

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE, CHENNAI**

**Application Nos. 267 and 268 of 2013 (SZ)**

**(W.P. Nos. 47599 of 2011 and 25255 of 2012 of The High Court  
of Karnataka)**

**In the matter of:**

H.S. Neelakantappa

S/o R.Siddappa

K-Hosur-577 228

Tarikere Taluk

Chikkamagalur District

... Applicant in Application No.267  
of 2013 (SZ)

1. Bharatiya Kisan Sangha

Karnataka Pradesha (Regd.)

Karnataka Dakshina Prantha

Chikkamagalur Jilla Ghataka

Chikkamagalur

Rep. by its Authorised Signatory

2. K.B. Veerabhadrapa

S/o Basavarajappa

President-District Unit

Bharatiya Kisan Sangha Karnataka Pradesha (R)

Kallushettihalli, Tarikere Taluk

Chikkamagalur District – 577 547

3. SM. Vishveshwaraiah

S/o Mallappa

Sokke, Tarikere Taluk

Chikkamagalur District -577547

4. Prasanna Kumar

S/o Basavarajappa

Rangapura, Tarikere Taluk

Chikkamagalur District -577 547

5. KM. Kallesh

S/o Maheshwarappa

Kallushettihalli, Tarikere Taluk

Chikkamagalur District – 577 547

..... Applicants in

Application No.268 of 2013 (SZ)

**AND**

1. State of Karnataka

Principal Secretary

Water Resources Department

Vikasa Soudha, Bangaluru-560 001

2. Karnataka Neeravari Nigam Ltd

(Upper Bhadra Project Zone)

4<sup>th</sup> Floor, Coffee Board Building

Dr. B.R. Ambedkar Veedhi

Bangaluru-560 001

3. Chief Engineer

4<sup>th</sup> Floor, Coffee Board Building

Dr. B.R. Ambedkar Veedhi

Bangaluru-560 001

4. Chief Engineer

Water Resources Development Office

Government of Karnataka

Bangaluru-560 001

...

Respondents 1 to

4 in

and 268

5. Sew-Jyothi Ltd

Nanubhai Amin Marg

Industrial Area

PO Chemical Industries

Vadodara-390 003

6. RNSIL-NMCC-JOTHI-PES(JV)

Corporate Office

Naveen Complex, 7<sup>th</sup> Floor

#14, MG ROad, Bangaluru-560 001

Project Office

2275, Tumakuru Road

Yeshwanthapura, Bangaluru-560 022

7. SNC Power Corporation Pvt Ltd

SNC House, 4<sup>th</sup> Floor

#7, Residency Road

Bangaluru-560 025

8. Environment Health and

Safety Consultants

#529, 15<sup>th</sup> Main, I Stage

III Block, Manjunathanagar

Bangaluru-560 010

9. Secon Pvt Ltd

Plot #147, 7-B Road

Export Promotion Industrial Park

Whitefield, Bangaluru-560 066

....Respondents Nos. 5 to 9

in Application No. 267

Counsel Appearing:

Applicant:

Ms. Jayna Kothari, Advocate

in Application No. 267 of 2013 (SZ)

Sri M.N. Madhusudan, Advocate

in Application No.268 of 2013

Respondents:

M/s. M.K. Subramanian, Advocate, and M.K.

Gokul

Krishnan, Advocate for respondent

Nos.1 and 4; Shri M.R.K Ravi, for respondent

Nos. 2 and 3; Shri B. Sathish Sundar and and S. Krishna Nand for respondent No. 5; M/s. S. Prasad Krishna Kumar and Shri Sasidharan Chetty for respondent No. 6. respondents in Application No. 267 of 2013

M/s. M.K. Subramanian, Advocate, and M.K. Gokul Krishnan, Advocate for respondent No.1; Shri M.R.K Ravi for respondent 2 respondents in Application No. 268 of 2013

ORDER

Present:

1. Hon'ble Shri Justice M. Chockalingam  
Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran  
Expert Member

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Date: 1<sup>st</sup> December, 2014

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(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

These applications have been taken on file as Application Nos. 267 and 268 of 2013 (SZ) in this Tribunal by transfer of the Writ Petition Nos. 47599/2011 (GM-RES-PIL) c/w 25255/2012 (GM-Res-PIL) by an order dated 8<sup>th</sup> July, 2013 of the Hon'ble High Court of Karnataka at Bangalore. The brief facts of the case of the applicants can be stated as follows:

2. The major population of Tarikere Taluk is engaged in agricultural activities and the main source of income is through agriculture. The entire Taluk is solely dependent on the rain and groundwater. The groundwater level in Tarikere taluk has depleted severely during the past and due to acute shortage of water, the farmers are not able to carry on the agricultural activity and there has been gradual exodus of the agriculturists to urban areas for better livelihood. They have been demanding water for irrigation and drinking water needs for several years from Bhadra dam

which is about 20 km away from Tarikere. The farmers have also held protests against the implementation of the Upper Bhadra Project and on the basis of the representations made by the farmers, the Assistant Commissioner; Tarikere submitted a detailed report to the Land Acquisition Officer about the inconvenience that would be caused to the farmers of Tarikere Taluk due to implementation of the said project. Instead of giving consideration to the farmers' demand, the 1<sup>st</sup> to 3<sup>rd</sup> respondents intended to divert the water from Bhadra dam to fill up the tanks in Chitradurga, Kolar and Tumakuru districts on the ground that the same would improve the groundwater level and bring down water scarcity in those districts by diverting 21 tmc water from the dam. Though the 1<sup>st</sup> to 3<sup>rd</sup> respondents are very much aware about the problems faced by the Tarikere taluk, the first respondent passed a Government order No. JaSaEe 152 vibKaKe 2004 (Ba-1) dated 15.09.2008 for implementation of Stage I of Upper Bhadra Project at a cost of Rs. 5985 crore for lifting 21.5 tmc of water from Bhadra dam and to supply the water to Chitradurga and Kolar districts. The 2<sup>nd</sup> respondent company was incorporated in the year 1998 with an objective of expediting Upper Bhadra Project for the purpose of irrigating Chitradurga, Kolar and Tumakuru districts on the ground that the above districts are declared as backward and

drought prone areas. It is pertinent to emphasise here that the Comprehensive Composite Development Index (CCDI) 2001 indicated Kadur taluk as backward taluk and even though the proposed diversion of water to the above three districts has to pass through Tarikere which has been declared as a backward taluk, the farmers of the taluk would be deprived of using even a drop of water from the said irrigation project. In order to achieve the objective, the second respondent intended to draw water from the Bhadra dam in Chikkamagalur district to Chitradurga, Kolar and Tumakuru districts and the same includes digging up deep canals/tunnels, intake structures, various lifting points, delivery chambers etc. The entire project involves laying of canals through reserve forest areas such as Aramballi, Grugigudda, Devaragudda, Janaklal State Forest, Lakkavalli State Forest and the forest area required for this project is 230 ha apart from 5015.7 ha private land, major portion of which is agricultural lands and small extent of undeveloped land.

