

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

.....

MISCELLANEOUS APPLICATION NO. 1092 OF 2015

IN

ORIGINAL APPLICATION NO. 478 OF 2015

IN THE MATTER OF:

Vikrant Tongad
A-93, Sector-36,
Greater Noida-201308
Distt. Gautam Budh Nagar,
Uttar Pradesh



.....Applicant

Versus

1. Noida Metro Rail Corporation
Through its Chairman
Administrative Block
New Okhla Industrial Development Authority
Sector-6, Noida-201301
2. Union of India
Through its Secretary
Ministry of Environment, Forests & Climate Change
Indira Paryavaran Bhawan
Jor Bagh Road
New Delhi-110003
3. State of Uttar Pradesh
Through its Secretary
Government of Uttar Pradesh
Secretariat, Lucknow-226001
4. State Environment Impact Assessment Authority
Through its Chairman
Directorate of Environment
Vineet Khand-I, Gomti Nagar
Lucknow, Uttar Pradesh
5. New Okhla Industrial Development Authority
Through its CEO
Administrative Block
Sector-6, Noida-201301
Uttar Pradesh

6. Greater Noida Development Authority
Through CEO
Chitwan Estate, GAMA II
Greater Noida 201308
Uttar Pradesh

7. Delhi Metro Rail Corporation
Through its Managing Director
Metro Bhawan, Barakhamba Road
Near Fire Station
New Delhi-110001

8. Central Ground Water Authority
Through its Member Secretary
West Block-II, Wing-3, Ground Floor
Sector-1, R.K. Puram
New Delhi - 110066

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Rahul Choudhary, Ms. Meera Gopal, Advocates.

Counsel for Respondents:

Mr. Ravindra Kumar, Advocate for Respondent no. 1, 5 & 6

Mr. Raman Yadav and Mr. Abhishek Yadav, Advocates for Respondent no. 3

Mr. Abhishek Yadav, Advocate for Respondent no. 4

Mr. A.D.N. Rao and Mr. Sudipto Sircar, Advocates for Respondent No. 7

Mr. B.V. Niren, Advocate for Respondent No. 8

Mr. Krishna Kumar Singh, Advocate for MoEF

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

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

Hon'ble Prof. A.R. Yousuf (Expert Member)

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

Reserved on: 17th May, 2016

Pronounced on: 31st May, 2016

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

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant, who claimed to be a public spirited person and has been working in the field of environmental conservation,

particularly, devoted to conservation on wetlands and ground water for the last many years. The present application raises issues of law and procedure on the facts in relation to the construction of metro line from Noida to Greater Noida there is twofold challenge to the project, firstly, that the project has been commenced and is being carried on without obtaining prior Environmental Clearance and secondly, that the construction of the project is seriously prejudicial to the environment, ecology and also in violation of the principles stated by the Tribunal itself in various judgments including *Vikrant Kumar Tongad v. Delhi Tourism & Transportation & Ors.*

Respondent no. 1, Noida Metro Rail Corporation is executing the project, while Union of India, respondent no. 2, is the nodal agency in the administrative structure of the Central Government for the planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes. The primary concerns of the Ministry are implementation of policies and programmes relating to conservation of country's natural resources including its lakes and rivers, its biodiversity, forests and wildlife, ensuring the welfare of the animals and prevention and abatement of pollution.

