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

ORIGINAL APPLICATION NO. 327 OF 2015

IN THE MATTER OF:

Doaba Paryavaran Samiti
Through its President
Dr. C.V. Singh
S/o Late Sh. Ajab Singh
R/o. P.O. Daha
District Baghpat,
Uttar Pradesh

.....Applicant

Versus

1. Union of India
   Through Secretary
   Ministry of Environment & Forests
   Prayavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi.

2. National Board of Wild Life
   Through Chairman
   Paryavaran Bhawan
   New Delhi

3. Uttarakhand State Wildlife Board
   Through its Chairman
   Dehradun
   Uttarakhand

4. State of Uttarakhand
   Through Chief Secretary
   Uttarakhand Secretariat
   Uttarakhand

5. Principal Secretary
   Ministry of Wildlife & Environment
   Uttarakhand Secretariat
   Dehradun
   Uttarakand

6. Department of Forests,
   Through Principal Secretary
   Uttarakhand

7. Kedarnath Forest Division
Through its Forest Officer
Gopeshwar
Uttarkhand

8. District Magistrate
District Magistrate Officer Rudraprayag
Uttrakhand.

9. Senior Superintendent of Police
SSP Office
Rudraprayag
Uttrakhand

.......Respondents

COUNSEL FOR APPLICANT:
Mr. Gaurav Kumar Bansal, Advocate for Respondent No. 1:

COUNSEL FOR RESPONDENTS:
Ms. Panchajayanya Batra Singh, Advocate for Respondent No. 1
Mr. D. Bharathi Reddy and Mr. Aditya Singh, for Respondent No. 3 to 6

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 Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 4th November, 2015
Pronounced on: 10th December, 2015

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)

This application under Section 14 and Section 15 (b)&(c) read with Section 18(1)&(2) of the National Green Tribunal Act, 2010 (for short the 'Act of 2010') has been preferred by the applicant with the following prayers.

A. Direct the Respondent to forthwith prevent the flying of the helicopter at Kedarnath Wildlife Sanctuary, Uttrakhand.

B. Direct the Respondents to declare the Eco |Sensitive Zone of the Kedarnath Wildlife Sanctuary, Uttrakhand.

C. Direct the Respondent No.4 to place on record all the relevant material & documents related to the operation of Helicopter Service at Badrinath Dham, Badrinath, Uttrakhand.

D. Award appropriate cost and expenses incurred by the applicant.

E. Pass any such other or further order as this Hon'ble Tribunal may deems fit and proper in the facts and circumstances of the present case.

The above prayers have been made before the Tribunal on the factual premise that the applicant is a Samiti involved in environmental protection and Dr. C.V. Singh is the President of the Samiti and is empowered to file the present application. It is averred that ecosystem of Kedarnath Wildlife Sanctuary is in danger because of the operations of helicopters which are flying over that area without obtaining the permission from the respondents, i.e. the forest department and the National Board of Wildlife (for short 'the Board').

2. Ministry of Environment and Forest is the nodal agency in the administrative structure of the Central Government with the task of implementation of policies and programmes relating to conservation of country's natural resources including its lakes and rivers, its biodiversity, forests and wildlife while ensuring the welfare of animals.

3. The National Board for Wildlife in its 21st meeting has adopted the National Wildlife Action Plan, 2002-2016 which is a policy inter-alia providing for declaration and identification of areas around the

protected areas and the corridors which were ecologically fragile under the Environmental (Protection) Act, 1986 (for short 'Act of 1986'). It was recommended that lands falling within 10 kms of the boundary of the National Parks and Sanctuaries should be notified as Eco Fragile Zone under Section 3 (v) of the Act of 1986. This was in furtherance to adoption of Wildlife Conservation Strategy, 2002 by the Board. It is the case of the applicant that the State Governments were also required to identify Eco Sensitive Zone based on specific conditions and submit the proposal to the Board within 6 months. A Writ petition, being W.P. No. 460 of 2004 titled as *Goa Foundation v. Union of India* was filed in the Supreme Court, wherein vide order dated 4th December, 2006 the Supreme Court granted final opportunity to all the State Governments to submit their respective proposals to respondent no. 1 for declaration and identification of the Eco Sensitive Zones in terms of the decision taken on 17th March, 2005 by the Ministry. The Supreme Court also vide the same order directed that in all cases where Environmental Clearance has been granted and where activities are within 10 km zone such projects will be referred to the Standing Committee of the Board under Section 5(b)and(c) of the Wildlife (Protection) Act, 1972.

