of environmental degradation and pollution) that have to be central in the development of safeguards for addressing the impacts of camping sites in Rishikesh-Kaudiyala stretch. Natural resource managers will have to apply a variety of strategies to avoid. Manage and minimize camping-related impacts.

Site Management strategy

Management actions implemented to spatially concentrate camping activities and reduce camping disturbance have been highly successful. These reductions in area of camping disturbance are attributed to a camping site policy, limitation on site numbers, and construction of sites in suitable terrain use of facilities and on ongoing program of campsite maintenance. Such action are most appropriate in higher use backcountry and wilderness settings (Marion and Farrell, 2002)

Because impact is almost synonymous with use, impacts can be reduces by limiting the spatial extent of use. This confinement strategy is one of the most commonly

> employed techniques in recreation management. The effectiveness of this approach can be amplified by confining use to sites that are particularly durable and able to withstand repeated disturbance, and by keeping use away from habitat that is rare or critical to animals. The success of attempts to employ spatial control as a management technique can be greatly increased through careful site selection for camping that will meet the needs and aspirations of recreationists, while minimizing both the extent and severity of impact.
>
> Research has indicated that use containment and site management strategies are most effective in minimizing the areal extent of camping impact (Cole, 1981; Hammitt and Cole, 1998; Leung and Marion, 2000a). A containment strategy seeks to limit the aggregate extent of resource impact by concentrating visitor use within a limited number of areas or sites, or within the boundaries of a single site (Leung and Marion, 1999).
>
> A review of all the 34 camping sites along Rishikesh-Kaudiyala stretch of Ganges clearly reflect that location and size of as many as 13 sites is questionable on account of their impacts on wildlife and their habitats.

104. This Rapid Impact Assessment Report was not found worthy of acceptance by the State of Uttarakhand according to the Inter-Departmental Meeting of the State of Uttarakhand chaired by Chief Secretary dated 8th September, 2010. It was held as a one day affair in which the team had gone in the river through the motor boat which was not permissible and they had no fair opportunity to examine the sites and offer fair comments. This contention does not impress us at all. These were verifiable facts and whether the State Government wanted to accept the report or not is a matter, exclusively in the domain of the State Government. But to treat it as an irrelevant document was certainly a mistake, the State Government ought to have considered the report objectively and taken its decision while granting permissions so as to ensure that there was no degradation of environment, biodiversity, ecosystem and particularly the forest area. If the people are going to these

pristine sites with firearms under the name of 'Back to Nature' then the situation is pathetic. Firearms could be used even to shoot the wildlife also indiscriminate bonfire is an indicator of serious violation. It would affect the environment and wildlife both in that area. It is an eco-sensitive area and greater precautions are expected to be taken by the people who wish to carry on such activities as well as by the State which wishes to permit carrying on of such activities. Thus, the conduct of the State and the private parties are of relevancy in determining the main issue. The Rapid Assessment Report would provide an insight into the working of these camp sites. Undisputedly, there are violations committed by the management as well as the guests at the camp sites.

DISCUSSION ON ISSUE NO. 6 AND 7

6. Whether camping site is a pure commercial activity and cannot be permitted in the forest land or on the banks of river Ganga, keeping its impact on environment in mind and should be barred?

7. If question no. 6 is answered in the negative, what should be the regulatory regime governing carrying on of such rafting and camping activities?

105. It has been commonly stated by all the respondents that large numbers of tourists come to Uttarakhand during the season for rafting and camping. Nearly 60,000 visitors come every year which includes 4 to 5 thousand foreign tourists. It provides revenue to the State as well as employment to the people of the area. It is clear that this eco-tourism activity is completely a commercial activity intended to provide financial benefit to the State and provide employment to the people of the area. It is true that rafting does not

have any adverse impacts on the environment, ecology and river per se but carrying on of camping activity in the forest area does have substantial impacts. Sustainable tourism is probably the adequate answer to this question while rafting could be carried on more liberally but it necessarily need not be connected to camp activity, both can operate independently. In our considered view despite the fact that eco-tourism is a commercial activity still it could be permitted, but subject to a strict regulatory regime and its enforcement without default.