3. The respondents 1-3 not only deprive the Tarikere farmers of their genuine demand for water for agricultural purposes, but also would severely affect their agricultural activity, as construction of deep canals/tunnels would further affect the already depleted ground water levels, resulting in the entire Tarikere Taluk

becoming further backward. Upper Bhadra Project intends to lift the water from Tunga to Bhadra, again from Bhadra Reservoir it is pumped to Shanthipura and from there it passes through deep cut canals (75-100 ft. Depth) and tunnels through Tarikere Taluk and thereafter through Ajjampura and Hiriyur reaches Chitradurga. The entire process of lifting consumes 189 MW of power, which is quite high. It is also pertinent to specify here that there are nearly 172 lift irrigation projects implemented and completed in the entire state of Karnataka for the past 30 years, out of which presently only 2-3 are in working condition. This acts as a mirror to the status of Upper Bhadra Project after its completion. The calculation and estimation for accumulation of water and availability of water source in Bhadra belt from which it is intended to lift water to the present project is not made out properly. In the past 20 years only 3-4 times the reservoirs got filled and overflowed, as such arriving at dependable yield of the reservoir on the basis of average of 20 years is totally a wrong calculation and it should have been calculated on yearly basis. In such event the dependable yield would be less than what they have calculated and definitely would not be viable for lifting water from Bhadra. Further, for the past several years, the accumulated water in Bhadra reservoir has never crossed 70 % of its limit and in fact 70% filling has been only

on one or two occasions and all along the water accumulation has been less than 50% of the actual limit. This accumulation is not even sufficient to fulfil the demands of the existing projects, which are dependent upon Bhadra Dam. There is already a canal from Bhadra Dam to Davanagree, which was constructed long time ago and the proposed diversion of water from Bhadra Dam to Davanagere, which the state intended at the time of construction of the said canal, itself could never be fulfilled.

4. The Upper Bhadra Project involves digging of deep cut canals for more than 40 km and 9 km of tunnel, which passes through Tarikere Taluk affecting more than 5000 farmers in the vicinity. Presently, Tarikere Taluk, which is situated in Chikkamagalur District is declared as backward, and gets very less rainfall. It is pertinent to mention here that the entire Chikkamagalur District is supplied with only 1 tmc of water from Bhadra Dam to cater to its irrigation needs even though Bhadra Dam is situated in Chikkamagalur District. This clearly demonstrates the deprivation being faced by Chikkamagalur District farmers in general and Tarikere Taluk farmers in particular. If the statistics provided by the Government is compared with those in Chikkamagalur District, the Taluks of Chitradurga, Kolar and Tumakuru are far better placed than that of Chikkamagalur.

Chikkamagalur District yields 200 tmc of water every year and 5 rivers flow through the said District and when there are several avenues for providing irrigation to Tarikere and Kadur Taluk, only 1 tmc of water is tapped for the entire Chikkamagalur District. Without providing irrigation to the fullest extent at the lowest cost, the proposed project of the respondents to draw water to other far off and better placed Districts by incurring huge expenditure to the exchequer, is clearly contrary to the well determined concept and preposition in basin irrigation, even on this ground, the entire Upper Bhadra Project is contrary to in-basin irrigation and tantamount to being a most illogical project. The Helsinki report on in-basin requirement has emphasized allotment of water to the in-basin first and only in the event of excess availability of water, diversion of the same to the next low lying area and not to high altitude area. In this connection, it is stated that the contour bed level (CBL) of Bhadra Dam is 620 and the CBL of Kolar, Chitradurga and Tumakuru are between 800 m and 950 m. The proposed project is not feasible.

5. The state Government gave administrative approval for Upper Bhadra Project *via* Maagundi in the year 2003 at an estimated cost of Rs. 2813 Crore vide its G.O dated 23.08.2003 and the same was dropped and subsequently as per the

recommendation of KC Reddy's report, administrative approval was given to the present scheme at an estimated cost of Rs. 5895 Crore, which has now escalated to Rs. 7000 Crore. The entire project is a burden to the exchequer, which only demonstrates the involvement of vested interest in enhancing the project cost most unrealistically for the same project. Alternative schemes have been formulated by experts who have dedicated their entire lives in irrigation projects in various parts of the State of Karnataka. These alternative schemes are very much eco-friendly, economically feasible and viable and most scientific and would protect the larger interest of the public. Such a scheme is readily available and the same was duly notified and brought to the knowledge of the Government. The viable scheme was not conducive to the vested interest and happens to be a low-cost scheme and does not pilfer the funds, the Government and its missionaries have turned a blind eye to the same. The larger people's interest is involved in preventing the implementation of the Upper Bhadra Project, which is clearly demonstrated from the fact that continuous and persisting demonstration and representation are highlighted in all forms of media. The real farmers, environmentalists, rationalists and thinkers are involved in these are involved in these agitations highlighting the irregularities and irrationality of the entire Upper

Bhadra Project. The involvement of Government machinery with vested interest is apparent from the instances of fabrication, misuse of power and creation of false documents at the instance of revenue authorities. The Revenue Inspector of Tarikere Village, Kasaba Hobli has indulged in creating a feasibility report in the form of *mahazar* report relating to acquisition of private lands in Tarikere Hobli. The extent of drawing the *mahazar* inside his office without even going to the villages and conducting spot inspection before drawing the *mahazar*. The signatures of the villagers are forged and the report has been placed for acquisition of private lands even though no assent or accord or consent was given by any of the farmers for land acquisition. When the farmers approached the jurisdictional police and its hierarchy, they too refused take any necessary action. Having no alternative, a private complaint was filed before JMFC, Tarikere and the same is referred for investigation to the jurisdictional police, who registered the FIR in Cr. No. 212/11. All these acts clearly indicate the malice and connivance of each and every official from grass - root level in order to make unlawful gains and to support the vested interests behind the proposed project is designed to make money and without any intention of achieving public purpose.

6. The ground water level in Tarikere and Kadur has drastically

dropped leading to deterioration of quality of drinking water as the fluoride levels have increased and further led to scarcity of drinking water. The Government is very much aware about the fact that the Tarikere Taluk is declared a drought hit area and is deprived from getting water from Bhadra Reservoir, instead of making suitable arrangements for supply of water in Tarikere farmlands, invite fresh tender for supply of water from Netravathi river to Tumakuru, Kolar, Chitradurga and Chikkaballapura districts running parallel to the Upper Bhadra Project. The people of Tarikere have been deliberately deprived of water and the neighbouring districts are being considered for supply of water from two distant rivers. The 1<sup>st</sup> respondent has given accord for another project in order to provide irrigation to Chitradurga, Kolar and Tumakuru from Netravathi River and has approved and called for tender for conducting survey for providing water facility at an estimated cost of Rs. 1865 Lakh. When an alternative scheme is under process, the purpose of the Upper Bhadra Project itself is defeated. The 1<sup>st</sup> respondent has not considered representation and subsequent development in order to stall the Upper Bhadra Project and has gone ahead with awarding of tenders. This further indicates malice on the part of the Government in implementing the Upper Bhadra Project.

