BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Application Nos.243 & 245 of 2016 (SZ)

IN THE MATTER OF:

Application No. 243 of 2016 (SZ)

Neeliah
S/o Neelisidiah
Swaraj Sanghatane Pushpaniketana Nilaya
3rd Floor, 4th Main Road
Sampangirama Nagara
Bengaluru 560027 ...Applicant(s)

Vs.

1. The Union of India
   Rep by its Secretary to the Government,
   The Ministry of Environment,
   Forests and Climate Change,
   Paaryavaran Bhavan, Jor Bagh,
   New Delhi.

2. The State of Karnataka
   Rep by the Chief Secretary to Government,
   Vidhana Soudha, Dr. Ambedkar Veedhi,
   Bengaluru 560 001.

3. The State of Karnataka
   Rep by its Additional Chief
   Secretary to Government,
   Forest, Environment and
   Ecology Department,
   Karnataka Government Secretariat,
   Room No. 447, 4th Floor, Gate No.2,
   M. S. Building, Bengaluru – 560001.

4. The Karnataka Pollution Control Board,
   Rep by its Member Secretary,
   Parisara Bhavan,
   No. 49, 4th and 5th Floor,
   Church Street,
   Bengaluru – 560 001.

5. The Karnataka State Environment
   Impact Assessment Authority
   Rep by its Member Secretary,
   Room no.709, 7th Floor,
   4th gate MS building
   Bengaluru – 560 001.

6. Bengaluru Development Authority
   Rep by its Commissioner
   T. Chowdaiah Road,
   Kumarapark West
   Bengaluru – 560 020.

7. Larsen & Toubro Limited
   Rep by its Managing Director
   L & T House, N.M. Marg, Ballard Estate
   Mumbai, Maharashtra – 400 001.

8. The Karnataka Lake Development Authority
   Rep by its Executive Officer
   Parisara Bhavan,
   Church Street,
   Bengaluru – 560 001.

....Respondents

Application No. 245 of 2016 (SZ)

In the matter of:

1. M/s. Citizen Action Forum
   Rep, by Mr.T.Vidyadhar,
   Organizing Secretary (77 years.)
   A society registered under the
   Provisions of the Karnataka Societies
   Registration Act, 1960 and
   Having its registered office at No.372, I floor,
   M.K.Puttalingaiah road,
   Padmanabhanagar,
   Bengaluru – 560 070.

2. Mr.V.Balasubramanian,
Aged about 75 years,
S/o.Mr.L.Venkatachalam,
4/1, Hall Road,
Richards Town,
Bengaluru- 560 005.

... A**pplicants**

Vs

1. The Union of India
Rep by its Secretary to the Government,
The Ministry of Environment,
Forests and Climate Change,
Paaryavaran Bhavan, Jor Bagh,
New Delhi.

2. The State of Karnataka
Rep by the Chief Secretary to Government,
Vidhana Soudha, Dr. Ambedkar Veedhi,
Bengaluru 560 001.

3. Department of Forest, Environment
and Ecology Department,
Karnataka Government Secretariat,
Rep by its Additional Chief
Secretary to Government,
Room No. 447, 4th Floor,
Gate No.2,M. S. Building,
Bengaluru – 560001.

4. The Karnataka Pollution Control Board,
Rep by its Member Secretary,
Parisara Bhavan,
No. 49, 4th and 5th Floor,
Church Street,
Bengaluru – 560 001.

5. The Karnataka State Environment
Impact Assessment Authority
Rep by its Member Secretary,
Room no.709, 7th Floor 4th gate MS building
Bengaluru – 560 001.

6. Bengaluru Development Authority
Rep by its Commissioner
T. Chowdaiah Road,
Kumarapark West
Bengaluru – 560 020.

7. Larsen & Toubro Limited
Rep by its Managing Director
L & T House, N.M. Marg,
Ballard Estate, Mumbai,
Maharashtra – 400 001.

8. Abshot Layout Residents
Associations (Regd)
No. 26/11, Abshot Layout,
Sankey Road Cross,
Bengaluru – 560 052.
Mr. A. Feroz ahmed, Son of Azeez ahmed.

Respondent No.8 impleaded by M.A. No. 263/2016 order dated 18.12.2016.

9. Citizens for Bengaluru,
276/c, 37th A Cross, 8th Block Jayanagar,
Bengaluru – 560 070
Rep by Mr. Aswin Mahesh and Mr. Prakash

Respondent No.9 impleaded by M.A. No. 06/2017 order dated 18.01.2017.

... Respondents

Counsel appearing for the Applicants in ApplicationNo.243/16:

M/S.Maitreyi Krishnan &
Neha Mariam Kurian

Counsel appearing for the Respondents in Application No. 243/16:

Mrs.Me.Saraswathy for R1

Mr.Madhusudhan Naik, Advocate General &
Mr.Devaraja Ashok for R2 to R5 & R8

Mr.Sanjay Upadhyay for
Mr.E.Vijayananth & R. Sivakumar for R6

Mr.Sathish Parasaran, Senior Advocate for
M/S.Anirudh Krishnan and
Keerthikiran Murali for R7

M/S.Rohan K.George and
Abraham Mathew for
M/s. Sambad Partners for R9

Counsel appearing for the Applicants in Application No. 245/16:

M/S.T.Mohan, &
A.Yogeeswaran

Counsel appearing for the Respondents in Application No. 245/16:

Mrs.Me.Saraswathy for R1

Mr.Madhusudhan Naik, Advocate General &
Mr.Devaraja Ashok for R2 to R5

Mr.Sanjay Upadhyay for
Mr.E.Vijayanath &R.Sivakumar for R6

Mr.Sathish Parasaran, Senior Advocate for
M/S.Anirudh Krishnan,&
Keerthikiran Murali for R7

M/s.C.Sakthimanikandan &B.Shyam for R8

M/S.Rohan K.George &
Abraham Mathew for
M/s. Samvad Partners for R9

J U D G E M E NT

PRESENT:

HON'BLE JUSTICE M.S.NAMBIAR, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Delivered by Hon'ble Justice M.S.NAMBIAR, Judicial Member

Dated: 13th March, 2017

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

Both the applications are filed challenging the construction of the six lane elevated road from Basaveshwara Circle to Hebbal flyover in the city of Bengaluru. The applicants would contend that 6.7 km long steel flyover with an estimated cost of about Rs.1791 crores, which was increased from the initial budget of Rs.1,350/- crores, is expected to be completed within 24 months from the commencement of the project. It is alleged that about 55000 tonnes of steel will be used for constructing the elevated road in steel. It is contended that the objective of the project, as put before the public domain, is to ease the vehicular traffic congestion enroute the Kempegowda International Airport, at Hebbal. A tender has been floated for the project by the Bengaluru Development Authority, respondent No.6 (in short 'BDA'). Respondent No.7, Larsen and Toubro Ltd (in short 'L &T')

is declared the successful bidder. It is alleged that no official communication was issued by BDA in this regard.

2. The applicants would contend that BDA did not publish the details of the project, including EIA report and Detailed Project Report (in short 'DPR'). The Civil Society of Bengaluruhas been continuously objecting the present project, due to the environmental impactof the project and also as the Government has not considered any other alternatives. The BDA has later, uploaded several documents on the website but the Environment Impact Assessment (in short'EIA') report was not found therein. One of the documents uploaded is "Salient features of elevated road from Chalukya Circle to Hebbal" proclaiming that the project did not require Environmental Clearance (in short 'EC') as per the EIA Notification issued by the Ministry of Environment, Forests and Climate Change (in short MoEF & CC) bearing S.O.2559 (E) dated 22.08.2013 (in short 2013 Notification) and the project is covered under sub-item (ii) of Section 2 of 2013 Notification. The applicants would contend that the document uploaded by BDA reveals that the project includes construction of Main Flyover between Rajbhavan and Hebbal having a length of 6.687 km and thus the, six lane elevated Flyover covers the length of 6.687 km. According to the applicants, even without including the area for construction of underpass, ramps etc., the project area is greater than

1,50,000 sq.m. and the project is covered under entry 8 (b) of the schedule to the Environment Clearance Regulations 2006 dated 14.09.2006 (in short 'Regulations 2006').

3. The applicants have also contended that in view of the decision of four Member Bench of the Tribunal in Vikrant Kumar Tongad VS Delhi Tourism and Transportation Corporation & Ors (Order dated 12.02.2015 in Original Application No.137 of 2014), whether the project would fallunder entry 8(b) of Regulations 2006 and whether Environmental Clearance is necessary, are no longer *res integra*. Relying on paragraphs 37 and 38 of the said judgment, the applicants contended that the project requires environmental clearance. It is also contended that the project involves cutting of 812 trees in the route where the steel Flyover is planned and no information is furnished by BDA as to whether or not, permission was sought and secured as mandated by the Karnataka Preservation of Trees Act (in short 'KPTA'). The applicants also contended that in view of the order passed by the Hon'ble High Court of Karnataka in W.P.No.7288 of 2011 dated 07.08.2014, the Tree Officer and Tree Authority have to fully satisfy themselves and certify that all other alternatives have been considered on the feasibility of the felling of trees and if any objections are received from the public, due consideration have to be given by assigning reasons. It is contended that cutting of fully grown trees and planting of sapling of even 10

times the number of trees proposed to be cut will not compensate the eco-system services provided by a tree.

4. The applicants would claim that trees provide various ecological services to humans and the environment like production of oxygen, carbon sequestration, cleaning and cooling of the air, providing shade and shelter, providing habitat to birds and biodiversity, acting as windbreaks, preventing soil erosion, cleaning of the soilthrough phytoremediation, regulating flow of storm water runoff, helping in reducing noise, helping in nutrient recycling and regulation of groundwater table and these are some of the eco-system services provided by the trees. The applicants also contended that Dr.Tarak Mohan Das, a researcher from the University of Calcutta has published for the first time a paper on quantifying the services rendered by a tree during its average life span of fifty years. (Indian Biologist, Volume XI, No.1-2, 1979). As per the said paper, the total value of the services rendered by a tree,which was divided into eight heads, was Rs.15,70,000/- in 1979, which has been later revised to Rs.3,55,13,000/- due to increase in price of oxygen and other services derived from a tree for a long span of fifty years and this value has been incorporated in the book of Accountancy and the concept of valuation under the title 'Services of a Tree' has been documented by the Film Division of Government of India. The applicants contended that the most important service provided by trees to the mankind is

the production of oxygen during the process of photosynthesis by absorbing carbon-di-oxide from the atmosphere and release oxygen into the atmosphere and thus, they act as a filter and purify the air we breathe. The net productionof oxygen by a healthy tree depends on species, it's size, health and location. In addition, trees also provide aesthetic pleasure and help in reducing mental stress, thereby playing an important role in improving personal health. It is contended by the applicants that according to Environment Canada (Canada's National Environment Agency) on an average, one tree produces nearly 260 pounds of oxygen per year and two mature trees,therefore, provide enough oxygen for a family of four. Further, investigations reveal that a single mature tree can absorb carbon-di-oxide at the rate of 48 pounds per year and release enough oxygen to support two human beings. A U.S Forest Service report indicates that a healthy tree produces about 260 pounds of net oxygen per year, while a typical person consumes 386 pounds of oxygen per year. Therefore, two medium sized healthy trees can supply the oxygen required for a single person for one year. The applicants contended that an average adult inhales and exhales 7-8 litres of air per minute which implies that an average adult inhales approximately 11,0000 litres of air per day and out of the inhaled air, about 20% is oxygen and exhaled air contains about 15% oxygen and so, about 5% of the volume of air inhaled in each breath is converted into carbon-di-oxide. Therefore, a

human being consumes about 550 litres of pure oxygen per day and the amount of air inhaled by an adult varies from 7-8 litres per minute (when at rest) to 50 litres per minute (after hard exercise)and thus, the actual oxygen consumption will be much more. As per the market survey by Delhi Greens on the cost of portable oxygen cylinder, it was found that the average cost of 2.75 litres of portable (maintenance free) oxygen cylinder on an average is Rs.6,500/- and though cheaper options are available for hospitals etc, they require high maintenance thereby enhancing the overall costs. The manufacturers of oxygen cylinders only filter the oxygen from the air and pack it in cylinders. They cannot produce oxygen as a tree does and the oxygen gets replenished in the world only through the chlorophyll contained in green plants and trees. As per the study, two healthy trees produce enough oxygen required by one individual in a year. The total cost of this maintenance free oxygen (as per prevailing rates) could be valued at Rs.47,45,00,000 and thus, the value of oxygen produced by one healthy tree is approximately Rs.23,72,50,000 per year. The applicants alleged that BDA without considering any of the relevant factors, has merely stated in the document that 812 trees will be cut and BDA has proposed to plant 60,000 numbers of saplings and urban planting in lieu of trees to be removed in the project area. It is also contended that though BDA has stated that 812 trees will be cut, as per the DPR uploaded on the website, only 548 trees are

to be cut and thus, there is discrepancy in the DPR furnished by BDA. It is also alleged that in reality, several times the number of trees shown in the Project Report are cut and destroyed. The BDA cannot be permitted to take only the economic value of the trees but has to consider the economic and ecological value of the ecological services provided by trees.

5. It is also pointed out that there is lack of complete transparency in the project and the intention of the State of Karnataka to expend exorbitant money, in violation of several laws, is preposterous and against public interest. It isalso contended that in the DPR, there is absolutely no study or even discussion on the environmental impact of the project. BDA did not obtain mandatory prior Consent to establish under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and therefore, the project cannot be permitted to be proceed without taking prior environmental Clearance and conducting public consultation to ascertain the views of the public and cannot be allowed to cut the trees.