Respondent no. 3, State of UP, is responsible for implementation of Environmental Laws and Rules within the jurisdiction of the State of UP and The State Environmental Impact Assessment Agency (for short 'SEIAA'), concerned with granting or rejecting of Environmental Compensation for the project covered

under the Environmental Impact Assessment Notification, 2006 (for short 'Notification of 2006'). Respondent no. 1 is in the process of construction of Metro Line from Noida to Greater Noida starting from Noida City Centre in Noida to Depot Station, Greater Noida of District Gautam Budh Nagar. The scope and area of the project can be described as follows:

S.No.	Description	Government (m²)	Private (m²)	Total (m²)
1.	Land for stations	52200.77	1421.9	53622.67
2.	Land for traction sub-station and receiving sub-station	16000.00	Nil	16000.00
3.	Land for Radio Tower	700.00	Nil	700.00
4.	Land for Depot	200000.00	Nil	200000.00
5.	Land for running Section	14439.34	Nil	14439.34
	TOTAL	283340.11	1421.9	284762.01

Further, the land requirement for parking of vehicles alongside the metro station is not included in this total land requirement proposed by the Respondent No. 1. The DPR of the project is made by Delhi Metro Rail Corporation. In this they have stated that the Depot of the metro rail is coming up on recreation green land, requirement for which is around 200000 sq. m. The alignment of the metro from Noida to Greater Noida also shows that it will pass through Hindon River and piers would be constructed on the river bed or flood plain.

That, during construction phase of the project, the total water requirement is about 1,40,00,000 liters. The water requirement would be met to by digging bore wells within the vicinity of the project during construction. Further, the detail Project Report (DPR) states that the water is made available by bore well within the vicinity of the project site during the construction phase. The requirement of water for operation phase is not clear for the DPR. It is submitted that the extraction of groundwater will have further impact of the depleting groundwater level of Noida and Greater Noida. Copy of the DPR is filed and annexed as Annexure A-1

That, as per the DPR 580 trees having girth size of more than 30 cm would be affected and about 478 shrubs

would be affected by the construction of the project. It is pertinent to mention here that the DPR by DMRC for the metro rail project from Noida to Greater Noida does contain any details of rainwater harvesting system depending upon the geology of the area.

That though from the DPR it is clear that the total land requirement for the project of metro rail from Noida to Greater Noida is around 284762.01 sq.m, no Environment Impact Assessment Report is Prepared.

2. The construction of tracks, stations, construction of bridge over river Hindon and other ancillary construction activities are causing dust, noise and environmental pollution. The project has been started and is being carried on without obtaining Environmental Clearance.

Different replies have been filed on behalf of the respondents. The facts are not by and large in dispute in the reply of Respondent No. 1,5 and 6, of course, it is has been specifically stated that the project does not require any Environmental Clearance within the provisions of the Notification of 2006. Further, it is disputed that the project, shall have any adverse effect on land environment, water environment, noise environment, biological environment and socio-economic either during construction or during operation. It is stated that the apprehension of the applicant is not well founded. However, respondent no. 2 has stated that under the provisions of the Notification of 2006, construction of new project or activities or the expansion or modernization of existing projects or activities listed in the schedule annexed to the Notification entailing capacity addition with change in process and/or technology shall be undertaken in any part, only upon grant of prior Environmental

Clearance in terms of sub-section 3, Section 3 of the Environmental (Protection) Act, 1986 and in accordance with the procedure prescribed under Notification of 2006. This applies to all projects or activities covered under the Schedule to Notification. The railway project, metro rail project are not within the purview of the Notification of 2006.

3. Respondent no. 3 and 4 have filed a common reply. It has been submitted by way of preliminary submission that the present project is not covered under the Notification of 2006 and all the projects that are received by SEAC, Uttar Pradesh are dealt with in accordance with that Notification. It is further submitted that the illegal construction, if any, raised is not a matter that relates to the said respondent. The SEAC, Uttar Pradesh has not received as on 14th March, 2016 any application on prescribed format regarding the grant of Environmental Clearance for the project relating to construction of Metro from Noida to Greater Noida, District Gautam Budha Nagar. Therefore, the question of the grant of prior Environmental Clearance to the project proponent does not arise.