7. Mostly in similarity with the averments contained in Application No. 267 of 2013 (SZ) the Applicant in Application No. 268 of 2013 (SZ) has raised the following grounds praying for quashing the Notification No.JaSaEe 152 VibkaEe 2004 (Ba-1) date 15.09.2008 with respect to Lift irrigation in Upper Bhadra Project. The Upper Bhadra Project is not viable economically, scientifically and socially and the administrative approval given by the 1<sup>st</sup> respondent *vide* its G.O is illegal and against the public purpose and deserves to be set aside. The respondents have utterly failed to consider the fact that 21.5 tmc of water was very much available in Bhadra reservoir at the time of according administrative approval for Magundi project in 2003, at a cost of Rs. 2813 Crore. The administrative approval accorded to the said project was withdrawn and administrative approval at a cost of Rs. 5580 Crore for lifting of 21.5 tmc of water was communicated which is totally illogical and is an undue burden on the State's exchequer. The intended project is totally a mega-lift irrigation project, which involves lifting of entire 21.5 tmc/ft of water from an altitude of 45 m by using electric power. It is pertinent to specify here that not even a single project of this magnitude has worked either in our State or in the country. The prevailing scarcity of power in the State would further negate the implementation of the

entire project. All these factors have been given a go-bye by the respondents and administrative accord has been given blindly. K.C. Reddy is not expert in irrigation and is an expert only in Highway and Public Works Department; however, he has chaired the Committee for modification of Upper Bhadra Project, and further the said person is prejudiced in as much his interest is for providing water to Kolar District, from where he hails. There are more than 172 lift irrigation projects in the State, out of which 170 projects are not working and only two projects are functional and these two projects are of very small scale i.e., 1 or 2 tmc ft and these factors have been given a go-bye by the respondents before according administrative approval for the Upper Bhadra Project. The Upper Bhadra Project is not approved on the basis of proper calculation, actual facts, statistics and figures thereby causing great differences in implementation of the project to that of the proposed project. The Upper Bhadra Project causes social injustice, environmental hazard and abrupt exploitation of mother earth and also leads to socio-economic imbalance in the society and the farmer folks are disturbed to the core and their livelihood itself is at stake. The Upper Bhadra Project is against the public at large and would not be meaningful in any manner whatsoever and it is only a project to en-cash out of the funds pilferage at the

instance of intermediaries, politicians, contractors and middlemen. The Government has not acted in accordance with law or laid down the policy to protect the interest of the people, there is no public purpose involved in giving administrative approval to the Upper Bhadra Project.

8. *Per contra*, the respondent Nos. 2 to 4 would state in their counter that Upper Bhadra Project is the project of State Government approved under Krishna basin. In order to utilize entire allocation of water made to Karnataka under Bachawat Award, the Government of Karnataka is committed to implement this project on a fast track basis of speedy execution and completion. The project has been taken up on an urgent basis to meet the decades long pending demand of drought prone areas of people of Chikmagalur, Chitradurga, Tumkur and Kolar Districts. The Government of Karnataka accorded administrative approval to Upper Bhadra Project on 15.09.2008 so that the drought prone areas (1,07, 265 ha) would get water speedily. The component of work involving lifting of water passing through Tarikere Taluk and a tunnel passing through Tarikere Taluk are critical works in the scheme of Upper Bhadra which will provide, when completed, a vital link between Bhadra reservoir and Chitradurga Branch canal. Any delay in the completion of the project would have a far

reaching ramification in terms of cost overrun and delay in accrual of benefits to the drought prone areas of Chikmagalur and Chitradurga Districts. The speedy and unhindered execution of the work of Upper Bhadra Project is of extreme urgency not only for utilization of the Karnataka share of water, but also in extending irrigation benefits to larger drought prone area of 1, 07, 265 ha in Chikkamagalur and Chitradurga Districts. For the people of Tarikere Taluk, a scheme to irrigate an area of 5,471 hectares and fill up 52 numbers of tanks is approved by the Government which is estimated to cost Rs. 75 Crore. At the meeting convened by the Hon'ble Chief Minister on 10.01.2012, the demand of the farmers for enhancing land compensation rates, providing additional irrigation and filling up additional 20 nos. of tanks of Tarikere Taluk have been acceded. The Upper Bhadra Project is a lift scheme where water is lifted against gravity. It is baseless to say that the scheme will not work, since a number of major lift schemes are functioning successfully in Karnataka and in other states. It is inevitable to lift water from the source which is at a lower level to drought prone areas which are at higher level so as to improve the socio-economic conditions of the farmers and for food security to meet ever increasing demands from the growing population and the project is implemented with all precautions and measures duly

addressing the concerns of the farmers be it compensation package for the land losers or providing irrigation benefits to Tarikere Taluk.

9. It is not correct to say that respondents or the Irrigation Department of Karnataka have not proved about the operational efficiency of such an existing project anywhere else. Till this date as many large lift irrigation schemes such as Indi lift, Almatti lifts (ALBC and ARBC), Rampur lifts under Krishna Bhagya Jala Nigam Ltd (KBJNL) are commissioned and functioning. The KNNL has the requisite experience in implementing many lift irrigation schemes successfully. The KNNL is in a position to implement Upper Bhadra Project. So far an amount of Rs. 529.83 Crore has been spent on Upper Bhadra Project by keeping the critical works of Package-I work: Lifting 15 tmc water from Tunga river to Bhadra reservoir and Package-II work: Lifting 21.5 tmc water from Bhadra reservoir to Ajjampura tunnel in progress. The KNNL has very good experience in implementing large irrigation projects successfully. Such large schemes are in successful operation in Karnataka and other states of India, the machinery (pumps and motors) for lifting of 21.5 tmc water are produced with due diligence from reputed manufacturers who have expertise in this field. Therefore, the apprehensions of the petitioners are

unfounded. Necessary care has been taken in the design and manufacture of such equipments to ensure their performance.

10. The contention that geological study for canal and tunnel with reference to groundwater conditions is not carried out is incorrect as illustrated below:

To allay the apprehension of the people of Tarikere on depletion of ground water due to construction of tunnel, the Government vide GO No. WRD 1 VBE 2008 Bangalore dated 28.02.2009, constituted a committee under the chairmanship of Sri D. N. Desal, Technical Adviser to Water Resources Department. As adverse effect to ground water due to tunnel construction was the main issue and to allay the apprehensions of farmers of the region, the Committee entrusted detailed study with an Expert in the field of hydro-geology, Prof. M. Sekhar of the Civil Engineering Department of IISC Bangalore. Also, the committee entrusted the study on the possible impact on the Geo-hydralological set up making use of satellite imagery maps of the area, remote sensing and geographic information system applications to Dr. Y. Lingaraju, retired Director, Geomatics Center WRDO and Director KRSRAC. The committee deliberated on all the issues and apprehensions expressed by the people including study of alternatives and submitted its report to the Government on