4. The Ministry on 27th February, 2007 also issued a circular stating that the development projects falling within 10 kms zone of sanctuaries and national parks shall be granted Environmental Clearance subject to securing clearance from the Board. On 22nd

February, 2009 respondent no. 1 issued an Office Memorandum pertaining to the procedure of grant of Environmental Clearance.

5. The applicant submits that he came to know that one of the forest officials of Kedarnath Wildlife Sanctuary has written to the Chief Conservator of Forest about the unauthorised entry of the helicopters in Kedarnath Wildlife Sanctuary, Uttarakhand. In the said letter it has been claimed that because of the entry of the helicopters in the said area not only flora and fauna of the area is affected, but even the ecosystem of the Kedarnath Wildlife Sanctuary is getting adversely affected. A letter was also written by Deputy Conservator of Forest, Kedarnath Wildlife Division to the Van Sanrakshak, Nandadevi Biosphere Reserve, Gopeshwar and Chief Wildlife Warden, Uttarakhand apprising them that no aviation company has taken consent from the respondents and the helicopters are flying illegally in that area. Moreover, the respondent no. 1 has also not notified the Eco Sensitive Zone of Kedarnath Wildlife Sanctuary, Uttarakhand.

6. It is averred by the applicant that there is a long pressing demand for declaring the said area as Eco Sensitive Zone. It is not only the Kedanath Wildlife Sanctuary which should be declared as Eco Sensitive Zone but even the peripheries of the area should also be declared as such.

7. The applicant states that National Parks, Sanctuaries and other Reserves are extremely important for conservation of

Biodiversity and for ensuring the survival of flora and fauna in the area. The helicopters are flying at a low height causing disturbance to the wildlife. There is greater risk of accident and the noise pollution caused by flying of helicopters is so high that it is exceeding the decibel limits prescribed by the Central Pollution Control Board. The unauthorised flying of the helicopters is not only damaging the ecosystem of the Kedarnath Wildlife Sanctuary, but as a result of this, even endangered species like musk deer and Himalayan Thar are forced to abandon their habitat and migrate to other places. Even the rare birds like Monal and Bearded Vultures have also abandoned the Sanctuary. The rare butterflies found in the said area have also disappeared resulting in adverse impact on pollination of vegetation.

8. Though respondent no. 1 has issued guidelines for seeking recommendations of the Standing Committee of the Board for taking up non forest activities in and around the protected areas but these guidelines have not been followed in the present case. Having failed to get any response from the respondents, the applicant has been compelled to file this application before the Tribunal with the above prayers.

9. Respondents no. 1 and 2 did not file a reply despite grant of opportunity while respondents no. 3 to 6 have filed a common reply. In the reply is has been stated that the Holy Shrine of Shri Kedarnath, is one of the most revered pilgrim site for Hindus, as it is regarded as one of the 12 Jyotirlingas and lies in the chunk of

civil land in Rudraprayag District of Uttarakhand. It is situated on the wedges into the North-Western Border of Kedarnath Wildlife Sanctuary. Kedarnath Temple is visited by lakhs of devotees, particularly, during the months of May to November. In winters it remains unapproachable due to high snowfall. Reaching the Shrine is an arduous task for the pilgrims. Starting from an altitude of 1650 meters near Sonprayag, which is situated at the foot of Mandakini Valley, the pilgrims have to climb an altitude of about 3560 meters, walking over a distance of more than 20 km on a bridle path that passes over steep and difficult terrain.