6. The applicants in Application No.243 of 2016 additionally contended that the report published in the Deccan Herald dated 24.10.2016 shows that the State Environmental Impact

Assessment Authority (in short 'SEIAA') has held that the steel Flyover does not require clearance from SEIAA. The applicants contended that as per the report of SEIAA, Ramachandra, Member Secretary of SEIAA told Deccan Herald that an endorsement was given that no clearance is necessary, because the steel Flyover is not in the list of infrastructure projects, which require environmental clearance as it does not mention steel Flyover and therefore, SEIAA has nothing to do with the said construction. In both the applications, the applicants sought an order of injunction restraining the BDA, respondent No.6 and L & T respondent No.7, from carrying on any project activity or construction activity connected with the project of 6.7 km long steel Flyover from Basaveshwara Circle to Hebbal and also restraining respondent Nos.6 and 7 from cutting trees including 812 trees mentioned in the 6-lane elevated Flyover and a direction to the BDA to obtain necessary prior environmental clearance under EIA notification 2006, Consent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, Act 1981 and also a direction to respondent No. 6 to conduct public consultation to ascertain the views of the public, before proceeding with the project.

7. Respondent Nos.8 and 9 Abshot Layout residents Association and Citizens for Bengaluru respectively, who are

opposing the project, got themselves impleaded as additional respondents. In fact, respondent No.9 had originally filed another independent Original Application, which was disposed permitting to get them impleaded in these pending applications, as the application was filed raising the same objections against the project.

8. Respondent No.1, MoEF & CC filed a separate reply contending that under the provisions of Regulations2006, construction of new projects or activities or expansion or modernization of existing projects or activities listed in the schedule annexed to the Notification, entailing capacity addition with change in process or technology shall be undertaken in any part of India, only after receipt of prior environmental clearance from the Central Government or SEIAA. Regulations 2006 covers 39 projects/activities in the schedule. Under the provisions of Regulations 2006, area Development Projects and Townships are covered under entry 8 (a) and (b) of the schedule. Entry 8(a) relates to Building Construction Projects above 20000 sq.meters and below 150000 sq.meters of built up area. Entry 8 (b) relates to Townships and Area Development Projects covering an area above 50 hectares or built up area above 150000 sq.meters and all projects under item 8(b) shall be appraised as category B1 project. The respondent No.1 contended that the project/activity in question is not within the purview of the Regulations 2006.

Flyover/bridges being the part of infrastructure projects, but not covered under the "Physical Infrastructure including Environmental Services" listed as item No.7 in the Schedule. Further, the judgment in Vikrant Kumar Tongad VS DTTC & Ors is relating to the bridge or similar activity, in which, the Tribunal held that bridge will be covered under 8 (b) and will require prior Environmental Clearance.

9. Respondent No.2 State of Karnataka in the reply contended that the applications are filed based only on newspaper reports and misconceptions and the applications are beyond the purview of the National Green Tribunal Act. As the subject matter of the project is a public interest project, the applications are to be dismissed. It is contended that the challenge is against the proposed six lane elevated road project which will connect Basaveshwara Circle and the Hebbal flyover, within Bengaluru city and the project proposes to reduce the travel time between Basaveshwara Circle and the Hebbal flyover between 7 and 10 minutes, from the current average time of more than one hour that is required to cover the same distance at peak traffic hours. The project is an elevated road project and covers a distance of 12.52 km and includes a main flyover, up and down ramps and 3 under passes. The project is a public purpose project, to provide signal free connectivity between Basaveshwara Circle and the Hebbal Flyover within the city of

Bengaluru. The project seeks to reduce the traffic congestion and thereby reduce the many hours spent waiting at traffic signals, reduce fuel consumption resulting in reduction of air pollution and noise pollution. The building material for the project consists of composite structures that are a mixture of concrete and steel. The cost of the project has been finalized at Rs. 1791 crores and in the undertaking of the project, 812 trees need to be removed and compensatory plantation of 81000 trees will be undertaken at the ratio of 1:100 for every tree that is felled and about 60 trees are proposed to be transplanted. No heritage structures are being disturbed and only the compound wall of Balabrooie guest house will be demolished, but the entire guest house structure will remain intact. It is contended that the Hon'ble Supreme Court has granted permission to the Bruhat Bengaluru MahanagaraPalike (in short 'BBMP') to acquire a portion of the Bengaluru Palace grounds and to fell trees within its premises to widen the existing road that adjoins the Palace grounds.

10. The project involves construction of an elevated corridor within the municipal limits of Bengaluru city and it does not constitute or qualify as a State or a National Highway. The project is clearly an urban road infrastructure. The project does not traverse any ecologically sensitive areas or undeveloped parcels of land unconnected with the existing road but it is a part

and parcel of existing road infrastructure. It is contended that the details of the implementation of the project is shown in the DPR prepared by BDA. Being a project envisaged in public interest, to ease the chronic problem of traffic congestion in the city of Bengaluru, as the traffic congestion is a generic problem and relatively severe in certain parts of the city due to intervening factors, the State Government is not only duty bound but also compelled to address these issues effectively to ease traffic movement. This will be critical in terms of controlling air and noise pollution and to reduce the fuel consumption and related economic costs. It is a more relevant factor that Bengaluru is a metropolitan city with increasing population and the associatedvehicular density and the resulting pollution i.e air, noise and water. The traffic congestion inevitably leads to higher air pollution and noise pollution and they arecollectively severe at certain traffic nerve centres and roads in the city. With reference to Bengaluru city road infrastructure, it can be summarized as being fraught with narrow width roads,with buildings and structures along both side /edges of the roads and multiple cross roads and connecting roads requiring several traffic signals/stopping at frequent intervals. This adds substantially to the factors that slow down vehicular movement and the resulting waiting time in traffic, excess consumption of fuel and the increase in pollution levels.

11. On the environmental issues relating to the project, the respondent No.2 contended that the project will aid the reduction of air pollution substantially, if the long term effects of traffic congestion are to be otherwise considered. It is contended that the project in effect encompasses aspects of sustainable development and even the precautionary principles for the protection and improvement of the environment. The project has been envisaged due to the long pending requirement for easing traffic congestion resulting along the entire stretch from Basaveshwara Circle to the Hebbal Flyover. The stretch of roads further leads to the international Airport /Domestic Airport of Bengaluru. It is clear that the area adjoining the airport is witnessing increased developmental activities and therefore providing seamless connectivity to the heart of the city of Bengaluru is a critical need, not only for community but also for the environment, especially considering the future growth and population pressures of the city. Any infrastructure project should envisage the future needs and requirements and should be implemented correspondingly for such progressive increase of infrastructure and related requirements. Accordingly, while addressing the immediate need for reducing traffic congestion and vehicular pollution, the project also takes into account the future need for providing adequate infrastructure and free flowing traffic from North Bengaluru upto and adjoining the Bengaluru International Airport. The project thereby addresses

the potential increase in pollution levels and preventive steps for its curtailment.

12. On the aspect of felling of trees, respondent No.2 contended that it is to be assessed, keeping in view the long term reduction of air pollution after the construction of the elevated road is completed resulting in smooth flow of traffic. It is to be noted that as a compensatory measure for felling of 812 trees, 81000 trees are going to be planted, which will eventually contribute to the overall improvement of the air quality in the city of Bengaluru for the long term. The respondent No.2 would therefore contend that when considering the project and its issues, it has to be considered on long term level and not on short term approach to the entire issue based on misconceptions and selective facts. Though felling of trees may lead to immediate loss of foliage within the city, it is to be noticed that specific compensatory measures are being undertaken, which would regenerate the foliage, manifold, as a result, it would only promote the pollution free environment.

13. On the permissions having been not obtained under the Karnataka Preservation of Trees Act, 1976 (KPTA), Air (Prevention and control of Pollution) Act 1981, Water (Prevention and control of Pollution) Act 1974 and the environmental

clearance, it is contended that requisite permission will be obtained from the authority under KPTA in due course and at appropriate stages. The felling of trees is governed by a statutory regime and the requirements therein will have to be complied with. If the applicants are aggrieved by noncompliance of the provisions of KPTA, it is upto them to approach the proper authority and the Tribunal has no jurisdiction to proceed. On the permission required under the Air Act and Water Act, it is contended that the project activity does not attract the provisions of the Air Act or Water Act and such permission, if warranted and required from the Karnataka State Pollution Control Board (KSPCB), will be obtained in due course. At this stage, such permissions are not required by law because the execution of the project will involve putting up of foundations and then installing the prefabricated girders at the site of the proposed elevated road. The girders are prefabricated at a different site and are transported to the site of the proposed elevated road for installation. As a result, there may be no requirement of permissions under the Air Act and Water Act. With respect to the requirement of EC , it is the bona fide belief of the State Government that the law of Regulations 2006 has been fully complied with by the Project Proponent. The BDA has sought clarification from SEIAA on 11.12.2015 and SEIAA has provided an endorsement on 22.12.2015 that the project will not attract the provisions of Regulations2006 and as such, it does not

require any EC. If the applicants are challenging the said endorsement dated 22.12.2015, it is barred by time. It is also contended that Regulations 2006 does not specifically address the construction of bridge, as an activity that requires prior EC. According to the respondent No.2, the judgment in Vikrant Kumar Tongad VS Delhi Tourism and Transportation Corporation & Others, has no application to the present case as the projects are different and in any case that judgment was relied on by the Tribunal in Delhi Metro Rail Corporation VS Vikrant Kumar Tongad and Others and that order was challenged before the Hon'ble Supreme Court in Civil No.9070 of 2016, wherein the Hon'ble Supreme Court issued notice to the respondent and also stayed the operation of the judgment of the Tribunal. It is also contended that the case in Vikrant Kumar Tongad and Others is distinguishable from the facts ofthe MetroRailcaseandthe present project, since the present project is being built within the city limits and on existing road infrastructure whichdoes not involve any eco -sensitive Zone.

14. The respondent also contended that the project will be implemented as part of the existing road infrastructure and no undeveloped land parcels that are unconnected with the existing roads, will be used. Regarding the buffer zone area around lakes, as stipulated by Tribunal in Forward Foundation case by the judgment dated 04.05.2016, which is prospective in its

application, does not affect the present project which has been conceptualized prior to the decision dated 04.05.2016. It is contended that there has been considerable opposition from certain sections of the society to the execution of the project for multiple reasons, including political and media propagated reasons and the applications are not on bona fide environmental reasons. A writ petition is also pending in WP No.53613 of 2916 before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court has refrained from granting any order of interim stay to the writ petitioners, considering the fact that the project is a public purpose and a public benefiting project. It is therefore contended that the applications are to be dismissed with exemplary costs.

15. Respondent No.5, State Environment Impact Assessment Authority (SEIAA) filed the reply contending that as per the information furnished by BDA , the proposed 6 lane elevated road consists of steel flyover (both main flyover and ramp), approaches to steel flyover with RE panel, grade separators, road widening works including drainage and signages, contiguous piles at Hebbal ramps for traffic diversion and illumination works. Such activities of road expansion within the city limits, are not covered under entry 7 (f) of the Schedule to Regulations 2006. It is contended that the MoEF & CC has provided clarification on calculation of built up area by letter dated 02.04.2012 that the

built up area, as per the amendment dated 04.04.2012, is "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building construction project, the area which is not covered or any area which is open to sky/cut out/duct should not be counted in the calculation of built up area and atrium i.e open portion of a building, which is not covered at the top level like any shopping malls or hotels can be taken into account for calculation of the built up area, though it should not be calculated for each floor". As per the definition in the Regulations 2006, if the built up area is greater than or equal to 20000 sq.meters or covers an area of 50 hectares and above, it requires prior EC. Hence, for the formation of road / construction of elevated road, the definition of built up area, as provided in item 8(a) of the Schedule of Regulations 2006 cannot be considered. It is contended that entry 8(b) of the Schedule is for area development and only projects such as formation of layouts, industrial estates, townships, etc. are to be considered for prior EC and not the formation of roads. It is the case of the respondent that only entry 7 (f) of the Schedule is the specific entry in the Regulations 2006, which applies to State Highways and National Highways and the Regulations 2006 does not specifically apply to road expansion work within the city or settlement. It is submitted that BDA had sought the opinion of SIEAA vide letter dated 11.12.2015 on the question whether or

not an EC is required prior to the undertaking of the elevated road project. SEIAA, based on the understanding stated earlier, provided the reply dated 22.12.2015 expressing the opinion that it is necessary to examine whether the proposed project, falls under the definition of ' Highways' and if it does not fall under Highways, prior EC is not necessary. SEIAA further advised BDA to seek EC from competent authority if it is necessary as per the Regulations 2006, in case the proposed elevated road falls under the category of Highways. BDA was also asked to ascertain, if the road would form part of a highways because State and National Highways are specifically covered under entry 7(f) of the Schedule to Regulations 2006. Letter dated 18.02.2016 was received from BDA stating that the elevated road does not form part of any State or National Highways. In terms of Regulations 2006, the onus is on the Project Proponent to apply to SEIAAand obtain the EC, if the proposed project attracts the provisions of Regulations 2006. If the proposal is submitted, SEIAA will consider the application submitted by BDA in terms of Regulations 2006. Respondent No.5 filed the same reply in both the applications.