23.06.2010. The decision in favour of construction of tunnel has been taken in the meeting convened by the Hon'ble Chief Minister on 10.01.2012 with the farmers and elected representatives and the Government has communicated acceptance of the report of expert committee in its order dated 13.06.2012. The apprehension that the proposed tunnel will deplete ground water in the area is well addressed in the design of tunnel and it will be water tight. All precautionary measures to see that the water table in the vicinity of tunnel is not lowered are contemplated in the design and construction of tunnel. Further, it is to be noted that tunnel is inevitable option to convey water from Bhadra sub-basin to Vedavati sub-basin which has to cross the ridge between the two sub-basins called 'basin divide'. The work Package-II i.e. Lifting of 21.5 tmc of water from Bhadra reservoir to delivery chamber near Ajjampura of Upper Bhadra Project is entrusted to M/s RNSIL (JV) on Engineering Procurement Contract (EPC) turnkey basis. As per the EPC norms the agency is required to implement the scheme which includes activities of Surveying, Planning and preparation of DPR with most economical and technically feasible alignment, execution, commissioning and maintenance of the scheme for 5 years thereafter. As the nature of work is such that land acquisition cannot be done in advance of entrustment. In order to speedily

take up the work on a fast track basis as per the decision of the Board of KNNL, this mode of execution is adopted. While finalizing the alignment, due care has taken to address the concerns of the landowners by avoiding canal in deep cuts and by avoiding the lands with plantations as far as possible. The contention of the petitioner that this is an unusual and unprecedented step is due to being misinformed. The river Bhadra is one of the major tributaries to river Tungabhadra, 2<sup>nd</sup> largest river of Southern Peninsular India. The Bhadra River takes its origin at Gangamoola in Kudremukh ranges of Western Ghats at an altitude of about 1189.00 m and flows for a length of 193 kms before joining the river Tunga at Kudli village in Shimoga district, from where the river is known as Tungabhadra.

11. The dam across the river Bhadra was built near Lakavalli in Chikkamagalur district way back in early 1960's for irrigating 1, 21, 500 hectares. In order to provide irrigation facilities to drought prone areas of middle Karnataka i.e., Chitradurga and Tumkur Districts, it was envisaged to construct one more reservoir for utilizing excess flow of water from the rivers Bhadra and Tunga during the year 1969. However, due to protest from the project affected people and paucity of funds, much progress could not be made in the implementation of Upper Bhadra Project. The

persistent and long pending demand from the people of the drought prone areas of Chitradurga, Chikkamagalur and Tumkur, the Government of Karnataka finally decided to go ahead with implementation of Upper Bhadra Project, which would also facilitate the utilization of 21.50 tmc/ft (608.81 mcum) of water allocated under the Inter-State water sharing distribution of river Krishna among the three riparian states viz., Karnataka, Andhra Pradesh and Maharashtra. The Upper Bhadra Project, as initially conceived, had been administratively approved by the Government for implementation in August 2003 at an estimated cost of Rs. 2813 Crore. This proposal envisaged construction of dams across Bhadra river, upstream of Bhadra reservoir, near Magundi and Tegurgudda villages of Chikkamagalur District and lift water through a common canal for supply to Chitradurga Branch canal Ajjampura tunnel. There were representations against this proposal by the people affected by the submergence of lands in Chikkamagalur District and also by environmentalists who apprehended damage to the environment as the canal was running through wildlife area. In order to address the above issues including the aspects of water availability, conveyance and possible alternatives for implementing the Upper Bhadra Project, the Government constituted a committee under the Chairmanship

of Sri. K. C. Reddy, a technical expert. After a detailed study, which included hydrological aspects for the availability of water, technical feasibility for storage and conveyance, environmental impact and interaction with the project affected people, the committee recommended to modify the earlier scheme providing for:

Lifting 15 TMC of water from Tunga river to Bhadra reservoir (package I); Lifting of 21.5 TMC of water from Bhadra reservoir to delivery chambers near Ajjampura (package II); Construction of Ajjampura tunnel to deliver water to Chitradurga Branch Canal (package III); Construction of Chitradurga Branch Canal to irrigate 1, 07, 265 ha and filling up of 156 minor irrigation tanks coming under drought prone areas of Chikkamagalur, Chitradurga, Kolar and Tumkur districts for drinking water purposes.

12. The project has been formulated keeping in view the least environmental damage and economic viability. The availability of 21.5 tmc of water for the Upper Bhadra Project was thus confirmed by the expert committee. The Government accepted the recommendation of the K.C.Reddy Committee and transferred the work to KNNL for implementation in 2006. The Government of Karnataka has given clearance to go ahead with the implementation of Upper Bhadra Project, following the principle

approval *vide* its order dated 15.09.2008. The proposal, as approved by the Government, envisages providing for irrigation facilities to an extent of 107265 hectares and also to rejuvenate 156 minor irrigation tanks in Chikamagalur, Chitradurga, Tumkur and Kolar Districts for recharging ground water and providing drinking water at an estimate cost of Rs 5985 Crore. The proposed project to divert western flows is not an alternative to Upper Bhadra Project. Upper Bhadra Project which is under implementation is for the purpose of providing irrigation facilities and filling up of minor irrigation tanks in drought prone areas of Chikamagalur, Chitradurga districts. Whereas, the current tenders as mentioned by the appellant are invited for survey, investigation and preparation of detailed project report planned for diversion and utilization of potential flows of West flowing streams and *nallas* for improvement of drinking water and ground water recharge in some part of drought affected areas of Karnataka.

13. The KWDT award to utilize surplus water of Krishna river has allowed allocation of 10 tmc of water for Upper Bhadra Project. With the utilization of savings in modernization of Bhadra, Tunga and Vijaynagar channels of 13 tmc, the total allocation to Upper Bhadra Project will be 23 tmc. With allocation of 1.5 tmc for Ubrani Amrutpur LIS, the allocaton to Upper Bhadra Project is 21.5 tmc.

The utilization of water as cleared by CWC for Bhadra Project is 62.945 tmc and the savings due to modernization of Bhadra Project is 6.5 tmc. By taking up Upper Bhadra Project, the utilization of Bhadra Project as cleared by CWC will not be affected. The savings of 6.5 tmc in Bhadra Project is proposed to be utilized for Upper Bhadra Project. All the issues related to storage, conveyance for drinking water needs would be looked into while finalizing the DPR of Part B-drinking water. As regards the blasting operations in tunnel and concerns on ground water expressed by the applicant, it may be noted that the expert committee constituted by the Government has gone into all aspects of tunnelling including blasting operations and impact of tunnelling on ground water and submitted a report with recommendations to the Government which have been accepted by the Government. Action is taken by KNNL to carry out tunnelling as per the recommendation of expert committee. The recommendations are :

- 1. Tunnelling operations shall be carried out under the supervision of an Expert Geologist.*
- 2. Before commencement of tunnel operations, further probing needs to be done to identify the strata through which*

*tunnel passes through. This is necessary to identify the location of lineaments, their extent and the strata.*

*3. For tunnelling, the pattern and drilling and the charge of explosive has to be got determined with the help of an Expert in tunnelling operations. This should be strictly followed and implemented in tunnel construction. The pattern drilling and explosive charged shall not be altered without the opinion of the expert.*

*4. In the region of lineaments, methodology for tunnelling appropriate to the strata has to be determined by an Expert in tunnelling operations and adopted after further probing.*

*5. In the region of identified lineaments, pre-injection of grout/chemicals has to be done. For this purpose, a service of an expert on the subject has to be mobilised. Pre-injection has to be carried out as per advise of the expert and under his supervision.*

*6. Attempts are to be made to see that no time gap is left between tunneling and lining.*

*7. Subject to geology being favourable, tunnel may be extended by 0.5 KM on either side. If not, the option of cut and cover to be adopted.*