10. In order to facilitate easy access to the holy shrine, the Government of Uttarakhand decided to provide helicopter service in the area. It is averred by the answering respondent that accordingly, permission was granted to M/s Pravatam Aviation Pvt. Ltd. to fly helicopter, and hence, the present application is not bonafide. This has been in operation for quite some time and the present application has been filed 9 years after the helicopter service was permitted. Thus, the application is barred by limitation under the provisions of Section 14(3) of the Act. The permission was first granted on 10th May, 2006 and thereafter has been renewed from time to time. The proposal for notification of the Eco Sensitive Zone of Kedarnath Wildlife Sanctuary has been prepared and sent to the higher authorities by the Divisional Forest Officer Kedarnath Wildlife Division, on 10th August, 2015 and it is in the process of being finalised. The helicopter is operating between Phata, Sirsi and

Guptakashi to Kedarnath shrine in the Mandakini Valley. The area of the valley including the Kedarnath Wildlife Sanctuary is nearly 97520 Hectares. The area of influence by flying of helicopters is confined to a maximum area of 2500 hectares which is only 2. 56 per cent of its total area. The respondents also referred to a inter-departmental letter dated 3rd March, 2013 wherein the reference was made to studies conducted on wildlife in U.S.A and Canada and it is stated to be evident that helicopter flying do not seriously affect the wildlife. During helicopter flying animals shows some reactions such as increased vigilance and running towards cover. There is enough cover in the Mandakini Valley and the forest cover is not disturbed in any way by helicopter services. Moreover, the wildlife would move to such places and the animals do get accustomed to such activities. According to the respondent, the applicant has not presented any material evidence to prove damage to flora and fauna, wildlife and ecosystem of the Sanctuary. The other averments in regard to various references to the recommendations of the Board, Ministry of Environment and Forests and other available bodies are not specifically disputed. However, it is stated that Uttarakhand is a small State with more than 71 per cent forest cover, rich in various types of flora and fauna and most of its area fall in protected area network. The helicopter service can prove useful in terms of time, convenience and utility when it is required to fly in areas like Utarakhand, which have fear of being exposed to Natural Calamities. During that period such services could come handy and helpful, resultantly, they pray for dismissal of the application.

From the above narrated factual matrix of the case, we are firstly called upon to deal with the question of limitation raised on behalf of the respondents. The contention is that the Helicopter service started in the year 2006 and the present application has been filed in August, 2015 more than 9 year later. As such, in terms of Section 14 of the Act, the application is barred by time.

11. It is true that helicopter service has started years back and the applicant has approached the Tribunal in the year, 2015. It is a settled principle of law that every violation of law or every act which constitutes and completes cause of action in itself would be a recurring cause of action and would bring right to an action independently. In other words, a recurring cause of action is an extension to the expression 'cause of action first arose'. The applicant is contending that the permission or the agreement entered into by the company in 2006-2009 is liable to be quashed. The contention of the applicant is that the helicopters are flying without permission of the Board and in a manner which has serious adverse impacts on flora, fauna and ecosystem, eco sensitive zone of the sanctuary and biodiversity thereof. If the helicopters are flying at a height which is not permissible or without permission from the Board in accordance with law and are causing adverse impacts upon the above, each flight would be an independent cause of action which will be a recurring cause of

action where the expression ‘cause of action first arose’ appearing under Section 14 (3) of the Act would not be attracted and renders the remedy of the applicant as barred by time. In this we may also refer to a judgment of this Tribunal in *Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors.* 2015 ALL (I) NGT Reporter (2) (Delhi) 81:

> “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].
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> 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. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

26. In the case of State of Bihar v. Deokaran Nenshi 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 or omission 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. Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga 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 (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. 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., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (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."

12. Other aspect of the matter is in relation to issuance of the Notification in compliance to the decisions taken by the Board, Ministry of Environment and Forests and the orders of the Supreme Court. Even according to the respondents this is required to be complied with and respondents are taking steps in that direction. In view of these admitted facts and the position of law afore-stated, we are unable to accept the contention that the present application is barred by time.