16. Respondent No.6, Bengaluru Development Authority (BDA) in their reply contended that the proposed project is a road infrastructure project proposing to connect two local points within the city limits of Bengaluru, as distinct from 'bridges'

which necessarily involve construction over water bodies including rivers, streams and rivulets which are essentially environmentally and ecologically sensitive areas and consequentially bound to have an impact that cannot be equated with a project such as a city road which is coming up on an already existing road envisaged primarily for smoother and efficient traffic for preventing among others – pollution, which is resultant from traffic congestion on the city roads. It is contended that any attempt to cover a road project under the category, other than 'Highways', would be contrary to the intent of the legislature which in its wisdom has included only 'Highways' (both National and State Highways) and not 'roads' per se, under the Regulations 2006. It is contended that as respondent No.5 had already adjudicated on the question of requirement of prior EC and by decision dated 22.12.2015, SEIAA found that prior EC is not required and as the said decision was not challenged by filing an appeal, the present applications are hopelessly time barred. It is contended that the Tribunal in the judgment dated 09.04.2015 in O.A.154 of 2014 held that "once an appeal does not lie before the Tribunal against a given order, it will not be appropriate for the Tribunal to exercise judicial jurisdiction under Section 14 or any other provisions of the NGT Act, 2010"and on that ground applications are to be dismissed. It is also contended that KPTA is not listed as one of the enactments in the Schedule to the NGT Act, 2010 and therefore, on that ground also, the

applications are not maintainable. Additionally, it is contended that respondent No.6 has applied for permission under the KPTA and permission is awaited and wherever mandated requisite permissions/sanctions shall be obtained in accordance with law. It is also contended that respondent No.6 has already proposed to plant 81,000 numbers of trees of 31 varieties in lieu of the proposed removal of 812 trees in the project area and wherever feasible, steps will be taken to transplant some of the existing trees. According to the respondent, the project is an elevated road project and covers a distance of 12.52 kms , which includes a main flyover with up and down ramps and three under passes, and it will come up on an existing road connecting two local points in the city of Bengaluru and such a structure will qualify as a local road. It is contended that any other connotation of the elevated road will defy logic and would be unsustainable. It is further contended that the Tribunal in its judgment dated 11.07.2013 in O.A.No. 2 of 2013, taking note that the project in question therein, is just a local road connecting two points while the one end meets the by pass of the State Highways and finding that the road project is not a State Highway, held in fact and in law that question of seeking EC from SEIAA shall not arise as it will not fall under Entry 7 (f) of the Schedule to the Regulations 2006. A similar view was taken by the Tribunal in the judgment in OA No.263 of 2013 dated 03.11.2014, and it is found that the contention put forward by the applicant that the

by pass is a part of the State Highway seems to be factually incorrect and held that the said road is only a link road and therefore, the provisions of Regulations 2006 are not attracted.

17. It is contended that the Tribunal had taken into account the Highway Specifications issued by the Ministry of Shipping, Road Transport and Highways published by the Indian Road Congress which has classified 'roads' into six categories, namely, (i) Expressways to cater for heavy volumes of motor traffic at high speeds, (ii) National Highways which are main highways running through the length and breadth of the country connecting major ports, highways of neighbouring countries, state capitals, large industrial and tourist centres etc. (iii) State Highways which are arterial routes of a State lining District Headquarters and important cities within the State and connecting them with National Highways or the neighbouring States, (iv) Major District Roads which are important roads within a district, serving areas of production and markets and connecting these with each other or with the main highways; (v) Other District Roads which are roads serving rural areas of production and providing them with outlet to market centres, talukas /tehsil headquarters, block development headquarter or other main roads and (vi) Village roads which are roads connecting villages or group of villages with each other and to the nearest road of higher category. According to the respondent

No.6, if the said classification is applied to the proposed 'elevated road', it would fall under the category 'City Corporation Road'. It is also contended that in O.A.85 of 2015, the Tribunal found that the entries in the schedule to Regulations 2006 are distinct and separate entities and the proposed project is not a part of existing National Highways and therefore is not covered under category 7 (f) and the Tribunal cannot accept the case of the applicants to include or cover the project under category 8 (a) of the Regulations 2006. It is contended that the initial proposed alignment of the flyover entailed with end point of the flyover in the proximity of the boundary of the Hebbal Lake. However, taking cognizance of the fragility of the area, as also the order of the Tribunal with regard to the Buffer Zone area around lakes and wetlands, the project has been realigned so that the buffer zone as laid by the Tribunal is not violated.

18. The respondent No.6 categorically stated that they will be undertaking the project with due regard to the environmental safeguards after mitigating/minimizing the impact on the environment. The respondent by letter dated 11.12.2015 addressed SEIAA, a nodal agency in the State for the appraisal of category B projects in the State, seeking clarification on the requirement of the EC for the project. SEIAA by letter dated 22.12.2015, categorically stated that the project does not come within the purview of 'Highways' and the provisions of

Regulations 2006 shall not be attracted. The respondent No.6, therefore, approached BBMP seeking clarification as to whether the said road comes under their jurisdiction. The BBMP by its letter dated 09.02.2016 informed that the entire stretch of road was under its jurisdiction and it is neither a National nor a State Highway. Therefore, it is clear that the proposed construction, being that of a local road, does not attract the provisions of Regulations 2006. It is therefore contended that the attempt to include the said project under another category, would not only be contrary to the provisions of law but also against the well settled principles of law. It is contended that decision in Vikrant Kumar Tongad case, was on the facts and circumstances of the case, where the proposed project is to be constructed across the river Yamuna, which necessarily involve construction in the flood plain area of river Yamuna, which itself is an eco-sensitive area as it lies in the close proximity of the Okhla Bird Sanctuary. It cannot be equated with the proposed elevated road to be constructed on an existing road involving negligible construction on undeveloped area. The construction is made with steel structure, which is pre-fabricated in fabrication yard and placed in-site after pier is erected. Even the pier/column are with structural steel and pre-fabricated, brought to site in pieces and assembled in-site after pile cap is constructed. Moreover, in Vikrant Kumar Tongad case the construction was a 'bridge' as distinct from a 'road' as in the present case. The potential scale

and nature of impact of the two projects are completely different and therefore, no analogy could be drawn based on the said decision. It is also contended that the rule of 'purposive construction' and liberal definition were taken in the given context of ecologically sensitive flood plain or sanctuary or a highly polluted river such as Yamuna and not on a road simplicitor. It is contended that the subsequent decision of the Tribunal following the decision in Vikrant Kumar Tongad case, has been challenged before the Hon'ble Supreme Court in Delhi Metro Rail Corporation VS Vikrant Kumar Tongad and others in Civil Appeal No.9070 of 2016 and the Hon'ble Supreme Court stayed the operation of the impugned judgment and therefore, Vikrant Kumar Tongad case cannot be followed.

19. It is further contended by respondent No.6 that the proposed project is in public interest and involves the construction of a 6-lane elevated road from Besaveshwara Circle to Hebbal flyover on the existing road, which is one of the busiest roads in Bengaluru city, taking traffic from southern, south-east and south-west extensions of Bengaluru and C B D area towards northern part of Bengaluru and beyond. With the shift in Bengaluru Airport from HAL to Devanahalli, there has been manifold increase in car and bus traffic, which has led to traffic congestion at all major intersections and at midblock sections. Considering the said increase in traffic, NHAI has built 6-lane

elevated road beyond Hebbal flyover leading to the airport. The surface level road has been upgraded to 6-lane elevated road, main carriageway with 2-lane service roads on both sides. Presently, the traffic from these 16 lanes is converging to 4-lane flyover at existing Hebbal flyover which is a bottle neck. The road section between Hebbal and Besaveshawara Circle (via Mekhri Circle) is already congested with traffic queues for longer durations during peak hours. The traffic from airport suddenly converges at the Hebbal flyover and towards the city. It is to clear this congestion and remove the bottle neck, an elevated road is proposed whereby the local traffic will be segregated from the traffic to and from the airport. The project, proposes to reduce the travel time, between Basaveshwara Circle and the Hebbal flyover to between Basaveshwara Circle and the Hebbal flyover, to between 7 and 10 minutes from the current average time of more than one hour that is required to travel the same distance at peak traffic hours. The existing road between Rajbhavan/Chalukya junction up to Hebbal is the main spine for airport bound traffic. Hence, this road cannot be blocked for traffic movement at any point of time and the construction activity should be carried out with minimum disturbance to road users. It was, therefore, decided to put in place a pre-fabricated flyover in steel. Steel structure is pre-fabricated in fabrication yard and placed in-site after pier is erected. Even the pier/column are with structural steel and pre-fabricated and brought to the

site in pieces and assembled. This causes least inconvenience to the existing traffic and it is a better and more viable option than concrete flyovers. Steel flyovers have been successfully implemented in countries like Malaysia, Korea, China, USA and in India at Calcutta. If the project is not an elevated flyover, land would have been acquired on either side of the existing road and it would have caused environmental problems. On 27.06.2016, respondent No. 6 issued a Press release inviting suggestions on the said project from experts and interested persons either by contacting or through e-mail. 299 suggestions were received through e-mail, out of which, 73% opined in favour of implementing flyover project. The remaining persons urged BDA to identify alternative route, conventional concrete method and to exhibit detailed project. All the requests were examined and DPR was shared. There were no adverse comments against the projects during Vision Group meeting held on 24.05.2016. The applications are, therefore, to be dismissed as not maintainable and devoid of merits.

20. The applicants in their rejoinder, while denying the contentions in the reply filed by the respondents and reiterating the contentions raised earlier, contended that the proposed planting of 80,000 trees and transplanting of some trees is vague and bereft of details. It is contended that Bengaluru known as the “Garden City,” for its dense tree cover, is on the brink of

environmental disaster and mindless felling of trees without any assessment whatsoever, is violative of the principles of sustainable development and inter generational equity, etc,. It is pointed out that Sri T.V.Ramachandra and Bharat H Aithal in Bengaluru's reality towards unlivable status with unplanned urban trajectory stated that "Quantification of the number of trees in the region using remote sensing data with field census reveals that there are only 1.5 million trees to support Bengaluru's population of 9.5 million, indicating one tree to every seven persons in the city. This is insufficient even to sequester respiratory carbon (ranges from 540 to 900 g per person per day"). The process mandated under the Karnataka Preservation of Trees Act, 1976 is merely a permission that is granted for the asking, especially to the Government agencies. There is no consideration of the necessity, inevitability or alternates to tree felling let alone an assessment of the irreversible detrimental environmental and its ecological ramifications. The EC under Regulations 2006 stands on a completely different footing and any effort of the respondent No.6, BDA to conflate the two distinct and separate legally mandatory requirements, is untenable. The description of the construction process by the respondent No.6 is misleading and contrary to civil Engineering involved in the construction of the proposed steel bridge. The communication between SEIAA, BBMP and BDA are all inter-departmental communications which were carried out without

public knowledge and therefore, based on the same there cannot be any bar of limitation. There is no identification of the trees which are to be cut, though BDA admitted that 812 trees are to be cut. As per the DPR the proposed trees to be felled are 548 and when the reply is filed by BDA, it is stated as 812 trees. It is contended that the proposed project will result in further destruction of the green cover of Bengaluru and it would act in contravention and adverse to the environment. The project will reduce only 10 minutes of travelling time to the Air Port for the elite of the city. The claim that the project would reduce the travelling time between 7 to 10 minutes instead of one hour, is based on no studies. Even the DPR does not have any such claim. Even the claim regarding the land acquisition is mis-leading as the proposed project would require acquisition of 14986 sq.meters of Government land and 4124 sq.meters of private lands as per the "Salient Features of Elevated road from Chalukya Circle to Hebbal". It is contended that as per DPR, acquisition of 13979 sq.m. of Government land and 5136 sq. meters of private land is proposed.BDA cannot be permitted to undertake the project in violation of all norms of environmental jurisprudence.

21. Mr.Mohan, learned senior counsel appearing for the applicant in Application No.245 of 2016 relying on the decision of the Tribunal in Vikrant Kumar Tongad Vs Delhi Tourism and

Transportation Corporation and Ors., (supra) which was followed in Sushil Raghav Vs Union of India and Others (supra) argued that the present project is an "area development" project squarely covered under the activity8 (b) of the schedule to the Regulations 2006. Particular reference was made to paragraph 37 and 39 of the Judgment in Vikrant Kumar Tongad case and paragraph 11 in Sushil Raghav Case. Learned senior counsel argued that 'Signature Bridge' considered in Vikram Kumar Tongad case was under symmetric cable stayed bridge with a main span of 251 meters and total length of 675 meters and the composite deck of the bridge carrying eight lanes is about 35 meters wide and is supported by lateral cables with 13.5 meters intervals and the total area of Signature Bridge was 1,55,260 sq.meters. That project was also proposed to ensure fast and smooth flow of traffic and the bridge was connecting eastern and western ends of the city of Delhi and the Signature Bridge is to be constructed over river Yamuna. But the decision was not depending on the eco-sensitive area of the river Yamuna as canvassed by the contesting respondents. It is argued that following that decision, the Tribunal in Sushil Raghav (supra) case held that the construction of 9.3 kms long six lane elevated road to provide a link to NH-24 would fall under activity 8(b) of the Regulations 2006 as it is a project of township and area development and covers the built up area in excess of covered area 150000 sq meters. Learned counsel

pointed out that the construction of Barapulla Phase III elevated road project was challenged before the Principal bench of the Tribunal in Manjo Mishra VS NCT of Delhi and Others (O.A.No.479 of 2015) and an interim order was passed restraining the Project Proponent from continuing the activity without prior clearance on 26.10.2015 and the application itself was disposed on 17.11.2016, when it was brought to the notice of the Tribunal that the Project Proponent had already applied for environmental clearance under Regulations 2006. Pointing out the copy of the application submitted by the PWD, NCT of Delhi in that case, it is argued that the project is an elevated road from Sarai KaleThan to Mayur Vihar , New Delhi covering a distance of 3.5 kms with a surface area of more than 1,50,238 sq.meters and therefore, the finding of the Tribunal in Vikrant Kumar Tongad case and Sushil Raghav case are binding and therefore the respondents cannot dispute the fact that the project in question would squarely come under the activity of 8 (b) Regulations 2006. It was argued that as per the DPR, the main elevated road is having a total length of 6687.00 meters and a total width of 24.2 meters and hence the total area would be 1,61, 825.4 sq.ms. Added to this, the total area of the up and down ramps would be 41,973 sq.meters and the total area of Cunningham underpasses would be 705 sq.meters and the total area of the other underpasses is 8662.5 sq.meters and if so, the total built up area would be 2,13,165.9 sq.meters and therefore, it exceeds

the threshold limit of 1,50,000 sq.meters provided under entry 8(b) of the Regulations 2006. Therefore, the respondent Nos.6 and 7 cannot be permitted to proceed with the construction without a prior EC. The contention of the MoEF or opinion of the SEIAA that the project will not come under the Entry 8(b) of the Schedule of Regulation, 2006, will not stand in the light of the decision of the Tribunal in the above cases.