The applicant has filed a common rejoinder to the reply filed by the respondent nos. 1,2,5 and 8. In the rejoinder it is reiterated that the project has been covered under the Notification of 2006 and it requires prior Environmental Clearance for any activity to be carried on in the project. The applicant has placed reliance upon the Judgement of the Tribunal in the Case of *Vikrant Kumar Tongad v. Delhi Tourism & Transportation & Ors.*, *S.P. Muthuraman v. Union of India & Ors.* and *Himmat Singh Shekhawat v. Union of India & Ors.*

From the above pleadings and contentions raised on behalf of the parties, the following 2 issues arise for consideration of the Tribunal.

1. Whether, project in question is covered under the EIA Notification of 2006, if so, to what extent?

2. Whether activities being carried on by the Project Proponent including construction of Bridges are bound to cause environmental degradation, environmental pollution, traffic and other hazards?

4. Further if the project proponent is liable to be directed to comply with certain precautionary measures before it can carry on with its project activity any further. The first issue is bound to have its consequence on merit of issue no. 2 as well. Issue no. 1 is primarily an issue of law and needs to be determined with reference to the language of Notification of 2006. It is undisputable that if a project falls under any of the entries of Schedule 1 to the Notification of 2006 then it will be statutorily obligatory upon the project proponent to seek "Prior Environmental Clearance" for the project or activity that the project proponent intends to carry on. Grant of Environmental Clearance is a condition precedent to the commencing of any activity of the project including its escalation work. The consequences of non compliance would follow and a project proponent would not be permitted to carry on the project activity in absence of such clearance. In this background now we may examine the entries contained in Schedule 1 of the Notification of 2006.

5. Clause 2 of the Notification of 2006 requires the project or activities falling under Category A and Category B to obtain prior Environmental Clearance from the concerned Regulatory Authority, i.e. category A from Ministry of Environment, Forests & Climate Change and Category B from SEIAA if they fall under the Schedule 1 of the Notification of 2006. Schedule 1 of the Notification is a list of the project or activities requiring prior Environmental Clearance. The Environmental Clearance is to be granted strictly in accordance with the procedure prescribed and the methodology stated in the Notification of 2006. The entries in the Schedule 1 specify the project or activity, categories with threshold limit that is if project was category A and B and conditions if any upon or otherwise required to be imposed upon such a project. The present case has relied upon entry 8B of the Schedule. Building construction project/area or development projects and township projects are covered under entry 8 categorised into 8A and 8B respectively. The said entry 8 reads as follows:-

Project or Activity	Category with threshold limit		Conditions if any	
	A	B		
8	Building/Construction Projects/Area Development Projects and Township			
8(a)	Building and Construction projects		≥ 20000 sq mtrs and < 1,50,000 sq mtrs of bilt up area#	[The built –up area for the purpose of this notification is defined as “the built-up or covered area on all the floors put together including basement(s) and other service areas, which are

				proposed in the building/construction projects]
8(b)	Township and Area Development Projects		Covering an area ≥ 50 ha and or built up area $\geq 1,50,000$ sq mtrs ⁺⁺	⁺⁺ All projects under Item 8(b) Shall be appraised as Category B1.

The bare reading of the above Entries of the Schedule does show that railway projects whether metro or otherwise has not been specifically mentioned in the entry. The contentions raised by the applicant before us is that these projects are covered under entry 8B of the Notification of 2006 in as much as they are development projects.

6. They would squarely fall under the Heading Township and or development projects. Where the area covered is equal to or more than 50 hectare and/or built up areas is equal to or more than 1,50,000 sq. mtr. they have to be treated as category B1 projects. According to the computation stated in the application which has not been specifically denied by any of the respondents the total land area required for the project is 2,84,762.01 sq. mtrs. which is higher to the threshold built up area and would be much in excess of 1,50,000 sq mtr as the metro track runs in miles. The entries have to be given a purposive interpretation. The interpretation which is held to achieve object has to be granted to such entries. These entries are not the entries which will require strict interpretation or strict consideration. The framers of the Notification itself have used

the terms with liberal expression and which are capable of receiving liberal interpretation.