*8. For the balance length of approach and exit cuts, not only*

*M-20 grade of concrete shall be adopted, but lining shall be done upto ground level. HDPE film or any other suitable material shall be laid behind the concrete lining.*

*9. For the appropriate grade of concrete for lining of tunnel, the grade of concrete to be adopted for lining of the tunnel shall be as per advice of an Expert and implemented.*

*10. The LI scheme proposed at the entrance of the tunnel shall be implemented to cover an area of 1821 ha in the region of the tunnel. This will benefit the farmers of the villages situated in the region of the tunnel during Khariff season and dependency on ground water will be avoided. This scheme will help recharging of ground water and thereby augment groundwater storage.*

*11. It is necessary to create awareness at each village in the region of the tunnel about the quantity of surface water that will be provided additionally to the farming community of the area.*

*12. In the region of tunnel, watershed development scheme on the lines of Integrated Mission for Sustainable Development (IMSD) guidelines may be prepared and implemented.*

*13. The committee though has examined alternatives to the*

*tunnel, but in the background of the above recommendation does not recommend any alternative.*

14. The power sanction for operating the lift schemes has been accorded by KPTCL and accordingly activities related to power supply arrangements started. The Upper Bhadra Project requires power in the order of about 160 MW. The Hon'ble Chief Minister during discussions on Upper Bhadra Project in the 41<sup>st</sup> Board meeting of KNNL issued directions that possibility of power generation using wind energy should be explored by KNNL. The possibility of dedicated power generation for this project should also be explored considering the huge requirement of 160 MW. The Managing Director states the Department of Renewable Energy has suggested to go for wind energy up to 160 MW, a possible option that KNNL could pursue vigorously. A dialogue was initiated with the Department of Renewable Energy Development Ltd. (KREDL), Government of Karnataka by KNNL for technical expertise and guidance in establishing wind farm for Upper Bhadra Project so as to make itself reliant in power. KREDL had informed that for exploring the suitable option required, technical support could be extended by them. A proposal has been submitted by the Managing Director to the Government on

01.07.2009 requesting to allot suitable site to establish wind farm for Upper Bhadra Project on EPC turnkey contract basis. The KKNL is pursuing alternative options for uninterrupted power supply and to be self reliant in power required for the project. The Upper Bhadra Project is designed as lift irrigation project, water is lifted from Tunga river and delivered to Bhadra reservoir in a period of four months from June to October every year. During the same period, water is lifted from Bhadra reservoir and delivered to Chitradurga branch through Ajjampura tunnel. The system design of the entire scheme is so carried out utilizing the Bhadra reservoir as a transit storage thereby delivering water to Chitradurga Branch canal for irrigation and tank filling. The Government constituted a committee under the Chairmanship of Sri K C Reddy, a technical expert. After a detailed study, which included hydrological aspects for the availability of water, technical feasibility for storage and conveyance, environmental impact and interaction with the project affected people, the committee recommended to modify the earlier scheme. It is incorrect to contend that presently only 2 lift irrigation schemes out of 172 lift irrigation schemes are in working condition and the Upper Bhadra Project is lift scheme where water is lifted against gravity, the scheme will not work, since a number of major lift schemes are functioning successfully in Karnataka and in other

states. It is inevitable to lift water from the source which is at a lower level to drought prone areas which are at higher level so as to improve the socioeconomic conditions of the farmers and for food security to meet ever increasing demand from the growing population. The project is found to be feasible and economically viable, and the 2<sup>nd</sup> respondent has very good experience in implementing large irrigation projects successfully. Such large schemes are in successful operation in Karnataka and other states. To address the demand to provide more irrigation facilities to Tarikere Taluk area, the Government has approved the scheme under Upper Bhadra Project at a cost of Rs. 75 Crore to irrigate 5471 Ha and to fill up 52 tanks in Tarikere Taluk by utilizing 0.8 tmc of water, vide GO Na.JaSamE 150 ViBhyAE 2009 dated 13.10.2011. During a meeting convened by Hon'ble Chief Minister on 10.01.2012, the demand of the farmers for enhancing land compensation rates, providing irrigation to 5500 hectares near the area of tunnels and fill up additional 20 Nos. of tanks of Tarikere Taluk have been acceded. With this, providing irrigation to an area of about 7500 hectares and filling up of 72 Nos. of tanks in Tarikere Taluk are taken up as part of Upper Bhadra Project.

15. In pursuance of an order of the Hon'ble High Court of Karnataka made in W.P.Nos. 47599 of 2011 and 25255 of 2012,

these applications were taken on file by the Tribunal. On the pleadings put forth by the parties, the following points were formulated for decision by the Tribunal:

1. Whether the applications are not maintainable since they are barred by limitation and fall outside the scope, power and jurisdiction of the National Green Tribunal (NGT)
2. Whether the Notification bearing No. JaSaEe 152 VibKaEe 2004(Ba-1) dated 15.09.2008 made by the State of Karnataka is liable to be set aside for all or any of the grounds stated in the applications.
3. Whether the applicants are entitled for a direction to the respondents to drop the entire project, namely, the Upper Bhadra Lift Irrigation for providing water to Tarikere Taluk for irrigation and drinking water purposes
4. To what relief the applicants are entitled to?

16. The learned counsel for the applicants and also for all the respondents put forth their elaborate submissions by relying on the materials made available and also decisions of the higher courts. At the outset, all the respondents in one voice raised their preliminary objection on the maintainability of the applications on the ground of limitation and jurisdiction. Hence, it would be fit and proper to answer the same before advert to the merits of the

rival contentions on other questions.

17. Advancing the arguments on behalf of the respondents, the learned counsel would submit that the applications are not maintainable in law for the reason that the administrative approval dated 15.09.2008 of the State of Karnataka questioned by the applicants is a policy decision which is within the domain of the executive and not justifiable unless it violates any law or abuse of powers. The applicants have not challenged any Environmental Clearance (EC) or substantial issue relating to the environment or pointed out any violation of the enactments in the First Schedule of the NGT Act, 2010. The said policy decision has subsequently fructified into a statutory clearance under the Environmental (Protection) Act, 1986 (EP Act, 1986) on 05.01.2010. The EC was appealable under Section 11 of the National Environment Appellate Authority Act, 1997 (NEAA Act, 1997). But, no appeal was preferred even though EC was published in public domain. The NGT Act, 2010 came into force on 18.10.2010. The writ petitions were filed in 2011 and 2012, respectively. Hence, both the applications have got to be dismissed on the ground of delay under Section 16 of the NGT Act, 2010. Even under the NEAA Act, 1997, the period of limitation prescribed under Section 11 is 30 days and the maximum period for the condonation of the delay is