22. Mr.Mohan, learned senior counsel further argued that without prejudice to the above submissions, the present project is styled as Expressway by respondent No.6 and the project is planned as an elevated road for the fast movement of the motorised traffic and as per the Specification and standards in the manual of Indian Road Congress (IRC) 2013, Expressway is defined as an arterial highway for motorised traffic, with divided carriageways for high speed level, with full control of access provided with grade separators at location of intersections and the proposed construction squarely falls within the above definition. It is further argued that in any event, the elevated road is a new Expressway and under entry 7 (f) of the Regulations 2006, in the general conditions, it is specifically provided that 'Highways' include Expressway and therefore, the project would fall under the entry 7(f) and if so, prior EC is mandatory.

23. Mr.Mohan, learned senior counsel submitted that the project would have great impact on the environment and ecology of Bengaluru city. As pointed out, the project involves cutting of 812 mature majestic trees. It is submitted that the proposal to plant 81000 saplings will not compensate the cutting of 812 matured majestic trees. According to the learned senior counsel, the felling of fully grown trees which perform essential ecological function, and planting of saplings in their place, will never be a substitute. It is also argued that planting of saplings somewhere-else will not cover the loss of protection offered by the trees at the project site and in any case, the DPR does not deal with these aspects at all or where the saplings are to be planted.

24. Learned senior counsel argued that Karnataka Preservation of Trees Act (KPTA) does not provide for the assessment of the ecological impact of the felling of trees or the cost of ecological services rendered by the trees. Therefore, even if permission under KPTA is obtained, it will not suffice, even though respondent No.6 is yet to get permission under KPTA.

25. Learned senior counsel argued that the eco-system services provided by the trees as pleaded in the applications if taken, the loss of mature trees would be enormous. It was argued that when DPR shows only 548 trees are to be felled, it is

admitted in the reply filed by respondent No.6 that 812 trees are to be cut and it is, thus, clear that there was no proper environmental impact assessment at all. Learned senior counsel argued that the Project Proponent cannot take into account the so-called economic value of the trees and instead it has to consider the economic and ecological services provided by the trees. It is also argued that the impact of the proposed construction on the water bodies including the Hebbal lake and the palace ground lake have not been studied or assessed. It is also argued that the dispersal of pollutants from the elevated road is different from surface road and the DPR does not have an assessment of the impact of the pollutants on the water bodies or the surrounding area or on the health or the flora and fauna. It is also argued that the trees in Bengaluru especially near the Gandhi Krishi Vignan Kendra campus have a healthy population of slender loris which is a schedule I species and protected under the Wildlife (Protection) Act, 1972. It was also argued that there was no study on impact of pollution due to increased traffic caused by the existing road or the impact on the area during construction or after construction. As there is no cost benefit analysis as far as the project is concerned, learned senior counsel submitted that without assessment of its impacts, appraisal by a body of experts applying their mind independently and an assessment of public opinion, the project cannot be permitted to be proceeded with. It is argued that people are the

best guardians of their environment and they have the right to participate in environmental decision making.

26. Relying on the decision of the Hon'ble Supreme Court in the case of Research Foundation for Science Technology National Resource Policy VS Union of India and Another (2005) 10 SCC 510), particularly paragraph 60 of the judgment, learned senior counsel argued that the right to information and community participation for protection of environment and human health is declared to be a right which flows from Article 21 of the Constitution of India and stresses that the Government and the Authorities have to motivate the public participation and thus, well-enshrined principles have to be kept in view while examining the various aspects and facets of the problems and the permissible remedies, while considering the major project like the present one.

27. Learned senior counsel also argued that especially when the city of Bengaluru is racing towards becoming a concrete jungle, the public should have a say on the project which has adverse environmental impacts. Relying on the study titled as Spatial Patterns of Urban Grown with Globalisation in India's Silicon Valley by Shri T.V.Ramachandra, learned senior counsel argued that the study shows that city of Bengaluru is gradually

transforming into a concrete jungle with compact urban areas and retreat of vegetation and water bodies.

28. Learned senior counsel further argued that though reliance was placed by the contesting respondents on the communication of the Member Secretary of SEIAA to BDA dated 22.12.2015, it is not the decision of SEIAA and as per paragraph 3 (7) of the Regulations 2006, all decisions of the SEIAA shall be taken in a meeting and ordinarily be unanimous, provided that the decision can be taken by the majority but it shall be clearly be recorded in the minutes of the meeting and this procedure mandated under law has not been complied with and therefore, the Member Secretary has no power at all to take any decision or pass orders on his own. It is also argued that as per clause 4 of the Notification of MoEF dated 02.05.2014, SEIAA shall base its decisions on the recommendations of the SEAC, which procedure has also not been complied with while informing BDA that prior EC is not necessary. Learned senior counsel argued that the contention of the respondent No.6 that as the decision of SIEAA was not challenged, the applications are not maintainable or barred by time, is not sustainable as the letter of SIEAA to BDA is not an order appealable under Section 16 of the National Green Tribunal Act, 2010 as it is not an order granting EC under Regulations 2006 and the letter itself is without jurisdiction as the mandatory procedures were not followed and

in any case, that letter of SEIAA was never in public domain and hence, the objection to the maintainability of the applications is not legally sustainable.

29. Relying on the decision of the Hon'ble Supreme Court in Re: Construction of Park at Noida near Okhla Bird SanctuaryVS Union of India and others (2011) 1 SCC 744), in particular, paragraph 74, it was argued by the learned senior counsel that the absence of a statute will not preclude the Court from examining the project's effects on the environment and the Tribunal has followed this principle in a series of judgments including the judgment in Kehar Singh VS State of Haryana (2013 (1) All India National Green Tribunal Reporter, Delhi 556) wherein it is held that the Regulations 2006 is to ensure protection of environment and ecology, in the face of rapid developmental activities and the object is to provide development of activities while ensuring presence of safer environment and therefore, the environmental impact of the construction provided under the project should have been properly assessed and without a proper study, the project shall not be permitted to be proceeded with.

30. Learned counsel appearing for the applicant in Application No.243 of 2016 adopted the arguments of the learned

senior counsel Mr.Mohan and additionally argued that DPR itself reveals that the proposed project would cause substantial environmental impacts with tree felling, air, water and noise pollution and the proposed project includes widening of the Bellary Road on which elevated road is proposed to be constructed. Relying on the "Report on environmental and ecological impacts of tree felling for the proposed steel flyover on Bellary road and road widening of Jayamahal Main road, Benagluru," by professor Harini Nagendra, Azim Premji University etc., learned counsel argued that the essential aspects of the projects as stated are (i) number of trees to be felled is more than estimated officially and 2244 trees would have to be felled which itself is a conservative estimate and it includes sacred and keystone trees, (ii) the proposed felling of trees will have grave impacts in terms of environment and would result in increased air pollution, (iii) the proposed project would exacerbate urban heat island effects and an irreversible loss of the tree temperature regulation provided by nature and even otherwise, the temperatures in Bengaluru are soaring every year,(iv) the project would have adverse impact on biodiversity and will reduce the available habitat for several species of birds, (v) the project would reduce the capacity of trees in Bengaluru for carbon sequestration, (vi) the project would disturb the Hebbal Lake and the lake in palace grounds, (vii) the project is likely to impact the endangered schedule 1 slender loris primate species.

31. Learned counsel also relied on an Article written by Professor Harini Nagendra and argued that the trees to be cut would not be 812 but 2,244 and submitted that no study whatsoever has been done with regard to the number of trees that would be transplanted. Further, relying on the manner of compensatory afforestation provided in the DPR, it is argued that it would not suffice to cover the entire area with grass mat and show plants and small trees and architectural plants, the loss that would be caused, if the project is to be materialised. Learned counsel argued that the destruction of trees in the city of Bengaluru had increased over the last decade and as per the news report, according to the Chief Conservator of Forests, BBMP, Bengaluru loses about 10,000 trees every year and a large number of trees are cut for developmental projects and between 2011-2014, 9,281 trees were felled for the Bengaluru Metro Rail Project and the road widening project. According to the study conducted by the Karnataka State Pollution Control Board and the Indian Institute of Science, there has been about 584% of growth in built-up area in the last four decades with a decline of vegetation by 66% and that of the water bodies by 74%. Bengaluru was once branded as 'Garden City' due to its dense vegetation cover, but the vegetation has now declined from 68.27% to less than 25%. Therefore, it is argued that on the environmental and ecological impacts of tree felling for the proposed steel flyover and road widening of Jayamahal main road

has to be properly studied. Learned counsel argued that applying the principle of sustainable development, precautionary principle, Public Trust Doctrine and Inter-generational equity, it is imperative for the State Government to undertake a comprehensive and holistic study on the tree cover in Bengaluru city before any further tree felling is permitted and the State had shown callous and indifference attitude on this important aspect. Learned counsel argued that loss of trees would definitely have adverse effect on the environment and ecology in Bengaluru which will cause 'urban heat island effect.'

32. Learned counsel argued that loss of trees would definitely have major impacts on biodiversity, air pollution and temperature in the area. Reference was made to the scientific paper, "A review on the generation, determination and mitigation of Urban Heat Island" and argued that the heat re-radiated by the urban structures plays the most important role in Urban Heat Islands and the study titled as "Study of green areas and urban heat island in a tropical city" with regard to New York found an average of $2^{o}C$ difference of temperatures between the most and the least vegetated areas and therefore, the loss of vegetation would cause adverse impact on the environment.

33**.** Learned counsel also argued that no study was made with regard to the impact of the use of steel and about 55,000 to 60,000 tonnes of steel is to be used for the construction of the flyover and with the steel flyover coming up, Bengaluru will see hotter days, since steel emanates more heat and radiation. It is argued that the enormous amount of steel and bitumen bedding of the road would absorb heat and become hot during the day, especially during summer. Due to this, no bird will be able to sit on the piles or create nests beneath. During cooler evenings, the absorbed heat from the steel flyover will begin to radiate increasing the surface temperature. It is stated that if the outside temperature is 30 to 35 degree centigrade, the flyover and the area around it would witness a temperature of 33 to 37 degree centigrade, due to thermal heat and radiation effect of the steel structure. It is therefore argued that there should be sufficient and proper green cover along the stretch to minimise the heat effect. It is also argued that even if the Regulations 2006 does not as such cover the project, absence of a statute shall not preclude the Tribunal from examining the effect of the project on the environment and therefore, before proceeding with the construction of the project, there should be proper study on the environmental impact of the project. Learned counsel argued that the proposed project is to be constructed next to Hebbal lake and the lake in palace grounds, which fall in eco-sensitive zone and the impact of the same, was not studied. As the project is likely

to intersect a few natural water channels viz. Rajakaluves' and come right next to some ' Rajakaluves,' there should have been a proper study on the impact of the project on the environment.

34. Learned counsel argued that respondent No.6 is attempting to mislead by contending that the project is re-aligned so that the buffer zone of Hebbal lake is not violated. From the Google Maps it is clear that the proposed road is adjacent to Hebbal lake and there is no possibility of any re-alignment. In fact, no material has been produced to prove the supposed realignment. Learned counsel pointed out that the Principal Bench of the Tribunal in the judgment in Forward Foundation VS State of Karnataka (O.A.No.222/2014) case has directed that the distance in the case of respondent No.9 and 10 from Rajakaluves, Water bodies and wetlands shall be maintained as in the case of Lakes, 75 m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies and the buffer/green zone would be treated as no construction zone for all intent and purposes and it is essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the area in question.

35. It is also argued that the Hon'ble Karnataka High Court in Environment Support Group Vs State of Karnataka (ILR 2012

Kar 3874) held that it is the mandatory obligation of the State on the principle of Doctrine of Public Trust, to preserve and maintain the lakes in good condition and the project is in direct contravention of Section 14 of the Karnataka Lake Conservation and Development Authority Act, 2014 which prohibits any act which is detrimental directly or indirectly, to the lakes and the undulating terrain of Bengaluru with its hills and valleys provides a very natural drainage pattern with small streams originating from ridges cascading down to form major streams in Hebbal, Vrushabhavathi and Koramangala & Challaghatta. The report submitted by the committee appointed by the Hon'ble High Court of Karnataka in W.P.No.817 of 2008 and others, provides the directions to preserve the lakes, stating that lake preservation is not limited to lake area itself but very much dependant on catchment area and the drains that bring rainwater into the lake and Rajakaluves, branch kaluves are to be surveyed and encroachments therein evicted. The legal regime regulating constructions in and around lakes, provides that no construction shall be permitted within 75 meters of lake boundaries and 50 meters of Rajakaluves from the edge of the primary Rajakaluves, 35 meters from the edges in the case of secondary Rajakaluves and 25 meters from the edges in the case of Tertiary Raja-kaluves. The proposed project is in violation of the same. Learned counsel therefore argued that BDA is to be directed to obtain prior EC.