7. It may not be necessary for us to deliberate on this issue at any greater length in view of the detailed judgment of this Tribunal in the case of *Vikrant Kumar Tongad v. Delhi Tourism and Transport Corporation* 2015 All (I) NGT Reporter (1) PB 244 directly on the issues involved in the present application. In that case, a similar contention was raised that construction of the signature bridge over River Yamuna at Wazirabad was not covered under the Notification of 2006 and, therefore, no environmental clearance was required. Larger Bench of this Tribunal while holding that the mandate of the Notification of 2006 was to protect the environment and ecology while providing for sustainable development held that without sense it would be a welfare legislation. The right to environment being a right to life within the meaning of Article 21 of the Constitution of India, adherence to the environmental laws was stated to be mandatory. It was also held that in conflict of environmental interest and economic interest, the former would prevail and due regard should be paid to the Precautionary Principle. It was finally held that the project falls under Entry 8(b) of the Notification of 2006 and the authorities were required to obtain Environmental Clearance, though the work was not stopped or demolition was not directed in that case. It will be useful to refer to the following paragraphs of the judgment:

“18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries.

The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of *The Authorised Officer, Thanjavur and Anr. v. S. Naganatha Ayyar and Ors.*, (1979) 3 SCC 466, the Court held that:

“1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation.”

In the case of *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, (1985) 4 SCC 71, the Court held that:

“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes.”

In the case of *Securities and Exchange Board of India v. Ajay Agarwal*, (2010) 3 SCC 765, the Court held that:

“41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.”

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these 15 Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social

welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., *salus populi est suprema lex*. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

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25. Thus, the assessment of such impact and degradation of environment resulting therefrom, is essential and is a matter which is of concern for the Expert Bodies appointed under the Act. Furthermore, Environmental Impact Assessment Guidance Manual for Building, Construction, Township and Area Development Project, 2010 provides that environmental facets which are to be considered in relation to township and area development are land, air, noise, water, biological, socio-economic and solid waste management. Thus, it is necessary to ascertain the baseline data of these environmental facets before a project or an activity may be permitted or carried out.

26. The Regulations of 2006 have been promulgated with the aim and object of assessing the impact that a project or an activity would have upon the environment and ecology. The expert body is expected to precisely visualise the extent of environmental degradation resulting from the project before granting approval. Normally, the projects having irretrievable and permanent impacts on nature are not permitted, and where permitted, very stringent, protective and precautionary conditions are imposed. Thus, it is relevant at this stage to understand the concept of EIA as contemplated under the Regulations of 2006 with reference to the 20 provisions of the Act of 1986 for protection of ecology and biodiversity of the river and riverbed.

27. In order to understand the concept of EIA, one first needs to know what an 'Environmental Impact' is. An 'Environmental Impact' is any impact or effect (positive or negative) that an activity has on an environmental system, environmental quality or natural resources. It is also known as an environmental effect [Oxford Dictionary of Environment and Conservation, First Edn., 2007]. An 'Environmental Effect' is defined as a natural or artificial disturbance of the physical,

chemical or biological components that make up environment [Black's Law Dictionary, 9th Edn., 2009]. Such activities may take the form of mining, oil and gas exploration, thermal, nuclear and hydraulic power plants, metallurgical industries, chemical fertilizers, storing of hazardous chemicals, industrial estates/parks/complexes/areas, waste treatment plants, etc.

28. EIA was first introduced in the USA in 1969 and has since been widely accepted. It is being adopted in one form or the other in an increasing number of countries as a basis for making informed and rational judgments about what sort of developments are environmentally acceptable. It even includes the concept of 'Strategic Environmental Assessment'. An EIA is defined as a formal statement of the environmental impacts that are likely to arise from major activities such as new legislation or a new policy, programme or project. The results of the assessment are reported in the 21 'Environment Impact Statement' (EIS) [Oxford Dictionary of Environment and Conservation, First Edn., 2007]. Thus, an EIA in general parlance does not confine itself only to projects but also to legislations and policies.