90 days from the date of appealable order. As such, the applications being appeals as contemplated under Section 16 of the NGT Act, 2010 are required to be dismissed without going into the merits of the matter. Even if the applications are treated as proceedings contemplated under Section 15 of the NGT Act, 2010, they would be still barred by virtue of Section 14 (3) which prescribes a limitation of 6 months from the date of cause of action for such dispute. In the instant case, the cause of action is related to the administrative approval dated 15.09.2008 or the statutory approval dated 05.01.2010. The Hon'ble Supreme Court in *Narmada Bachao Andholan vs. Union of India and others reported in 2000 (10) SCC 664* has observed that just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them. In the instant case, not only the petitioners have challenged the policy decision, but they have come forward to file the applications out of time and after the project is underway. It is the further argument of the counsel that the applicants have chosen to challenge the Government notification dated 15.09.2008 before the Hon'ble High Court of Karnataka which were entirely transferred to the Tribunal finally. The applicants have not chosen to challenge the EC dated 05.01.2010 granted by the Ministry of Environment and Forest

(MoEF) even though they were fully aware of the same. In fact, they have not chosen to implead the MoEF as a party respondent either before the Hon'ble High Court of Karnataka or before the Tribunal. It can be seen that the application for the EC was made as early as in 2/2009. The proposal made by the 1<sup>st</sup> respondent, State of Karnataka has been considered by the Expert Committee for River Valley and Hydro-electric Projects and on their approval, the MoEF has accorded the EC as per the provisions of the EIA Notification, 2006 subject to strict compliance of the conditions which have been set out at Part A and Part B of the EC. In terms of the EC, it is the duty of the Project Proponent to submit 6 monthly reports on the status of the compliance to the conditions stipulated in the EC. Such reports were submitted in time. The same have never been objected to by the MoEF. Periodic inspections were made. But, no deviation from the terms and conditions has been noticed. The case of the applicants that there has been infarction and violation of terms and conditions of the EC rings hollow and it is purely speculative. No material is placed before the Tribunal to substantiate such a contention. The clearance issued to the 1<sup>st</sup> and 4<sup>th</sup> respondents was valid for another 5 years and hence the applicant cannot be heard to contend that the conditions of the EC have not been complied with

by the respondents. In short, in the absence of any challenge to the EC dated 05.01.2010, the applicants have no case at all. If at all any person is aggrieved against the grant of EC such person has to prefer an appeal before the NEAA within 30 days under Section 11 of the NEAA Act, 1997. But, no appeal has been filed. After a period of 3 years from the Government Notification dated 15.09.2008 approving the project, the writ petitions were filed before the Hon'ble High Court of Karnataka. The NGT was constituted in the year 2010 and started functioning in October, 2010. Nothing prevented the applicants to knock the doors of the NGT at that stage. This would be indicative of the lack of *bona fides* of the persons. Even after the transfer of the writ petitions to the Tribunal, the applicants have not filed any additional ground or plea challenging the EC. But, the applicants have been advancing the same allegations as they have filed in the writ petitions before the Hon'ble High Court of Karnataka. In such a scenario, the applications are liable to be rejected on the ground of limitation and also on the ground that they did not disclose any violation of any statutory provisions enunciated in Sections 14, 15, and 16 of the NGT Act, 2010 and the present applications are not maintainable. The EC was granted in favour of the respondents even in 1/2010 much earlier to the coming into force of the NGT

Act, 2010. Hence, the applications are liable to be dismissed.

18. Though the applicants have termed the applications as PIL, the writ petitions were filed since certain lands owned by the applicants were acquired for the project. Moreover, to avoid the land acquisition by the State Government, the applicants have filed the applications. Such an ulterior motive is evidenced by the fact of delay of over three years in challenging the administrative order. In the entire writ petitions the petitioners have not provided any justification for such protracted delay in filing the writ petitions. While the writ petitions were pending adjudication, the petitioners/applicants sought transfer of the writ petitions to the Tribunal by giving up all the grounds on which the writ petitions are primarily based and then submitting before this Tribunal's jurisdiction and subsequently including allegations and unfounded environmental concerns. The petitioners are attempting to achieve indirectly what they cannot do directly i.e., to avoid dealing with issues of delay in filing the petitions and also to keep alive the legal proceedings although there is no merit in the matter.

19. Added further the learned counsel that apart from the point of limitation, both the applications have got to be dismissed since the reliefs sought for do not fall within the ambit of substantial question relating to environment as defined in Section

2 (m) of the NGT Act, 2010. The reliefs sought for do not fit in any one of the provisions enshrined in the NGT Act, 2010. More so, in spite of liberty granted by the Hon'ble High Court, Karnataka to make necessary prayer. The applicants have not asked for or seek appropriate relief before the Tribunal. The prayer to quash the Government order dated 15.09.2008 passed by the 1<sup>st</sup> respondent and for direction to drop the entire Upper Bhadra Lift Irrigation Project to provide water to Tarikere Taluk for irrigation and drinking water purpose do not fall within the ambit of the NGT Act, 2010. Neither the project nor the Government order approving the same in violative of any specific statutory environmental obligation leading to environmental consequences and thus the applications fall outside the scope, ambit of powers and jurisdiction and hence, they have got to be dismissed.

20. In answer to the above, the learned counsel for the applicants with vigour and vehemence would submit that the applicants filed the PLI in the interest of safeguarding of the ecology, farmers and residents of Tarikere and Kadur taluks of Chikkamagalur district in the State of Karnataka, aggrieved by the large scale environmental and ecological damage caused by the implementation of the Upper Bhadra Project by the State of Karnataka. The respondents commenced the work on this project

in violation of the EC obtained by the respondents from the Central Government on 05.01.2010, but without procuring approvals under the Forest (Conservation) Act, 1980 and Wildlife (Protection) Act, 1972 causing huge and irreversible damage on the ecology and hence the applications filed before the Hon'ble High Court of Karnataka which were later transferred to this forum. The Hon'ble High Court, Karnataka by an order dated 20.02.2013 has stayed all the works of the project in the forest land until forest clearance is obtained. The said order is still in operation. The arguments advanced by the respondents that the present applications are not maintainable on the ground that challenge was made only to the administrative approval for the Upper Bhadra Project dated 15.09.2008 or a challenge to the EC accorded to the said project on 05.01.2010 would be barred by limitation is completely false. A petition was filed by the applicant before the Hon'ble High Court of Karnataka which does not challenge the EC dated 05.01.2010 granted to the respondents. In fact, it has been alleged in paragraph 31 of Application No. 267 of 2013 that there was a continued non-compliance of the terms of the EC accorded to the Upper Bhadra Project. The averments regarding the non-compliance with the EC and prior forest clearance required are clearly stated in I.A. No. 2 and I.A. No. 3 filed in the main

application which form part of the pleadings. The reliefs sought for in Application No 267 of 2013 are not only for quashing the administrative order dated 15.09.2008, but also stoppage of the works of the Upper Bhadra Project which is shown in relief clause B of the prayer. Thus the challenge to the administrative sanction order dated 15.09.2008 is only a formal prayer as the main prayer in the writ petition is clearly against the continuance of the work on the Upper Bhadra Project in violation of the conditions of the EC granted to the project as well as the forest and wildlife laws. Under Section 14 of the NGT Act, 2010, all matters where the substantial question relating to environment including the enforcement of any legal rights relating to the environment can be filed. The time limit for filing is given in Section 14 (3) stating that it should be filed within 6 months from the date of cause of action arising. Thus, the applications are maintainable and not barred by time since the violation of EC is continuing day by day. The learned counsel relied on the Judgment of the Principal Bench, NGT in Wilfred.J. vs. MoEF in Application No. 74 of 2014.