36. Learned counsel appearing for respondent No.6 argued that the elevated road over an existing road project is essentially a city road simplicitor project, under a distinct and separate category completely unrelated to roads. The project is a road infrastructure project to connect two local points within the city limits of Bengaluru, and is to be appraised accordingly. Learned counsel Mr.Sanjay Upadhyay argued that as distinct from bridges that ordinarily involve construction over water bodies, including rivers, streams, rivulets and flood plains therein, which are essentially environmentally and ecologically sensitive areas and are bound to have an impact, cannot be equated with a project such as city road which is coming up on an already existing road, primarily for smoother and efficient traffic for preventing the pollution. It is argued that any attempt to cover a road project under a category other than 'Highways' as provided under Entry 7 (f) of the Regulations 2006, is against the intent of the legislature, which in its wisdom has included only ' Highways' and not 'roads' *per se* under the Regulations 2006.

37. Learned counsel argued that the Regulations 2006 makes it clear that linear project such as city road has to be appreciated within the framework of Regulations 2006. The Regulations 2006 excluded a number of projects, such as Railway projects, Waterways, Transmission Lines etc. It was argued that slurry pipelines passing through National Parks or Sanctuaries or

coral reefs, ecologically sensitive areas is covered under activity 1(a) (ii) of the schedule to the Regulations 2006. So also, irrigation projects depending on command area and appraisal of Category 'B' project by the Central Government, if the project is falling in more than one State, is covered under activity 1(c)(ii). Air strips under Airports which do not involve bunkering/refuelling facility and/or air traffic control are exempted under entry 7(a),though Aerial Ropeways projects located 1000 meters and above and all projects located in notified ecologically sensitive areas are covered under Entry 7 (g) of the Schedule. It is pointed out that Highway projects are included in Entry 7(f) of the Schedule and these include the new National Highways Projects, expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40 meters on existing re-alignments or bypasses. According to the learned counsel, it is, therefore, clear that expansion of National Highways less than 100 km is exempted under Regulations 2006. The argument of the learned counsel is that the said classification makes it clear that the Central Government had applied the mind at length to include or not to include certain classes of linear projects within the EIA framework and classified such linear projects passing through important ecological zones such as hilly terrains, National Parks, Sanctuaries and other ecologically sensitive areas and ensured that the environmental impact of such projects is assessed and a prior EC is a

prerequisite. As the present project is a city road, and only Highways are classified in the Notification, there is no requirement to take prior EC for the present project.

38. Learned counsel also argued that the proposed construction of an elevated road is not covered under the Entry 7 (f) of the Schedule or Entry 8(a) or 8(b) of the Schedule, as the construction is merely connecting two roads, through an elevated road onward to another elevated road being constructed by National Highway Authority of India. Learned counsel, relying on the decision in the case of Dayal Singh Vs Union of India & Others (2003) 2 SCC 593) argued that any other interpretation or inference is contrary to law. It is also argued that the proposed elevated road is not an 'Expressway' within the meaning of Regulations 2006. Any State Highway is a Highway, under the above Act, only when it is declared as such by way of a Notification under Section 3 of the Karnataka Highways Act, 1964. The city road has not been notified as State Highway. Relying on the decision of the Tribunal in Goa Foundation Vs Goa State Environment Impact Assessment Authority (O.A.No.85 of 2015(WZ)), learned counsel argued that when the project is not covered under Entry 7 (f) of the Schedule, the question whetherit canbe separately considered under Entry 8 (a) of the Schedule, was considered and rejected by the Tribunal holding that the entries in the Regulations 2006are distinct and separate entities

and when a project does not fall under the original category, it would not be open to try to incorporate or include or cover it under some different category and therefore, when the specific case of the applicants is that the project would come under Entry 8 (b) of the Schedule, and it is found that it does not fall within that category, the applicants cannot be permitted to contend that it would come under Entry 7(f).

39. Mr.Sanjay Upadhyay, the learned counsel vehemently argued that the dictum laid down in a particular case has to be understood, based on the facts and circumstances of that particular case and in 'Vikrant Kumar Tongad' case, it was the construction of Signature Bridge across the river Yamuna, which itself is an eco-sensitive area and therefore, it would have adverse impact on environment. But the present project has no adverse impact on the environment of any such eco-sensitive area and therefore the decision in 'Vikrant Kumar Tongad' case cannot be imported to the facts of the present case. Learned counsel pointed out that it was found in 'Vikrant Kumar Tongad' case that the bridge can hardly be termed as a stand alone project as it would normally be part of a major or a smaller development or allied activity and therefore, a bridge cannot be taken in an abstract term and it would always be a part of a project i.e construction of a highway or even an ordinary road or to cross a river, canal, drain even a rail-road and in the disputed

project both the roads are not State Highways, and therefore it cannot be said it requires prior EC. Learned counsel further argued relying on 'Vikrant Kumar Tongad' case, the Tribunal found in 'Vikrant Tongad VS Noida Metro Rail Corporation' (O.A.No.478 of 2015 PB) that Noida Metro shall seek environmental clearance from SEIAA under Entry 8(b) of the Schedule to Regulations 2006. The matter was challenged before the Hon'ble Supreme Courtin Civil Appeal No.8762 of 2016 and vide order dated 16.09.2016 the Hon'ble Apex Court stayed the operation of the order of the Tribunal. Therefore, learned counsel would argue that based on the decision in 'Vikrant Kumar Tongad' case it cannot be held that the proposed project is a part of an Area development project covered under Entry 8(b) of Regulations 2006. Learned counsel also argued that in Sarang Yadwadkar Vs The Commissioner, Pune Municipal Corporation (2013 SCC Online NGT 4485)and Jacob George Vs Union of India and others (O.A.263 of 2013 PB) the Tribunal had examined the question whether the city roads/local roads or in otherwords a road simplicitor, connecting two points, is covered under Regulations 2006. The learned counsel argued that, while considering the construction of a road from Vithalwadi to National Highway-4 bypass, Pune, in first case, the Tribunal while noting that the project in question was just a local road connecting two points, while the one end meets the bypass of the State Highway, held that the road project is not a State Highway, and hence

question of seeking environmental clearance from SEIAA would not arise. In the latter case, rejecting the case of the applicant that the proposed bypass project is part of the State Highway, the Tribunal held that the said road is only a link road and therefore, the provisions of Regulations 2006 are not attracted. Learned counsel argued that when the present project is similar in nature and connects two city roads, by an elevated road, it can only be considered under Entry 7(f) of the Schedule and as the construction is not covered under the said Entry it does not require any prior EC.

40. Learned counsel also pointed out that the decision in 'Sushil Raghav' case, also cannot be applied to the facts of the present case, as that road passes through a Bird Sanctuary and constructed over river Hindon, which is one of the major rivers in the State of UP as well as an ecologically sensitive area while that is not the case with the present project. The learned counsel argued that the case of the applicant in O.A.243 of 2016 that the project is less than 20 meters from Hebbal lake is factually incorrect. As per the earlier planning of the elevated road, the structure was concluding at the Hebbal junction, which is more than 60 meters away from the Hebbal lake. It was subsequently decided to realign the said construction of the elevated road, to move it more than 75 meters away from the Hebbal lakeand connected to the National Highway, which leads upto the Airport

and beyond and this was done primarily keeping in view the directions given in the judgement of the Tribunal in Forward Foundation case VS Union of India and others. It is argued that as far as the lake in palace ground is concerned, it is neither notified as a wetland under the Wetland Conservation Rules,2010 or 2016 nor it is a statutorily recognised lake as per the revenue records which includes village map. The palace water body is a private property and in any case, construction of an elevated road would have no adverse impact on the said water body. Learned counsel argued that in Coorg Wildlife Society VS Union of India and Ors (O.A.No.26 of 2012), the Tribunal has already held that Karnataka Preservation of Trees Act (KPTA) is beyond the jurisdiction of the Tribunal and the respondent would fully comply with the provisions of the KPTA.

41. Mr.Sanjay Upadhyay also submitted that BDA is environmentally conscious and they have already applied for permission under KPTA on 18.11.2016 and in addition, it is proposed to plant 81,000 number of trees of 31 varieties in lieu of 812 trees to be removed in the project area and they will take steps to transplant or transpose maximum number of existing trees wherever feasible, to minimise the damage to the environment.

42. Learned counsel argued that the said project is in public interest and serves a public purpose and due to the construction of the elevated road over an existing road, land acquisition would be substantially minimised and there would be no displacement of people. The project proposed is to reduce the travel time between Basaveshwara Circle and Hebbal flyover to between7 and 10minutes, as against the existing one hour required to travel the same distance. On 27.06.2016, BDA issued Press release inviting suggestions on the project and out of total suggestions received, 73% opined in favour of implementing flyover project. Learned counsel also argued that respondent No.6, BDA, as a responsible authority sought clarification from SEIAA regarding the requirement of prior EC for the proposed project. By letter dated 22.12.2015, SEIAA informed that EC is necessary only if the project is a Highway, State or National. Therefore, on 27.01.2016 respondent No.6 wrote to BBMP seeking clarification as to whether the said road comes under their jurisdiction. BBMP informed that the entire stretch of road was under its jurisdiction and it is neither a National Highway nor a State Highway and by communication dated 18.02.2016, SEIAA clarified that no EC is necessary and therefore, BDA has not taken prior EC.

43. Learned counsel also argued that the Original Applications are not maintainable as they are barred by

limitation. It is further argued that by communication dated 22.12.2015 SEIAA informed BDA that only if the project forms part of the State or National Highway, EC is necessary and by letter dated 09.02.2016 BBMP clarified that the entire stretch of road is under its jurisdiction and hence, BDA by letter dated 18.02.2016 addressed to SEIAA, clarified the status of the road and therefore, the period of limitation started to run from 18.02.2016 and hence, the application is barred by limitation. Learned counsel also argued that in any case, when the remedy available is to challenge the order and if an appeal will stand against a given order, the applicant is not entitled to exercise the jurisdiction under Section 14 instead of Section 16 of the National Green Tribunal Act and therefore, the applications are to be dismissed as not maintainable.

44. Learned counsel appearing for the applicants argued that respondent No.6 is attempting to mislead the Tribunal by contending that the project is re-aligned, so that the buffer zone of Hebbal lake is not violated, but from the Google Maps, the proposed elevated road runs adjacent to Hebbal lake and there is no possibility of any re-alignment. In fact, no material has been produced to prove the supposed realignment. Learned counsel also pointed out that the Tribunal in the judgment in Forward Foundation VS State of Karnataka (O.A.No.222/2014) has directed the distance from Rajakaluves, Water bodies and wet

lands to be maintained by project proponents from the Lakes as 75 m from the periphery of water body and it shall be maintained as green belt and buffer zone for all the existing water bodies and the buffer/green zone would be treated as no construction zone for all intent and purposes and it is essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the area in question.

45. It is also argued that the Hon'ble Karnataka High Court in Environment Support Group Vs State of Karnataka (ILR 2012 Kar 3874) held that it is the mandatory obligation of the State, on the principle of Doctrine of Public Trust to preserve and maintain the lakes in a good condition and the project is in direct contravention of Section 14 of the Karnataka Lake Conservation and Development Authority Act, 2014 which prohibits any acts which is detrimental, directly or indirectly, to the lakes and the undulating terrain of Bengaluru with its hills and valleys provide a very natural drainage pattern with small streams originating from ridges cascading down to form major streams in Hebbal, Vrushabhavathi and Koramangala & Challaghatta. The report submitted by the committee appointed by the Hon'ble High Court of Karnataka in W.P.No.817 of 2008 and others, provide directions to preserve the lakes stating that lake preservation is not limited to lake area itself but very much depend on the catchment area and the drains that bring

rainwater into the lake and Rajakaluves, branch kaluves are to be surveyed and encroachment therein evicted. The legal regime regulating constructions in and around lakes, provides thatno construction shall be permitted within 75 meters of lake boundaries and 50 meters of Raja- kaluves from the edge of the primary Rajakaluves, 35 meters from the edges in the case of secondary Rajakaluves and 25 meters from the edges in the case of Tertiary Rajakaluves. The proposed project is in violation of the same. Learned counsel therefore argued that BDA is to be directed to obtain prior EC.

46. Learned counsel appearing for respondent No.6 argued that the elevated road, over an existing road project is essentially a city road simplicitor project under a distinct and separate category is completely unrelated to Highways. The said project is a road infrastructure project to connect two local points within the city limits of Bengaluru and is to be appraised accordingly. Learned counsel Mr.Sanjay Upadhayay argued that as distinct from construction of bridges, that ordinarily involves construction over water bodies including rivers, streams, rivulets and flood plains therein which are essentially environmentally and ecologically sensitive areas and are bound to have an impact, that cannot be the same with a project such as a city road which is coming up on an already existing road, primarily for smoother and efficient traffic for preventing the pollution. It is argued that

any attempt to cover a road project under a category other than 'Highways' as provided under Entry 7 (f) of the Regulations 2006, is against the intent of the legislature, which in its wisdom has included only ' Highways' and not 'roads' per se, under the Regulations 2006.

47. Learned Advocate General Mr.Mr.Madhusudhan Naik, for the State of Karnataka submitted that the project is for construction of elevated road within the Municipal Corporation limits of Bengaluru city and it does not traverse any ecologically sensitive area and instead, it is part and parcel of existing road within the city. The elevated road in turn joins with an already existing elevated road built by NHAI Authorities that stretches upto Bengaluru International Airport at interchanges. The project is in the midst of existing dense population and development and seeks to reduce air and noise pollution caused by the city's road traffic congestion.