29. With expansion and modernization of economic and trade activities in India, there was a need felt to understand as well as regulate the potential environmental impacts that such activities may have. Thus, in order to impose certain restrictions and prohibitions on new projects or activities, or on expansion or modernization of existing projects or activities, the Central Government enacted the Environment Clearance Regulations, 2006, on 14th September, 2006 under Section 3(1) and 3(2)(v) of the Act of 1986 and Rule 5(2) of Rules of 1986. The objective of the Regulations of 2006 is to set procedures of environmental clearance before establishment of project of identified nature and size. It required the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification to be undertaken in any part in India only after prior Environmental Clearance is granted by the particular authority. These Regulations do not define an EIA or an EIS. However, it requires the Expert Appraisal Committees in case of category 'A' projects and the State Level Expert Appraisal Committees in case of category 'B-1' projects or activities, including applications for expansion and modernization and/or change in product mix of existing projects or activities, to determine detailed and comprehensive ToR addressing all relevant environmental 22 concerns for

the preparation of an EIA. Categorization of projects/activities into category 'A' or 'B' is done on the basis of the potential hazards that it poses to the environment, location, the extent of area involved etc.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied. Article 48A in Part-IV (Directive Principles) of the Indian Constitution enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes a duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" which includes forests, lakes, rivers and wild life, and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf to shed its extravagant, unbridled sovereign power²³ and to forge in its policy, to maintain ecological balance and hygienic environment. Article 21 protects 'Right to Life' as a fundamental right. Enjoyment of life and its attainment, including the right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also to take adequate measures to promote, protect and improve the environment, both, man-made and natural. Sections 3 and 5 of the Act of 1986, apart from other provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'Environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Act

of 1986. [*Noyyal River Ayacutdars Protection Association rep. by its President, P.M. Govindaswamy Pappavalasu v. The Government of Tamil Nadu rep. by its Secretary, Public Works Department and Ors.*, 2007-1-LW 275, *Indian Council for Enviro-Legal Action etc. v. Union of India*, (1996) 3 SCC 212]. The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an eco-system. [*Manoj Mishra v. Union of India*, Original Application No. 6 of 2012 and Original Application No. 300 of 2013, decided on 13th January, 2015]. The powers conferred on the Central Government by virtue of provisions contained in Section 3, 5 and 25 of the Act of 1986 and on the National Green Tribunal by virtue of Sections 14, 15 and 16 read with Section 18 of the National Green Tribunal Act, 2010, are wide enough to provide for protection, preservation and restitution of the environment and ecology of the river bed of River Yamuna.

31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647].

32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat Supreme Wastech Pvt. Ltd. v. State of Haryana and Ors*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of

the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: Wharton's Law Lexicon, 15th Edn., 2012, Black's Law Dictionary 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This

was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. Dehors the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors.*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to

be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

“66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized that the converse of the illustration given by Mr. Bhushan may not be true. For example, a project which is by its nature and character an *"Area Development project"* would not become a *"Building and Construction project"* simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.

67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the *"Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project*". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres.”

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

“74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law

to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the 30 sensitive and delicate ecological balance required for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution”

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of ‘Right to Life’ as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a ‘Signature Bridge’ over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the ‘Signature Project’ is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to 31 the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that ‘bridges’ are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for

commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof”

8. From the above paragraphs, it is evident that the construction of the bridge over a River was not specifically stated in any of the Entries of the Notification of 2006. The object of the Notification would stand defeated if such huge constructions which admittedly falls much above the threshold limits of construction prescribed under the Notification of 2006, are exempted or held to be not covered under the Notification.