21. The learned counsel would further submit that the subject matter of the applications fall squarely within the competency of the Tribunal in terms of Schedule I of the NGT Act, 2010 as the cause of action leading to these applications is the violation by the

respondents of the EC procured by them under the EP Act, 1986. The said legislation is clearly enumerated in Schedule I of the NGT Act, 2010. The contention put forth by the respondents that the issue regarding clearance from the National Board of Wildlife under the Wildlife Act would not come under the jurisdiction of this Tribunal since the said Act is not enumerated under Schedule I is completely baseless because the clearance under Wildlife Act is a specific condition under the EC dated 05.01.2010 which is issued under the EP Act, 1986 which falls within the subject matter of the Tribunal. In order to substantiate the above contention, the counsel for the applicant relied upon the case of Tribunal on its own motion vs. Secretary, MoEF and others in Application No. 16 of 2013 (CZ, Bhopal) and thus the subject matter of the applications is well within the jurisdiction of the Tribunal. Hence, the contention put forth by the counsel for the respondents on the question of limitation and jurisdiction are liable to be rejected as devoid of merits.

22. The Tribunal paid its anxious considerations on the submissions made in respect of preliminary objection on the question of maintainability of the applications on limitation and jurisdiction. Admittedly, the applicants filed two writ petitions before the Hon'ble High Court of Karnataka, Bangalore in W.P. Nos.

47599 of 2011 and 25255 of 2012 whereby an order of transfer was made by the Hon'ble High Court, Karnataka which runs as follows:

*"1. During the course of arguments, learned counsel Mrs. Jayna Kothari appearing also in W.P.No. 25255/2012 for the petitioners fairly conceded that in view of the clear ratio and directions of the Apex Court in paragraphs 40 and 41 of its judgment in Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others reported in (2012) 8 SCC 326, the petitions and present proceedings were required to be transferred to the National Green Tribunal under the National Green Tribunal Act, 2010 without prejudice to the rights and contentions of the parties. It was also conceded that the issues and objections sought to be raised in these petitions were related to and covered by the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 both of which enactments find their place in Schedule-I to the National Green Tribunal Act, 2010.*

2. *Learned counsel for the respondents have not controverted the above statement of fact and law, the petitions are, along with pending interlocutory applications made therein and interim orders, ordered to be transferred to the National Green Tribunal having its Bench at Chennai, with liberty to the parties to make appropriate representations and prayers before the Tribunal in the facts and circumstances of the cases. As far as this court is concerned, the petitions stand disposed without any further orders upon being transferred to National Green Tribunal”.*

23. On transfer, the said writ petitions were taken on file as Application Nos. 267 and 268 of 2013 (SZ) in the Tribunal. The parties were given opportunity to file their pleadings and documents. It is pertinent to point out that the applicants in both the Application Nos. 267 and 268 of 2013 (SZ) did not seek any amendment to the averments or reliefs as sought for in the original writ petitions and proceeded with their cases as they stood before the Hon'ble High Court of Karnataka.

24. The relief clause in Application No. 267 of 2013 (SZ) (W.P.No. 47549 of 2011) reads as follows:

*“(a). issue a writ of certiorari quashing the Government order No. JaSaEe 152 VibKaEe 2004 (Ba-1) dated 15.09.2008 (Annexure-D) passed by the first respondent with respect to Upper Bhadra Lift Irrigation.*

*(b) Issue a writ of mandamus directing the respondents to drop the entire project of Upper Bhadra Lift Irrigation and provide water to Tarikere Taluk for irrigation and drinking water purpose.*

*(c) Pass such other reliefs as this Hon’ble Court may deem fit and proper in the interest of justice and equity”.*

25. Equally, the relief clause in Application No. 268 of 2013 (SZ) (W.P.No. 25255 of 2012) reads as follows:

*“(a). issue a writ of certiorari quashing the Government order No. JaSaEe 152 VibKaEe 2004 (Ba-1) dated 15.09.2008 (Annexure-D) passed by the first respondent with respect to Upper Bhadra Lift Irrigation.*

*(b) Pass such other reliefs as this Hon’ble Court may deem fit and proper in the interest of justice*

*and equity”.*

26. From the very reading of the above, it would be quite clear that both the writ petitions were filed to quash the Government Notification No. JaSaEe 152 VibKaEe 2004 (Ba-1) dated 15.09.2008 as found in Annexure-I with respect to the Lift Irrigation Project in Upper Bhadra. The applicants in Application No. 267 of 2013 (SZ) apart from the above, sought for directions to the respondents to drop the project of Upper Bhadra Lift Irrigation and provide water for Tallikere Taluk for irrigation and drinking water purpose.

27. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

*“14. Tribunal to settle disputes:- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule-I.*

*(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1)*

*and settle such disputes and pass order thereon.*

*(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*

*Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a period of not exceeding sixty days”.*

28. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation of any one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for

sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

29. As seen above in both the applications, the applicants have chosen to challenge the Administrative Order in Notification No. JaSaEe 152 VibKaEe 2004 (Ba-1) dated 15.09.2008 in the year 2011 and 2012, respectively. This would be indicative of the fact that even when they approached the Hon'ble High Court of Karnataka, there was delay and *laches*. It is not in controversy that the MoEF has accorded EC to the 1<sup>st</sup> respondent for the project in question on 05.01.2010 which was in public domain. They have not chosen to challenge the EC till date. No attempt was made either during the pendency of the writ petitions before the High Court of Karnataka or pending these applications before the Tribunal. They have not even chosen to implead the MoEF as a party respondent either in the writ petitions or in these applications. Having not challenged the EC dated 05.10.2010 in respect of the project, the applicants have come forward to stake as they are aggrieved by non-compliance of the some of the conditions attached to the EC. If the applicants were really aggrieved by the impugned order, they should have preferred appeal before the National Environment Appellate Authority within the period of 30 days under Section 11 of the NEAA Act, 1997. But, they have not done so. On the contrary,

the applicants have preferred two writ petitions challenging the said administrative order of the year 2008 approving the project after a lapse of 3 years. It remains to be stated at this juncture that the NGT Act, 2010 came into force in October, 2010. Not only the administrative order was given in the year 2008, but also the EC was given on 05.01.2010 even before the commencement of the NGT Act, 2010. Further, it has to be stated that even before filing of the writ petitions before the High Court of Karnataka, NGT became functional 1 year before the 1<sup>st</sup> application and 2 years before the 2<sup>nd</sup> application. Thus, it would be clearly indicative of the fact about the knowledge of the applications in respect of the Administrative Order dated 15.09.2008 and EC by the MoEF dated 05.01.2010. The applicants have not preferred any appeal under Section 11 of the NEAA Act, 1997 within 90 days as stipulated in the Act including the period of condonation of the delay. But, they have chosen to challenge by way of writ petition before the High Court of Karnataka after a long delay and no explanation is forthcoming in this regard. The NEAA Act, 1997 stood repealed under the NGT Act, 2010 with effect from 18<sup>th</sup> October, 2010. A party cannot be allowed to rely upon the provisions of the repealed statute. If a right has been accrued under the repealed enactment, it cannot be disturbed. Even then, if any new or further step was needed to be

taken under the Act that cannot be taken even if the Act is repealed. It has been ruled by the Hon'ble Apex Court in *M.S. Shivananda vs. Karnataka State Road Transport Corporation* (1980 1 SCC 149) as follows:

*“23. The distinction between what is and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great interests. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere ‘hope or expectation of ‘or liberty to apply for, acquiring a right. In Director of Public Works V. Ho Po Sang Lord Morris speaking for the Privy Council observed,*

*‘it may be, therefore, that under some repealed enactments, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved even if a process of quantification is necessary. But, there is a manifest distinction between an investigation in respect of a right and an*

*investigation which is to decide whether some right should be or should not be given. On repeal, the former is preserved by the interpretation of Act. The latter is not.”*

*24. A reading of the above would clearly indicate the right of appeal granted under the repealing Act as could be seen from the NGT Act, it was restricted only to the orders that were passed on or after 18.10.2010 and also taking up for consideration the appeal which were filed before NEAA on or before 17.10.2010. As rightly pointed out by the learned counsel for the respondent, the Tribunal is only a creature of the statute and could not stretch its jurisdiction what is expressly conferred by the Act and no statutory authority whether empowered by the Hon'ble Supreme Court can act or otherwise de hors the statutes. In the instant case, the repealed act cannot be relied upon by the appellant. If the appellant has acquired any right, the same would be protected by applying the provisions of Section 6 ( c) of the*

*General Clauses Act but that is not so in the instant case. In the instant case, the environmental clearance was granted on 01.05.2008 but no appeal was preferred before 18.10.2010 under NEAA Act and hence, it cannot be stated as a pending case to be decided under Section 38 (5) of the NGT Act. As seen above, the appellant cannot rely upon Section 16 of the NGT Act General Clause to expand the portion of Section 16 of 38(5) of the NGT Act beyond the plain language.*

*25. As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of the NGT Act, one should have the cause of action consisting of a bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.*

*(a) Black's Law Dictionary defines cause of action as: "Cause of action is stated to be*

*the entire set of facts that gives rise to an enforceable claim, the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.*

*(b) in 'Words and Phrases', the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.*

*(c ) As per Halsbury Laws of England (Fourth Edition) 'cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his*

*cause of complaint or the subject matter of grievance founding the action, not merely the technical cause of action.*

*(d) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.*

*26. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT, New Delhi in Appeal No. 1 of 2013 M/s. Medha Patkar and Others vs. Ministry of Environment and Forests, Union of India and others on the point of limitation.*

*“The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act*

would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions read with the Notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of

*his project after years have elapsed. This cannot be in the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a*

*limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus, both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature, in its wisdom, has under the provisions of the Act or in the Notification of 2006 not provided any other indicator or language that could be the precept for the Tribunal to take any other view.”*

*27. By employing these words, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the cause of action for the disputes arose is explicit. This is not only an indication but also a caution that*

*later dates on which the subsequent events arose should not be taken to account for computing the period of limitation”.*

30. The contention put forth by the learned counsel for the applicants that the challenge to the administrative sanction dated 15.09.2008 was only a formal prayer as the main prayer in the writ petitions against the continuance of the works for which EC was granted to the project cannot be countenanced. The relief sought for in Application No. 268 of 2013 (SZ) is only to set aside the administrative order and nothing more. It is true that in so far as Application No. 267 of 2013 (SZ) is concerned, the relief sought for is for a direction to the respondents to drop the entire project of Upper Bhadra Lift Irrigation Project for providing water for irrigation and drinking water purpose. The relief sought for in Clause (a) to set aside the administrative order dated 15.09.2008 is evidently the main prayer and a direction to drop the entire project of Upper Bhadra Lift Irrigation can only be a cause for the first relief. If relief (a) is negative, relief (b) does not arise for consideration at all. In other words, relief (b) cannot be granted independent of relief (a).

31. Pointing to paragraph 31 in Application No. 267 of 2013 (SZ), the counsel would submit that there was a specific averment as to the continued non-compliance by the respondents with the

term of EC accorded to the Upper Bhadra Lift Irrigation Project.

Paragraph 31 of the Application No. 267 of 2013 (SZ) runs thus:

*“31. The petitioner states that the respondents have failed to consider that the project involves deep cut canals and tunnels passing through Tarikere which is causing environmental hazards directly affecting the ecosystem and also the farmers in the vicinity, the water level and also horticultural crops shall be totally destroyed because of such deep cut canals and tunnels. Further the channel passes through numerous forest area and reserve forests affecting wildlife. When the project itself is not feasible due to the aforesaid reasons again causing further damage to the ecosystem is totally unjustifiable and against public at large”.*

32. A reading of the above would clearly indicate that the applicants have nowhere spoken about EC or the conditions attached or non-compliance. Hence, the above submissions made by the counsel are worth to be ignored. The learned counsel for the applicants in his sincere attempt of making submissions in support of the applicants would submit that the I.A. Nos. 2 and 3 were filed seeking directions which were also transferred along

with the writ petitions. Having failed to prefer an appeal challenging the administrative order of the year 2008 wherein period has been stipulated as envisaged under NEAA Act, 1997 or challenge the EC granted in respect of the project on 05.01.2010, these two applications which were taken as applications which were hopelessly barred by time, in no way advance the case of the applicants for any relief as asked for. These two applications though filed for a direction are actually intended to amend the main applications, if possible but in vain. The applicants cannot maintain the two interim applications while the main applications fail on the point of limitation.

33. Equally, the contention of the learned counsel for the applicant that in view of the violation of the conditions attached to the EC, the cause of action continues and thus it is within the period of limitation has to be rejected on the grounds that as in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of the NGT Act, one should have the cause of action consisting of a bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

34. Further, trite law it is that the special law of limitation, in any

given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14 (2) and 15 (3), as stated *supra*. The Principal Bench, NGT has already held in *Jesurethinam and Ors. Vs. Ministry of Environment and Forests, Union of India and Ors.* reported in 2012(2)FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which specific period of limitation is available under the NGT Act, 2010.

35. In so far as the plea raised by the respondents that both the applications do not make out any substantial question relating to environment as envisaged under Section 2 (m) of the NGT Act, 2010 and hence, the Tribunal has no jurisdiction has to be rejected. The Hon'ble First Bench of the Karnataka High Court in the order of transfer of the writ petitions has observed as follows:

*“..It was also conceded that the issues and objections sought to be raised in these petitions were related to and covered by the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 both of which enactments*

*find their place in Schedule-I of the National Green Tribunal Act, 2010.*

36. It is also pointed out that the learned counsel for the respondents have not controverted the above statement of fact and law. Thus, it would be clear that the respondents were conscious of the fact that the issues raised are under the provisions of the enactments. Hence, it would be futile on their part that no substantial question relating to environment arose in the applications.

37. In view of the findings recorded by the Tribunal, both the applications are barred by limitation as rightly contended by the respondents. The applications are dismissed. Since the applications are dismissed as above, all other contentions on other questions do not arise for consideration.

No cost.

(Justice M. Chockalingam)

Judicial Member

(Prof. Dr. R. Nagendran)

Expert Member

Chennai,

Dated, 01 December, 2014



# NGT