48. It is argued that the project is a public purpose project which has been undertaken to ease the traffic congestion as such, traffic congestion is relatively severe in certain parts of the city and the State Government is duty bound to address these issues at a policy level, taking into account the aspects of sustainable development and long term remedies to the potential

problem of pollution and traffic movement within the city. The State Government have also to address the issues to ease the traffic movement at places where the incidences of traffic congestion and air pollution are higher. These aspects are inseparable from the ever growing population in the metropolitan city and the resulting air pollution. Such road projects are essential to reduce pollution levels. It is argued that these aspects were judicially decided in several cases including Sarang Yadwadkar (cited supra) The Bengaluru city infrastructure had its own peculiar factors causing traffic congestion. The width of the road is narrow in most parts of the city and the buildings exist along both sides of the road, multiple roads and connecting roads exist requiring several traffic signals, consequently, there is stoppage of traffic at frequent intervals, which substantially add to the slowing down the vehicular movement, resulting in 'waiting time' in traffic, excess consumption of fuel and increase in pollution levels. The proposed project provides congestion free and signal free movement of traffic, which will substantially contribute to the protection of the environment by reducing the consumption of fuel as well as reducing the air pollution and save the time, which is otherwise wasted in waiting at signals or traffic jam.

49. Learned Advocate General further submitted that the State Government and the Project Proponent will comply with all

the requisite laws as applicable to the facts and circumstances of the proposed project. The applications are premature and filed based on misconceptions and without proper valuation.

50. It is submitted that permission under KPTA would be obtained from the designated authority in due course and as per the requirement and requisite compliance with the process involved will also be undertaken as necessitated by law and therefore there is no cause of action at this stage to approach the Tribunal.

51. It is pointed out that under Section 8(vii) of KPTA, consideration of objections of the public, if any, before granting permission for felling of the trees by the concerned Tree Officer, is mandatory and BDA, which is a statutory authority implementing the project, would act only according to the law. It is also submitted that felling of trees will be undertaken only in accordance with the KPTA and in any case, KPTA is not one of the enactments that is covered under the NGT Act. It is argued that with regard to the felling of trees, the applicants have to submit their objections before the Tree Officer in terms of KPTA and in any case, the felling of 812 trees would be compensated by planting 81,000 trees in the city and in particular, planting about 28000 trees in the northern part of the Bengaluru., i.e.in

the area where the project will be implemented. It is also pointed out that there will be planting of midsized trees along the central median of the project and planting of other species of trees along the sides of the existing road. On the objection with regard to want of permission under Air (Prevention and Control of Pollution) Act 1981and Water (Prevention and Control of Pollution),Act 1974, it is submitted that the project activity does not warrant permission under these Acts and in any case, if warranted, the same will be obtained from KSPCB. Learned Advocate General pointed out that at this stage,no permission is required under both the Acts. Learned Advocate General pointed out that under Regulations 2006, the project does not require prior EC. It is pointed out that BDA had sought opinion from the SEIAA and SEIAA had clarified that no EC is required under Regulations 2006. Learned Advocate General distinguished the decision in Vikrant Kumar Tongad case and submitted that the eco-sensitive area of the Yamuna river as well as flood plain areas would be subjected to environmental hazards in case of construction of Signature Bridge, whereas the present project is being built within the city limits and it does not involve any eco-sensitive zone and the Tribunal only found that construction of the Bridge across the river Yamuna, would require EC, by including the project under entry 8(b) of the schedule to the EIA Notification 2006.

52. Learned Advocate General also argued that similar was the case in Sushil Raghav judgment, as the elevated road is being constructed over Hindon river and that too, it passes through a bird sanctuary which is an eco-sensitive area. As the proposed elevated road, in question, is to be constructed on an already existing road and that too, the area which has already been developed and therefore, the facts are distinguishable and hence, those decisions cannot be applied to the facts of the present case.

53. Learned Advocate General submitted that in Sarang Yadwadkar case (supra) the Tribunal had occasion to consider the 'road project' in terms of the directions prescribed in Regulations 2006 and held that the project does not require EC. Similarly, in Jacob George Vs Union of India and others (O.A.263 of 2013) the Tribunal considered construction of a road, again in terms of Entry 8 (a) of the Regulations 2006 and held that the project was not a new one and as such, it does not require prior EC. It is argued that even though the project was for construction of a road of more than 100 kms, it was submitted that no EC is necessary, if it is not a Highway either State or National.

54. Learned Advocate General vehemently argued that the finding of the Tribunal in Sarang Yadwadkar and Jacob George (supra), where the question on whether the 'road project' requires EC or not, was considered and decided and it remains undisturbed in the judgment in Vikrant Kumar Tongda and Sushil Raghav cases, as they were not specifically discussed or dealt with and therefore the dictum in these judgments still subsists and therefore, it can only be found that construction of an elevated road connecting an already existing elevated road and that too, over an existing road, would not come under Entry 8(b) of the Schedule of Regulations 2006 and therefore, no prior EC is required. Even if the project comes under Entry 7 (f) of the Schedule, it is argued that with the various amendments in 2009-2011 to the EIA Notification 2006, MoEF has limited the requirement of EC to National Highways or State Highways only and that too, if it is a new National Highways or if it is an expansion of new National Highway greater than 100 km involving additional right of way greater than 40meter involving land acquisition, and to all the new State Highway projects, if it includes expansion of Highway projects in hilly terrain above 1000 meters AMSL and/or ecologically sensitive areas. As the present project is a 'road project', no prior EC is necessary.

55. Learned Advocate General argued that the principle applied by the Tribunal in 'Vikrant Kumar Tongad' case and

Sushil Raghav case, was for the protection of environment and its eco-sensitive area and also ensuring sustainable development and the purposive interpretation of the Regulations 2006, in respect of road project(or other linear projects enumerated in other Entries of the Schedule to the EIA Notification),would imply that EC is prescribed for utilisation of new land parcels or for the utilisation of eco-sensitive areas for alternative purposes only. As a natural corollary to this, it is clear and unambiguous that road construction projects within city limits in well developed areas will not require EC.

56. It is argued that if the MoEF was concerned with road project within the city limits also, MoEF would not have specifically referred only 'National Highways' and 'State Highways' in Entry 7 (f) and it would have simply referred to particular or all roads and thus, it is to be found that the project in question does not require prior EC as it is excluded by the Regulations 2006.

57. Learned Advocate General also argued that the arguments of the learned counsel appearing for the applicants that the project is an Expressway and therefore, covered under Entry 7 (f) also cannot be accepted, as the present project is only an expansion of existing road and there is no new land

/undeveloped land being acquired as envisaged under Entry 7 (f) of the Schedule. It is argued that the project in this case does not meet any of the criteria laid down in Entry 7(f) of the Schedule, even if the argument of the applicants that it is an Expressway is to be accepted. It is also argued that when the applicants have specifically contended that the project falls under Entry 8(b) of the Schedule to Regulations 2006, they cannot be allowed to contend additionally that it would fall under entry 7(f) of the Regulations 2006. Learned Advocate General also submitted that the stipulations of the Tribunal in O.A 222 of 2014 (Forward Foundation case) would be complied with and there is no violation. It is argued that the decision in Goa Foundation case was pronounced on 04.05.2016 and the project has been conceptualised prior to that decision and even tenders have been called for on 28.09.2015, and therefore, those directions will not apply and in any case, the directions have to be complied with. It is argued that the project would not in any way pass through any buffer zone around the Hebbal lake, in terms of the decision in Forward Foundation case and the project route has been realigned to avoid any portion of buffer land around the Hebbal lake. Learned Advocate General also argued that the palace lake, projected by the appellants, in fact, is not a notified water body and is not an identified lake and is not recorded in the revenue records. It is submitted that it could be a water body that has been artificially created inside the palace

grounds for private purpose and therefore, the said water body does not fall within the ambit of the decision in Forward Foundation case.

58. The learned Advocate General also argued that the project is for public purpose and in fact, would result in reducing the pollution level and will not cause any adverse environmental impact and therefore, the applications are to be dismissed imposing heavy costs.

59. Respondent Nos. 8 and 9, who got themselves impleaded and supported the applicants, had adopted the arguments of the learned counsel appearing for the applicants. Respondent No.9, in addition to the arguments addressed by the learned counsel appearing for the applicants, submitted that in Vikrant Kumar Tongad case, the Tribunal applied the dominant purpose or dominant nature and found that it is a matter to identify the dominant purpose or dominant nature of the project and if that is applied, the project would come only under clause 8(b) of the EIA Notification,2006. Learned counsel argued that the Courts in India referred to the Standard specifications and code of practice for road bridges- S.L – General features of design published by the Indian Road Congress, as an authoritative determination in order to understand what is a bridge and what is

not. Reliance was placed on the decision of the Hon'ble High Court of Calcutta in 'Mercantile Express Company Ltd VS Assistant Collector of Customs' (1978 (2) ELT 552). Learned counsel also pointed out that DPR shows the various Codes of Practice in general to be followed and it includes IRC -83- Standard Specifications and Code of Practice for road bridges, Part II – Elastomeric bearings and Part III : POT cum PTFE bearings, and IRC 24 – Steel Road Bridges and the disputed project is a steel road project and therefore, would definitely come under 8(b) of the EIA Notification, 2006.

60. Learned counsel argued that the Project Proponent has not complied the guidelines issued by the Hon'ble High Court of Karnataka in Environment Support Group VS State of Karnataka, and by the Tribunal in Forward Foundation case, and applying the precautionary principle, it is mandatory that there should be an environmental impact assessment study to understand the potential danger to which the Hebbal Lake and Palace lake would be put to, if the project is materialised, as the lakes are in close proximity to the steel flyover project. Learned counsel argued that the Project Proponent shall be directed to obtain prior EC before proceeding with the project.

61. On the pleadings and arguments, the following points arise for consideration:

1. Whether the applications are barred by time and whether the applications are maintainable before the Tribunal?

2. Whether the construction of the 6 lane elevated road from Basaveshwara Circle to Hebbal flyover require prior EC under the Regulations 2006?

3. What are the directions, if any, warranted?

62. **Point No.1**: The applications are filed contending that prior Environmental Clearance (EC) under the Regulations 2006 is required and therefore, respondent Nos.6 and 7 cannot be allowed to proceed with the construction of the project, before obtaining the prior EC. Admittedly, respondent No.6, the Project Proponent has not obtained any prior EC as contemplated under Regulations2006. According to the contesting respondents, no prior EC is necessary as none of the Entries to Schedule in the Regulations 2006 apply to the proposed project and therefore, no Environmental Clearance is necessary.

63. The core question to be decided in the applications is whether prior EC is necessary for the proposed project. It cannot be disputed that the said question would squarely fall within the ambit of Section 14 of the National Green Tribunal Act as it is a

substantial question relating to environment and such question arises out of the implementation of the enactments specified in the Schedule of the said Act.

64. The argument of the learned counsel appearing for the contesting respondents is that the question whether prior EC for the proposed project is required or not was sought from SIEAA and SIEAA replied that no EC is required and EC is required only if the project falls under National Highways or State Highways and therefore, the Project Proponent sought the details from BBMP and they replied that it does not fall under the State Highways or National Highways and thereafter, SEIAA clarified that no prior EC is necessary and therefore, the remedy for the applicants is to challenge that order of SEIAA and when Section 16 of the National Green Tribunal Act, 2010 provides for an appeal and no appeal is filed, the applications are not maintainable. True. The materials produced would establish that on 11.12.2015, BDA, being the Project Proponent sought clarification from SEIAA on the requirement of EC for the project. By communication dated 22.12.2015 SEIAA informed that prior EC is required if the road on which the present project is to be carried out is a National Highways or State Highways and if not, no prior EC is necessary. On 27.01.2016, BDA sought information from Bruhat Bengaluru Mahanagar Palike (BBMP) as to whether the said road project comes under their jurisdiction and by reply

dated 09.02.2016 , BBMP informed that the entire stretch of road falls under their jurisdiction and it is neither a National nor a State Highway. Pursuant to the same, by communication dated 18.02.2016 SEIAA clarified that the project does not require prior EC. The argument of the learned counsel appearing for the contesting respondents is that as SEIAA informed that no prior EC is necessary by its order dated 18.02.2016 and under Section 16 of the National Green Tribunal Act, no appeal is filed and hence the applications are not maintainable.

65. Section 16 of the NGT Act provides the appellate jurisdiction of the Tribunal. Under the section any person aggrieved by an order or decision by the Appellate Authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 or an order passed by the State Government under Section 29 of the Water (Prevention and Control of pollution) Act 1974 or directions issued by the Board under Section 33 A of Water (Prevention and Control of Pollution) Act, 1974 or an order or decision made by the Appellate Authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act 1977 or an order or decision by the State Government or other authority under Section 2 of the Forest (Conservation) Act 1980 or an order or decision made by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution Act (14 of 1981) or any direction issued

under Section 5 of the Environment (Protection) Act 1986, or an order refusing to grant EC under the Environment (Protection) Act 1986 or any determination of benefit sharing or an order made by the National Biodiversity Authority or a State Biodiversity Board under the provisions of Biological Diversity Act 2002,are appealable. Therefore, the Communication addressed by SEIAA dated 18.022016 cannot be treated as an order or a decision by SEIAA, which is appealable under Section 16 of the Act.