106. Responsibility lies upon the State to protect its environment, forest and rivers. Right to decent and clean environment is the right of every citizen. Thus, on the cumulative reading of Article 21, 48 A and Article 51 A (g) of the Constitution the State cannot be permitted to shirk its responsibility of conservation and protection of forests and environment on the plea of earning revenue. If the State chooses to carry on such activity which certainly is not a prohibited activity under the Conservation Act, but is a restricted activity then it must take unto itself responsibility of regulating this activity in all responses without any default. Camping activity does cause contamination of river and ground water particularly when the activity is not carried on strictly in terms of the regulatory regime in force. Google images, Rapid Impact Assessment Report and other documents placed on record show that presently the camping activity in particular is not being properly regulated by the State and its authorities. State is failing in its supervisory capacity and even private entrepreneurs have failed in their duties in

complying with the conditions of the permission granted to them in accordance with law. We may also notice here that the wildlife that has been reported between Kaudiyala-Rishikesh in Garwhal region includes leopard, Fox, Jakal, Black Bear, Sangal, Wild Bear, Wild Cat and Rhesus Mancaque. The wildlife requires protection besides conservation of forest. MoEF when issued the letter on 23rd May, 1990 it noticed that camping on sandy stretch of the river would be a source of pollution and is a threat to the forest and the river bank. Site should be more towards the road and not on the river bed. There it had also been stated that it was a commercial activity. The activity of camping cannot be permitted as a primary activity as it has been there for continued period of 5 years. It is a matter of common knowledge that a person who wish to make investment for a period of 5 years would be having some reluctance not to raise structure of atleast some permanence to give greater comfort, convenience and service to its visitors, though at the cost of adverse impacts upon environment, ecology, river and wildlife. Thus, it is absolutely essential that a proper stringent Regulatory Regime is placed on record so that such activity can be permitted to continue longer. The State of Uttarakhand has submitted before the Tribunal on 31st March, 2015 that it would not grant any fresh permits for the current season. We propose to continue the said directions till a proper Regulatory Regime in accordance with law is brought in place and is implemented.

107. We may also notice that the river Ganga from Gaumukh to Rishikesh which few years back was a river of pristine and without

any pollution today, because of various factors, of which camping is one, has altered water quality. It is absolutely necessary that a High Powered Committee is constituted to undertake a study taking Rapid Impact Assessment Report and all other relevant documents into consideration and to examine the entire matter *de novo.*

108. It may be little impractical and may cause undue delay in commencement of the activity of camping if every individual licensee of a camp site is required to obtain clearance and order in terms of Section 2 of the Forest Conservation Act. It will be substantial compliance to the provisions of the Act if sites are identified; Collective Management Plan is submitted by the State to the MoEF which should grant its approval and/or by adding such conditions as it deems fit and proper, resulting in passing of a collective and comprehensive order under Section 2 of Conservation Act by the State of Uttarakhand. There has to be a very serious supervision with physical inspections at regular intervals by team of high officers of the Forest Department of Uttarakhand and Uttarakhand Environment Protection and Pollution Control Board. It should also ensure that conditions that are imposed in the permit granted by the State Government are fully and effectively implemented. However, there would be no camping or camping site in the mid of the river or river bed and anywhere within the area which is less than 100 meters measured from the middle of the river upto 2 km beyond boundary of the Rishikesh upstream and not less than 200 meters measured from middle of the river there

onwards till boundary of Haridwar downstream. (100 meters as a crow flies)

We consider it appropriate to observe that the State of Uttarakhand while exercising powers in consonance with the provisions of the Act of 2012 should keep in mind 1 in 25 years flood plain as the guiding factor since it is a well-studied and documented limitation.

109. In any case no construction permanent or semi-permanent should be permitted in any circumstance. The State Government and the Central Government should consider the period of 5 years for which the permits are being granted for their reasonableness. Some conditions in the permission orders placed on record appears to be reasonable and must be imposed in the permission/license granted by the State. Further the permission/license granted by the State is not an absolute right of the private entrepreneur and they must carry out each direction issued in the permission in its true spirit and substance. The concept of 'Back to Nature' ought not to be used for developing revenue at the cost of Environment and Ecology. River Ganga is not a river simply for our country, but it is a river that is worshiped and is a lifeline to a large population in our country. Therefore, this is a fit case where the Tribunal must issue interim directions till the proper Regulatory Regime comes into force in accordance with law.

110. In light of the above discussion we pass the following directions.

1. No camping activity shall be carried out in the entire belt of Kaudiyala to Rishikesh and the Government would abide by its statement made before the Tribunal on 31st March, 2015, till the regulatory regime in terms of this Judgement comes into force and is effectively implemented. However, we make it clear that Rafting per se does not cause any serious pollution of river or environment. We permit rafting activity to be carried on with immediate effect.