The framers in their wisdom used two different expressions ‘Township’ and ‘Area Development Projects’. The expression ‘and’ used in Entry 8(b) would have to be read as disjunctive between ‘Township’ and ‘Area Development Projects’. They cannot be read as synonyms. Development projects could be *de hors* of a township while township may take in its ambit a development project in general. In the present case, the project includes use of land for construction of stations, traction sub-stations, receiving stations, land for radio towers, for depot and for running station section. The total land required, as already noticed, is 2,84,762.01 sq. mtrs. and the construction to be raised upon this land is much above the threshold limit of 1,50,000 sq. mtrs. The applicant has also placed on record a copy of the detailed project report. In this report, the

details of the project have been stated. Information like result of soil analysis, water resources, chemical analysis of water samples and matter in relation to noise, water and air pollution have been dealt with as well as environmental costs have been prescribed. The project specifies land requirement for stations, tractions and receiving sub-stations, radio towers, land for depot running stations and for temporary construction. The applicant has also emphasized upon extraction of ground water for construction and project purposes and requisite permission from the Central Ground Water Board has not been taken. The construction details clearly demonstrate huge construction and large scale requirement of land, which is definitely beyond the threshold limits specified under the Notification.

9. The purpose of the Notification of 2006 is not to prohibit development but to permit the same while protecting the environment and ecology. It is the requirement that there should not be irretrievable or irreversible damage to the nature and environment. In the event the project commenced damage then the entire project would fall beyond the known dimensions of principle of Sustainable Development and would apparently result in violation of Pre-cautionary Principle. Unchecked and indiscriminate development would certainly have adverse impacts upon the environment and ecology of the area. The learned counsel appearing for the respondents have not brought to our notice any judgment taking a view contrary to the view taken in the judgment of this Tribunal in the case of *Vikrant Kumar Tongad* (supra).

Taking environmental clearance would cause no prejudice to any of the stakeholders on the one hand, while on the other it will protect the environment, nature, the river and its banks. The official respondents and the project proponents both had been ad idem that the project did not require prior Environmental Clearance in terms of Notification of 2006. Since we have now held that the project is covered under the Notification of 2006, therefore, it will be obligatory on the part of the project proponent to take Environmental Clearance.

10. In these circumstances, we do not consider it appropriate to impose environmental compensation upon the project proponent subject to the condition that it will carry out and comply with all the terms and conditions that would be now imposed by SEIAA as it is Category-B1 project.