66. As rightly argued by the learned senior counsel Mr.Mohan, sub-para (7) of para 3 of Regulations 2006 provides that all decisions of the SEIAA shall be unanimous and taken in a meeting. The communication dated 18.02.2016 does not show that the decision of the SEIAA was taken in a meeting, as provided under Regulation 3 (7) of the EIA Notification 2006. Moreover, the communication dated 18.02.2016 is a private communication in between BDA and SEIAA. None of the applicants are privy to the communication. There is no case that the communication dated 18.02.2016 was ever put on the public domain. We cannot agree with the submission of the contesting respondents that the communication dated 18.02.2016 is an appealable order, and if the applicants are aggrieved parties to the said decision, it is for the applicants to challenge the same under Section 16 of the NGT Act and the applications are not

maintainable. Therefore, we hold that the applications are maintainable under Section 14 of the NGT Act.

67. Mr.Sanjay Upadhyay, learned counsel appearing for respondent No.6, BDA vehemently argued that even if no appeal is to be filed, when the cause of action arose for the first time on 18.02.2016, and as applications are not filed within six months from that date, the applications are not maintainable. True, Section 14 (3) of the NGT Act provides that 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. Proviso to the Section enables the Tribunal to condone the delay of 60 days, provided the applicant was prevented by sufficient cause from filing the application within the period of six months. The question is whether the cause of action for filing the application first arose on 18.02.2016, as canvassed by the learned counsel appearing for the contesting respondents. As is clear from the communication dated 18.02.2016,wherein SEIAA clarified that no prior EC is necessary for the proposed project, it is an internal communication and it was never put in the public domain. Irrespective of the question whether that decision or order was taken by the SEIAA in a meeting and if not, whether it is valid or not and whether the SEIAA is expected to give such a clarification/ opinion so long as the internal communication

between BDA and SEIAA is not in public domain, we cannot agree with the submission that the cause of action first arose on 18.02.2016 and therefore, the applications are barred by time. Admittedly, the construction for the proposed project is yet to be started. Therefore, it cannot be held that the cause of action first arose six months prior to the filing of the present applications and therefore, barred by time. We hold that the applications are not barred by time and therefore, perfectly maintainable and the point No.1 is answered accordingly.

68**. <u>Point Nos.2 and 3</u>:** Bengaluru was once known as 'Garden City' due to the dense vegetation cover and salubrious weather. By passage of time consequent to the globalisation, rapid urbanization and industrialisation, the quantum of vegetation started declining. As a natural corollary, weather has also started to change drastically. The paperon "Trees of Bengaluru" by M/s. TV.Ramachandra, Bharath H.Haital etc. of Energy and Wetlands Research Group, Centre for Ecological Sciences, Indian Institute of Science (in short IIS), Bengaluru published in ENVIS Technical Report: 75, for KSPCB and IIS, Bengaluru discloses that the decline of vegetation was rapid. When 68.27% of vegetation was available in 1973, the vegetation available in 2012 was less than 25%. The same is the case with regard to the lakes. Bengaluru was earlier described also as a 'city of lakes', due to the numerous lakes. The impact of

urbanization had reduced the number of water bodies. Water bodies have reduced from 3.4% in 1973 to less than 1% in 2012. The increase in the road network and the widening of the roads, all resulted in axing a large number of trees which were existing on the roadsides. Many lakes and their banks were encroached and converted into residential layouts, multi-storied buildings, playgrounds, bus stands etc. and some lakes were used for dumping of municipal solid wastes and many of the lakes cannot now be even called as lakes, but only sewage tanks/ponds. As per the study estimates it indicates that about 6 tonnes of carbon is sequestered by 1 hectare of forest annually and this averages out as carbon sequestration of 6 kg/tree/year. Per capita respiratory carbon ranges from 192 to 328 kg/year, depending on the physiology of humans. Generally, the carbon dissipated through respiration varies from 525 to 900 gm/day/person. According to the study, this means 32 to 55 trees per person is required in a region to exclusively mitigate respiratory carbon-di-oxide (CO_2). The consequence of the reduction in the vegetation has been stated in the study as follows:

> "The reduction of vegetation cover and collateral urbanization have serious implications on a city's environmental and ecological health. Bengaluru has evidently crossed the threshold of urbanization which can be gauged by the increase of psychological, social and health related issues among its residents. Additionally, there have been higher instances of domestic violence, traffic bottlenecks, road accidents, and incidences of diseases such as obesity and

> asthma. A need for overall improvements in human well-being and community vitality compel urban planners to sustain atleast 33% green cover in cities. In such a case, there would be atleast 1.15 trees/person in a city."

69. The conclusion of the study is that "Bengaluru has an average vegetation density of 0.14 %." Mapping of trees based on canopy delineation, coupled with field data show that most of the wards have less than 100 trees. Based on the data collected, the total number of trees in Bengaluru is stated as about 14,78,412.

70. The study on "Greater Bengaluru: Emerging Urban Heat Island" by T.V.Ramachandra and Uttam Kumar, of Energy and Wetlands Research Group, Centre for Ecological Sciences, Indian Institute of Science, Bengaluru also highlights the consequences of urbanization and loss of the trees as follows:

> "Urbanization is a form of metropolitan growth that is a response to often bewildering sets of economic, social and political forces and to the physical geography of an area. It is the increase in the population of cities in proportion to the region's rural population. The 20th century is witnessing "the rapid urbanisation of the world's population", as the global proportion of urban population rose dramatically from 13% (220 million) in 1900, to 29% (732 million) in 1950, to 49% (3.2 billion) in 2005 and is projected to rise to 60% (4.9 billion) by 2030 (World Urbanization Prospects, 2005) . Urban ecosystems are the consequences of the intrinsic nature of humans as social beings to live together. (Sudhira et at, 2003; Ramachandra and Uttam Kumar, 2008) The process of urbanisation contributed by infrastructure initiatives, consequent population growth and migration results in the growth of villages into towns, towns into cities and cities into metros.

Urbanization and urban sprawl have posed serious challenged to the decision makers in the city planning and management process involving plethora of issues like infrastructure development, traffic congestion, and basic amenities (Electricity, water and sanitation) etc. (Kulkarni and Ramachandra, 2006) Apart from this, major implications of urbanization are :

- Heat island: Surface and atmospheric temperatures are increased by anthropogenic heat discharge due to energy consumption, increased land surface coverage by artificial materials having high heat capacities and conductivities and the associated decreases in vegetation and water previous surfaces, which reduce surface temperature through evapotranspiration.
- Loss of aquatic ecosystems: Urbanisation has telling influences on the natural resources such as decline in number of water bodies and / or depleting groundwater table.

Unplanned urbanisation has drastically altered the drainage characteristics of natural catchments, or drainage areas by increasing the volume and rate of surface runoff. Drainage systems are unable to cope with the increased volume of water and are often encountered with the blockage due to indiscriminate disposal of solid wastes. Encroachment of wetlands, floodplains etc. obstructs floodways causing loss of natural flood storage. Damages from urban flooding could be categorized as : direct damage – typically material damage caused by water or flowing water, and indirect damage – eg. Traffic disruptions, administrative and labour costs, production losses, spreading of diseases, etc."

71. The conclusion is that "the increased urbanization has resulted in higher population densities in certain wards, which incidentally have higher LST due to high level of anthropogenic activities. The growth poles are towards North, North East, South and South East of the city, indicating the intense urbanization process due to growth agents like setting up of IT corridors,

industrial units etc. Newly built up areas in these regions consisted of maximum number of small-scale industries, IT Companies, Multistoried buildings and private houses that came up in the last one decade. The growth in northern direction can be attributed to the new international Airport, encouraging other commercial and residential hubs. The southern part of the city is experiencing new residential and commercial layouts and the north-western part of the city outgrowth corresponds to the Peenya industrial belt along with the Bengaluru –Pune National Highway."

72. These studies and materials indicate that any future construction, causing further destruction of the trees and lakes, definitely have adverse impact on the environment of the city of Bengaluru must be properly assessed before venturing on the new projects. It, therefore, warrants that generally environmental impact of any project to be implemented, is to be properly assessed, considering the precarious environmental atmosphere of Bengaluru.

73. Regulations 2006 provides that on and from the date of the Notification, any construction of new projects or activities or the expansion or modernization of the existing projects or activities listed in the Schedule to the Notification, entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after the prior EC from the Central Government or SEIAA in accordance with the

procedure specified in the Notification. Para 2 of the Regulations provides that all the projects/activities listed in the schedule to the Notification, expansion and modernization of existing projects/activities listed in the schedule to the Notification with addition of capacity beyond the limits specified in the concerned sector (i.e) projects or activities which cross the threshold limits given in the schedule after expansion or modernization , any change in product - mix in an existing manufacturing unit included in the schedule beyond the specified range, shall require prior EC from the concerned Regulatory Authority., namely, Central Government in the Ministry of Environment and Forests for matters falling under category 'A' in the schedule and at the State level from the SEIAA for matters falling under Category 'B' in the said Schedule, before any construction work or preparation of land by project management, except for securing the land is started on the project or activity. Schedule provides the list of projects or activities requiring prior Environmental Clearance.

74. The project in question is construction of six lane elevated road from Basaveshwara Circle to Hebbal flyover. The case of the applicants is that the project falls under Entry 8(b) of the schedule. Entry 8 deals with Building/ Construction projects / Area Development Projects and Townships. Entry 8(a) relates to building and construction projects, while Entry 8(b) relates to Townships and Area Development Projects

8(a)	Building and Construction projects		≥ 20,000 sq. mtrs and ≤ 1,50,000 sq. mtrs of built up area	The term "built up area" for the purpose of this notification is the built up or covered area on the floors put together, including the basement and other service area, which are proposed in the building and construction projects. **Note 1**. The projects or activities shall not include industrial shed, universities, college, hostel for educational institutions, but such buildings shall ensure sustainable environmental management, solid and liquid and implement environment conditions given at Appendix-XIV. **Note 2**: "General conditions" shall not apply. **Note 3**: The exemptions granted at Note 1 will be available only for industrial shed after integration of environmental norms with building permissions at the level of local authority.
8(b)	Townships and Area Development projects.	≥ 3,00,000 sq. mtrs of built up area or Covering an area of≥ 150 ha	≥ 1,50,000 sq. mtrs and < 3,00,000 sq.mtrs built up area or covering an area ≥ 50 ha and < 150 ha	Note: "General Conditions" shall not apply.

Entry 7 relates to Physical Infrastructure including Environmental Services. Entry 7(f) relates to Highways, both State and National Highways.

7(f)	Highways	i) New National Highways; and ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes.	i) All New State Highway Projects ii) State Highway expansions projects in hilly terrain (above1000m AMSL) and/ or ecologically sensitive area.	General Condition shall apply Note: Highways include expressways

The Prior EC is required for New National Highways and expansion of National Highways greater than 100 km involving right of way or land acquisition greater than 40 meters on existing alignment and 60 meters on re-alignment or by-passes. They are category 'A' projects. Prior EC is required for all New State Highway projects and State Highway expansion projects, in hilly terrain beyond 1000 meters AMSL and /or ecologically sensitive area. The general condition shall apply. The Note under general conditionmakes it clear that Highwaysinclude expressways also. Therefore, even National Highways or State Highways require prior EC only if they fall within the categories which are specifically provided in Entry 7 (f) of the Schedule.

75. When the applicants would contend that the project in dispute falls under Entry 8(b), the contesting respondents would contend it will not fall under Entry 8 (b) as it is not a project of building/construction projects/area development projects and

townships and at best, it would be a project for construction of an elevated road connecting two existing roads and at the most, they could only be taken as a project for construction of roads. If such construction does not fall under Entry 7(f),no prior EC is required. Their case is that it is neither a Building / Construction project nor an Area Development and Township Project and therefore, it can never fall either under Entry 8(a) or Entry 8(b).

76. Learned counsel appearing for the applicants and the supporting respondents are relying on two decisions of the Principal Bench of the Tribunal in Vikrant Kumar Tongad (Supra) and Sushil Raghav (Supra).The arguments of the learned counsel appearing for the contesting respondents is that those decisions are based on the eco-sensitive area where the respective projects are proposed to be built and when the present disputed project is for construction of elevated road over an existing road and not in an eco-sensitive area, those decisions, cannot be made applicable to the present project. Learned counsel appearing for the contesting respondents relying on the decision of the Principal Bench in Sarang Yadwadkar case (Supra) would contend that as in the present case, the disputed project in question in that case was also the construction of a local road connecting two points and while the one end meets the by-pass of the State Highway, the Tribunal held that it is in fact not a State Highway and only a local road and therefore, seeking prior EC from SEIAA in terms or

Regulation 2 read with entry 7 (f) of the Regulation 2006, would not arise. Learned counsel also relied on the decision of the Tribunal in Jacob George case (supra) as the contention that the construction of the by-pass is a part of the State Highway, was rejected holding that it is only a link road and therefore, EIA Notification 2006 does not apply, and contended that since the proposed construction is of an elevated road over the existing road, it does not require prior Environmental Clearance.

77. The fact that the total built up area of the proposed 6 lane elevated road project is 2,13,165.9 sq.meters is not in dispute. In fact, the applicants have shown in their written submission the total length of the elevated road as 6687 meters and the total width 22+1.2 +1 = 24.2 meters. These were extracted from the DPR and hence admitted. Therefore, the total built up area of the main elevated road is 1,61,825.4 sq.meters, which itself is more than the threshold limit of 1,50,000 sq.meters provided in Entry 8(b) of the Schedule of Regulations 2006. In addition, the total length of the up and down ramps is shown as 4,938 meters and width 8.5 meters and the total built up area of up and down ramps as 41,973 sq.meters. In addition, there are two underpasses. The total built up area of Cunningham underpass , which is having a total length of 235 meters and width of 3 meters, is 705 sq.meters and the total built up area of other underpass, which is having a total

length of 1155 meters and width of 7.5 meters, is 8,662.5 sq.meters and altogether. These data were also extracted from the DPR and hence is not disputed. Thus the total built up area the project is 2,13,165.9 sq.meters. Therefore, if the project falls under Entry 8(b) of the Schedule of Regulations 2006, necessarily, the total built up area is more than the threshold limit of 1,50,000 sq.meters and it would definitely requires prior EC.