2. We constitute a Committee of officers not below the rank of a) Joint Secretary from the Ministry of Environment and Forests and along with a specialist in this field from the Ministry.

   b) Secretary, Department of Environment and Forest from the State of Uttarakhand.

   c) Member Secretary, Central Pollution Control Board.

   d) Chief Conservator of the Forest of the concerned area.

   e) Member Secretary, Uttarakhand Environment Protection and Pollution Control Board.

   f) Director of Wildlife Institute of India or his nominee of a very senior rank.

   Member Secretary, Uttarakhand Environment Protection and Pollution Control Board would be the Nodal Officer and Convenor of this Committee and responsible for submitting report to the Tribunal as per the directions of this judgment.

This Committee shall be at liberty to engage any Government Institution or a private body which have expertise in the line to prepare the regulatory regime and Regime is to be submitted to the Tribunal in accordance with law.

3. The Rapid Impact Assessment Report shall be treated as a relevant document and the Committee would conduct or get conducted further survey to satisfy itself.

4. The Committee shall consider all aspects of Environment, Wildlife, River and Biodiversity while preparing the relevant regulatory regime.

5. The Committee shall give recommendation for all preventive and curative measures and steps that should be taken for ensuring least disturbance to wildlife and least impact on the environment and ecology.

5(A). The Committee shall specifically report in relation to carrying capacity of the area in regard to both the activities, in view of the fragile ecology of the area. (Carrying capacity in terms of visitor per day and other environmental loads of the activity taken together).

6. After preparation of this report which should be prepared within 3 weeks from the pronouncement of this Judgement, the State of Uttarakhand through Secretary, Forests would submit a Comprehensive Management Plan cum proposal for approval to MoEF. MoEF would consider the same in accordance with law and accord its approval

in terms of Section 2 of the Forest Conservation Act within 3 weeks thereafter.

7. The Committee shall ensure that it not only identifies the sites which can be appropriately used for camping activity but also the manner and methodology in which such sites should be put to use for carrying on of these activities. It is only those sites that are decided by the Committee that would form the part of the Management Plan to be submitted by the State of Uttarakhand to MoEF.

8. After grant of approval, the State of Uttarakhand shall issue an order under Section 2 of the Forest Conservation Act and give permits in terms of its policy.

9. We make it clear that we are not in any way entering upon the methodology that should be adopted by the State of Uttarakhand in economic and technical terms. In terms of revenue and technical aspects, the State is free to take its decisions.

10. We further direct that if the Committee is of the opinion that rafting stations and number of rafting shafts to be permitted should be more than camp sites, it may so recommend but then, those rafting stations shall be used for very limited purposes of picking up and dropping the visitors without any other infrastructure.

11. We hope that the economic interest of the State of Uttarakhand would be duly kept in mind by the Committee and it would ensure that local persons should

be provided with maximum chances of employment or other financial gains resulting from this Eco-Tourism.

12. We hereby impose complete prohibition on use of any plastic in the entire belt covered under this judgment. (Plastic such as plastic bags, plastic glass, plastic spoons, plastic bottles package and such other disposable items).
13. It shall be obligatory upon every person to whom permit/license for camping is granted by the State to collect the Municipal Solid Waste or all other wastes from the camping site at its own cost and ensure their transport to the identified sites for dumping.
14. If any licensee fails to comply with these directions, the department would take action in accordance with law and it would be treated as a breach in terms of the license.
15. In this regard complete record shall be maintained at the end of the licensee of the site as well as at the dumping site, in the records of the concerned authority.
16. No structure of any kind would be permitted to be raised, temporary, semi-permanent or permanent. We make it clear that making of the cemented platforms or bricked walls would not be permitted within the limits afore-stated.

    This will be done with reference to River Ganga Data maintained by the Central Water Commission. Within these 100 meters any construction activity what so ever would not be permitted under any circumstances.

Wherever the road intervenes between 100 meters defined space, in that event, the camping can be permitted across the road towards the hill side.

17. The Committee also has to make this Report in relation to source, quantum of Water and source of Power needed keeping in view the camping activity.

111. The application filed by Jaswinder Kaur where she has prayed various reliefs also has been disposed in terms of the order in this case. As such, both the above cases have been disposed of without any order as to cost**.**

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

D.K. Agrawal
Expert Member

A.R. Yousuf
Expert Member

New Delhi
10th December, 2015