13. Now, reverting to the merits of the case, the applicant has placed reliance upon a letter written by the Deputy Forest Conservator, Department of Forest of the concerned division to the Chief Conservator of Forest. In this letter it has been indicated that the aviation company has not even contacted the concerned officers for the purpose of taking NOC. It is stated in this letter that due to flying of the helicopter at low height the ecosystem of the sanctuary is getting adversely affected. In terms of conditions no. 14 and 15 of the Government Order the company is required to take a NOC from the department at its own level. Further, no flying will take place upon the protected area. All these conditions were being violated by the company. The applicant also placed reliance upon the letter issued by Ministry of Environment and Forests Wildlife Division,

dated 19th December, 2013 wherein guidance for taking up non forestry activity in the wildlife habitat has been stated. It is stated that the Project Proponent cannot rely upon the consent of *fait accompli* if they have already received any or all the requisite clearances which should be obtained. In the guidelines, activities inside the protected area have been detailed as well as activities inside wildlife sanctuaries are also specified. The reading of this guideline shows that such activity would not be permissible in the area. On the other hand, the learned Advocate General appearing for the State of Uttarakhand contended that the permission has been granted by the authorities to the company. There is no adverse impact upon wildlife or the Eco Sensitive Zone. Furthermore, there is an aviation policy framed and permission to the company has been granted by the State Government for flying the helicopter in accordance with the aviation policy.

14. From the rival contentions raised on behalf of the respective parties, one aspect that is clear is that it is an eco-sensitive zone, and despite decision of the Board, the Ministry of Environment and Forests and even the clear directions from the Supreme Court, the State of Uttarakhand has failed to submit a proposal to Ministry of Environment and Forest for the purposes of issuance of the Notification for declaration of the Eco sensitive area under the Act of 1986 for the Kedarnath Wildlife Sanctuary notified in terms of provisions of the Wildlife Protection Act, 1972.

15. The State of Uttarakhand cannot take any advantage of its own wrong. It is required of the State to comply with law and directives issued by the Courts within reasonable time. If a specific consent is provided in the present case, the Supreme Court has stated the time within which the proposal should be submitted. We see no reason as to why the State Government should not comply with its obligation, particularly when it relates to protection of ecosystem, environment and eco sensitive zones.

16. The studies relied upon by the respondent are of no consequence. The geographical environmental and ecological conditions of India are very diverse and different from the countries like Canada and U.S.A and studies carried out in that area cannot be *per se* applied to the Indian conditions. The environmental laws and wildlife protection laws in India, again have different parameters and implications. Examining this contention even from another purview, the studies relied upon show that there is no serious impact upon wildlife. This necessarily implies that there is an impact on the wildlife, on flora and fauna of the area. Once it is found that there will be impact then it has to be understood and construed with reference to a specific condition of a country and not on a universal applicability. It is a matter of common knowledge that helicopter develops noise which is beyond the prescribed decibels and when they are flying over wildlife sanctuary or eco sensitive zone then they have to take extra precautions to ensure that they do not cause any adverse impacts. High sound would

certainly disturb the wildlife and the sound will be more if the helicopters are flying lower than the specified heights. The State Government was expected to be more stringent in granting the permission for flying of helicopter in that area. We do not expect the contention of the applicant that the helicopter services in that area is not a need of the hour, but then, it must be essentially regulated in accordance with law and while ensuring complete protection of environment, ecosystem and wildlife. In light of this discussion, we dispose of this application with the following directions.

1. The State of Uttarakhand shall take immediate steps to submit its proposal for notification of eco sensitive zone covering Kedarnath Wildlife Sanctuary as well as the Wildlife Sanctuary. This proposal must be submitted to Ministry of Environment, Forest and Climate Change within 3 months from the date of pronouncement of this judgment.
2. Ministry of Environment, Forest and Climate Change shall take consequential steps with utmost expeditiousness thereafter.
3. We decline to prevent flying of helicopters in that area However, we direct the State Government to issue specific directions in consonance with the aviation policy with specific reference to the Eco Sensitive Zones of Kedarnath Wildlife Sanctuary in relation to height and level of noise that the helicopter being used by the company should be permitted to generate. We direct the Uttarakhand Environment Protection and Pollution Control Board to give

their input to the State Government within 2 weeks of passing of this order.

4. Issuance of such notifications and other requisite steps as may be directed by the central government, the State Government shall issue measures and steps which should be taken by the company based on the Precautionary Principle.

17. With the above directions, this application is disposed of without any order as to costs.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D. K. Agrawal
Expert Member

Mr. B.S. Sajwan
Expert Member

New Delhi
10th December, 2015