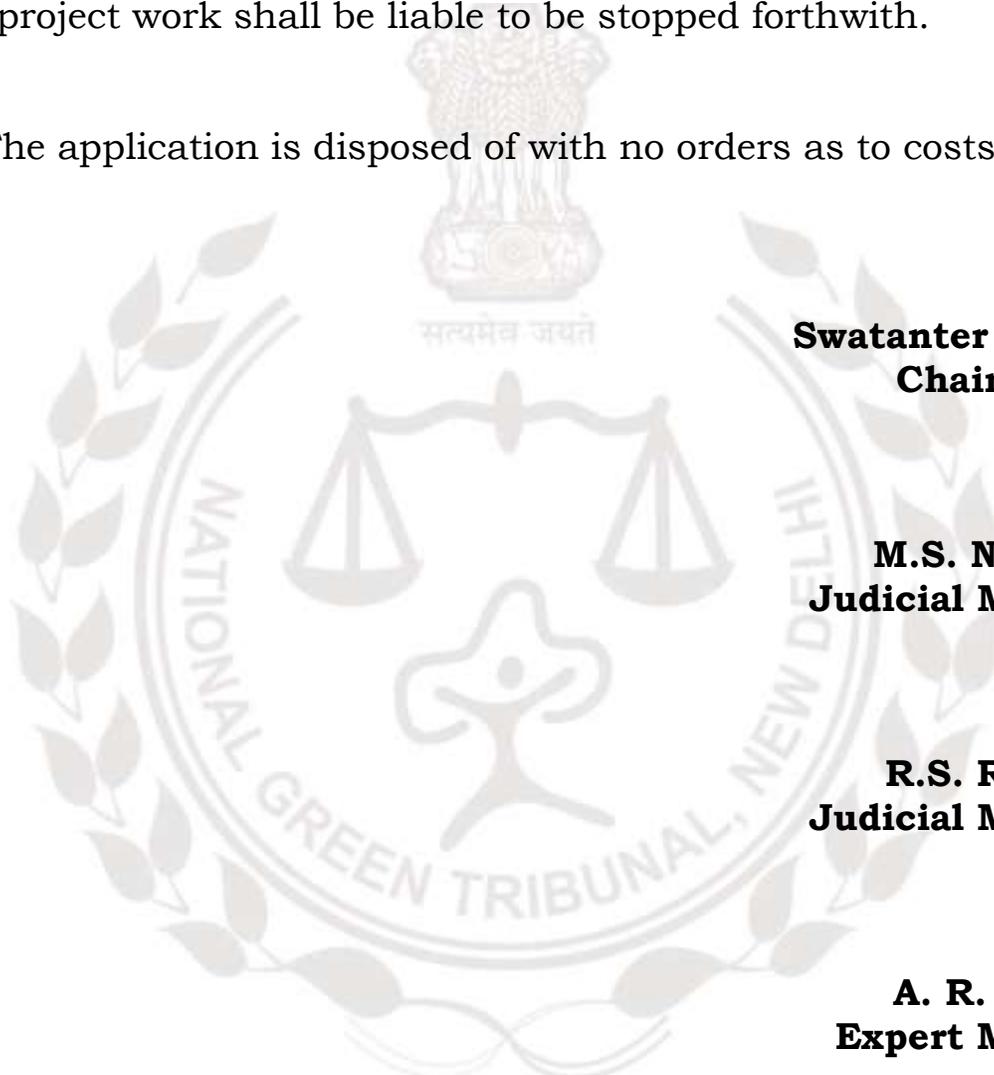
The entire matter would have to be examined by SEIAA and they would have to impose conditions which would direct corrective measures that the project proponent is required to take as well as the conditions which it should comply with in future in the aid of Precautionary Principle, in the interest of the nature, environment and ecology.

In view of our finding on Issue No.1, it is not necessary for us to deliberate upon and decide upon Issue No.2. As a consequence of our finding on Issue No.1, it would squarely fall in the domain of SEIAA which will deal with all the aspects of protection of environment and ecology and place such restrictions upon the project as it may deem fit and proper.

11. In view of the above discussion, we dispose of this application with the following directions:-

1. We hold and declare that the project in question, that is, the Metro Construction from Noida to Greater Noida is a project covered under Entry 8(b) of the Schedule to the Notification of 2006.
2. We direct the respondent no.1, the project proponent to obtain Environmental Clearance for the project in question as expeditiously as possible and in any case not beyond three months from the date of pronouncement of this judgment. The application in Form 1A shall be submitted within one week from today to SEIAA, Uttar Pradesh. It shall dispose of the application as Category B-1 project as expeditiously as possible, and in any case, not later than the period aforesated.
3. SEIAA shall impose conditions, both in regard to the remedial measures as well as for completion of the project in terms of the Notification of 2006 and protection of the environment and ecology in that area.
4. We make it clear that if the work already executed by the project proponent has caused any irretrievable loss to environment, ecology and nature, the SEIAA would be well within its rights even to direct demolition of such constructed portion.

5. The order granting Environmental Clearance shall be specific in regard to the remedial as well as precautionary measures that are required to be taken by the project proponent.
 6. In the event the project proponent does not comply with the directions issued under the Environmental Clearance, the project work shall be liable to be stopped forthwith.
12. The application is disposed of with no orders as to costs.



Swatanter Kumar
Chairperson

M.S. Nambiar
Judicial Member

R.S. Rathore
Judicial Member

A. R. Yousuf
Expert Member

Bikram Singh Sajwan
Expert Member

New Delhi
31st May, 2016

NGT