78. The argument of Mr.Sanjay Upadhyay, learned counsel appearing for the BDA is that the Legislature in their wisdom has considered the linear projects in detail and included certain projects in the Schedule requiring prior EC and left out the remaining which do not require EC. The argument is that the Railway projects, Waterways and Transmission lines, all linear projects, were not included in the schedule and it was apurposive decision of the legislators. Further, it is argued that under Schedule Entry1(a)(ii) slurry pipelines (coal lignite and other ores) passing through National Parks or Sanctuaries or coral reefs, ecologically sensitive area, under Entry 1 (c) (ii) irrigation projects depending on command area and under Entry 6 (a) oil and gas transportation pipeline projects passing through National Parks, Sanctuaries, coral reefs and ecologically sensitive areas including LNG Terminal were the linear projects which require prior EC. So also under Entry 7 (g) Aerial Ropeways projects

located 1000 m and above and all projects located in notified ecologically sensitive areas also require prior EC. So also, the Highway projects included under Entry 7 (f) require prior EC. The argument is that the legislators in their wisdom did not include projects of construction of a 'road' in the Schedule which require EC and instead provided that prior EC is required for roads only if they are National Highways and State Highways that fall in Entry 7(f).

79. The Principal Bench of the Tribunal had examined the necessity to take prior EC for a project to construct Signature Bridge across the river Yamuna in Vikrant Kumar Tongad case (supra) and construction of an elevated road over the river Hindon in Sushil Raghav case (supra). In both the cases, the Tribunal found that though they are construction of a bridge/elevated road, they fall under Entry 8(b) of the Schedule to Regulations 2006 and therefore require prior Environmental Clearance in terms of Regulations 2006. In fact when the applicants are relying on the said decisions, the contesting respondents distinguish the decisions stating that it was based on the peculiar facts and circumstances of those cases the decisions were rendered and cannot be uniformly applied to constructions of all bridges or elevated roads.

80. The question that came up for consideration and settled in Vikrant Kumar Tongad (supra) case was "whether constructing a bridge across Yamuna is a 'project' or 'activity' that shall require prior EC from the Regulatory Authority under 'A' category, particularly, with reference to Entry 8(a) and /or 8(b) of Schedule to the Regulations, 2006. The Construction of the Signature bridge over Yamuna river connecting Eastern and Western parts of Delhi to ensure fast and smooth flow of traffic in that part of the city was the issue in that case. After considering the description of the word ' bridge' in Law Lexicon, it was observed that even in common parlance, bridge is understood to be a structure that connects any two ends for various activities like travelling, crossing a river, joining National or State Highways or roads and is intended to provide for natural or artificial link for communication. It was then held:

> "A bridge can hardly be termed as a stand-alone project as it would normally be part of a major or a smaller development or allied activity. A bridge therefore, cannot be taken as an abstract term. It would, without exception, always be a part of a project, i.e. construction of a highway or even an ordinary road and/or to cross a river, canal, drain or even a rail road. To put it simply, the bridge would be a segment or part of a bigger project, activity or development. It can hardly be a final product in itself. Like even in the present case, it is meant to connect the Wazirabad Barrage and Okhla Barrage, to ease out traffic pressure and provide fast movement of traffic across River Yamuna, though the existing bridge would still be in existence. Thus, it would be a step in the final process and will not be equitable to a final

> product. A bridge cannot be made to stand on its own without connecting it with the roads on both ends. It is an integral part of an activity of development or area development that has to be seen wholly and from a holistic point of view."

81. It was also held that Regulations of 2006 have been issued in exercise of its statutory powers of delegated legislation, vested in the Central Government in terms of the provisions of the Act and Rules of 1986. The Environment (Protection)Act of 1986 (in short 'the Act of 1986') was enacted by noticing the decline in environmental quality as evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The purpose was controlling and preventing environmental pollution and degradation and to provide greater environmental safety. The Act of 1986 was intended to take appropriate steps for the protection and improvement of environment, which include water, air and land and also the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. It was also held

> "The legislature has left nothing to the imagination and has worded Entry 8 (b) very widely so as to cover within its ambit every facet of environment as contemplated under Section 2 (a) of the Act of 1986."

Observing that Regulations of 2006 have been promulgated with the aim and object of assessing the impact that a project or an

activity would have upon the environment and ecology,it was held that

> "The expert body is expected to precisely visualise the extent of environmental degradation resulting from the project before granting approval. Normally, the projects having irretrievable and permanent impacts on nature are not permitted, and where permitted, very stringent, protective and precautionary conditions are imposed."

82. Analysing Entry 8 (b) of the Schedule to the Regulations of 2006, dealing with Townships and Area development projects, it was held:

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

very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary V. Union of India (UOI) &Ors.,* (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgement of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended not altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. Dehors the ambiguities in these Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Part at Noida Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors*., (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity

and telephone lines and the whole range of other civic infrastructure, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological of botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological of botanical park or a recreational park etc. would fall within the category or Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

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

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

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings

given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by the State Government/MoEF, permitted continuation of the project, and held as under:

"74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to top it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Government have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required for the sanctuaries.

But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution".

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

83. On examining the ambit and scope of Entry 8 (b), while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006, along with the Schedule and the most important right to have a clean environment being integral concept of the Constitutional Scheme, it was held:

> " The project in question is construction of a ' Signature Bridge' over River Yamuna, connecting eas tern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the ' Signature Project' is 1,55,260 sq.meters, which is higher than the threshold marker of 1,50,000 sq.meters. This project cannot fall within Entry 7 (f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof. "

Thus, it was found that the project of construction of the Signature Bridge across Yamuna river would fall under Entry 8(b) and therefore, it requires prior Environmental Clearance.

84. Though the learned counsel appearing for the contesting respondents including the Advocate General vehemently argued that the said decision was based on the fact that the Signature Bridge is to be constructed across the river Yamuna, involving eco-sensitive flood plain area and therefore, it cannot be equated with the construction of an elevated road over an existing road, we do not agree with their contention. The finding that the project falls under Entry 8 (b) was not based on the eco-sensitive nature of the flood plain area of the river Yamuna, but on the principle that such construction would amount to an area development and hence falls under Entry 8(b).

85. The Principal Bench had again considered a similar question in Sushil Raghav case (supra). The question settled in the case was whether the disputed project in question requires Environmental Clearance within the ambit and scope of environmental Clearance Regulations, 2006. The disputed project was the proposed project of the Gazhiabad Development Authority, the Project Proponent, for construction a six lane elevated road and using the land in Khasra No.1453 for stocking the construction materials on temporary basis, which are to be removed within 8 to 9 months. The project was envisaged to ease out the traffic congestion and bottle neck situation existing in the existing 45 meter road. Holding that the expression 'project' and 'activity' provided under Clause 2 of the Regulation, 2006, have to be given its expanded meaning on the principle of Purposive Construction, it was held that these expressions have to be construed liberally while keeping in mind that such interpretation achieves the object of the Act. It was then held:

> "The Project is a term of wider connotation than an activity. Normally, every activity would be a part of the project but not always. These expressions are not interchangeable or synonyms. Once the project or activities specified fall in the items of the Schedule to the Regulation, then the obligation upon the project proponent immediately arises to take prior environmental clearance. Once, the project or activity has the threshold limits and falls in any of the items of the Schedule to the Regulation of 2006 then there is no escape upon the Project Proponent to strictly comply with the Regulation of 2006 and obtain Environmental Clearance."

86. After relying on the discussions and the findings in Vikrant Kumar Tongad case (supra), it was held:

> "9. There are other judgments of the Tribunal which have taken the view that Clause 2 of the Regulation of 2006 and the Schedule attached thereto clearly demonstrates tht expression of a very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. The Tribunal cannot give it a narrower or a restricted meaning. It is based upon the Principle of Sustainable Development and would result in violation of the Precautionary Principle as uncheck and indiscriminate development would certainly have adverse impact upon the environment and ecology of the area.
>
> 10. From the above stated principles, it is evident that Entry 9(a) and 9(b) would operate in different fields. There is a very fine line of distinction between these two entries. Most material part of these entries is that the threshold criteria of specified area of project and/or construction have to be satisfied. Similarly, Entry 7(f) of the Schedule deals with Highways. These Highways have further been bifurcated into new National Highways and expansion of National Highways gr eater than 30 kms involving additional right of way greater than 20 m involving land acquisition and passing through more than one State. Such projects would fall under Category A projects while all the State Highway projects and the State Highway expansion projects in hilly terrain (above 1000 meters) and/or ecological sensitive areas would fall under Category B project.
>
> 11. According to the respondents, particularly, GDA, it is a project of construction of six lane elevated road. This road is to provide a link to NH-24 and is intended to ease the traffic congestion in Ghaziabad and onward traffic to other districts in the State of Uttar Pradesh. It is also averred by the Applicant that the Project Proponent is constructing pillars for the elevated road and an underpass on the Khasra Nos.1450

> and 1453. According to the Applicant, the project would fall under Entry 89a) of the Schedule. We have already stated that Entry 8(a) and 8 (b) operate in different fields and the project in question would fall under Entry 8(b) as it would be a development work even if it is not part of a State Highway. For reasons best known to the respective respondents, complete details of the project and whether or not it is part of State Highways joining the National Highways has not been placed on record. Be that as it may, the project certainly covers the areas much more than the threshold areas stated in the Regulation. It would be part of a State Highway. Even if it be not so, it would certainly fall under Clause 8(b) of the Regulation as it is project of township and area development and covers the built up area much in excess of covered area 150000sq.meters. On the basis of the reasoning given in the case of Vikrant Kumar Tongad (Supra), there is no reason for us to hold that this project would not be squarely covered under the Schedule to the Regulation of 2006 and it will not be obligatory upon the Project Proponent, GDA to seek Environmental Clearance. Therefore, we answer this issue by holding that it was obligatory upon the Project Proponent to take prior environmental clearance in accordance with the terms and Regulations of 2006."

87. True, the elevated project is also alleged to be adversely affecting the Bird Sanctuary and the pond near Hindon canal opposite to Arthala Lake. But it is crystal clear from the judgment that the decision that the project falls under Entry 8(b) was not on the basis of the eco-sensitive area of the Hindon canal or the Bird Sanctuary, but on the purposive interpretation of Entry 8(b) of the Regulations, 2006. Therefore, we do not agree with the argument of the learned counsel appearing for the contesting respondents that those two decisions are not to be made

applicable to the facts of the present case. Instead, the grounds for holding that the six lane elevated road project involved in Sushil Raghav case (supra) requires prior EC, squarely apply to the facts of this case.

88. Learned counsel appearing for the applicants also pointed out that the construction of Barapullah Phase 3 project from Saral Kale Than to Mayur Vihar, New Delhi was challenged before the Principal Bench of the Tribunal in O.A.No.479 of 2015 (Manoj Mishra VS NCT of Delhi and Ors.) on the ground that there is no prior EC. Copy of the final order dated 17.11.2016 shows that earlier an interim order was passed directing that there shall be no construction activity of the project, without obtaining prior EC. Later, the Project Proponent, the P.W.D, NCT of Delhi, applied for Environmental Clearance. The applicant also made available a copy of the Form-I proposals submitted by the said Project Proponent for Environmental Clearance on 22.07.2016, admitting that construction of the elevated road project requires Environmental Clearance. In view of these developments, by the aforesaid order dated 17.11.2016, the application was disposed permitting the applicant to withdraw the application as the project Proponent has already applied for prior EC.

89. We find force in the argument of the learned counsel appearing for the applicants that when the Principal Bench of the Tribunal on a detailed analysis of the provisions, concluded that

construction of Signature Bridge Project over the river Yamuna and construction of the six lane elevated road by Ghaziabad Development Authority fall under Entry 8(b) of the Regulation, 2006 and accepting the said legal position, the Project Proponent the P.W.D, NCT, Delhi had already applied for environmental clearance for the construction of an elevated road from Saral Kale Than to Mayur Vihar, New Delhi, the accepted legal position is to be followed by the other Benches of the Tribunal also. Judicial propriety demands that the decision of a Bench, that too a Bench of four members, has to be followed by the other Benches, if they are on identical facts and circumstances of the case, as otherwise, the litigants including the project proponents and the environmental activists will be confused as to what law and principles are to be followed. The different Benches is not expected to take divergent views on the same question.

90. Though reliance was placed on the decision of the Principal Bench of the Tribunal in Sarang Yadwadkar case (Supra), we find that the question whether construction of an elevated road, as is the dispute in this case, was not the question settled in that case. The challenge in that case was on the construction of a surface road from Vitthalwadi to National Highway-04 by-pass under the Draft Development Plan on the ground that the said Draft Development Plan has not been approved by the State Government, no permission from Irrigation Department has been

taken and the road touches the Vitthalwadi Temple and its surrounding areas which are Grade I Heritage Buildings and even permission from Archaeological Department has not been taken. True. The question whether the project requires Environmental Clearance under the Regulations 2006 was also considered in that judgment. What was contended by the Project Proponent was that they have taken all necessary permissions, which are required to be taken and the project does not require EC either from MoEF or SEIAA.

91. The contesting respondents are relying on the following paragraph of the judgment in Sarang Yadwadkar case:

"17. It is obvious that the project, being in a State, would fall under category 'B' if it relates to a State Highway. It is not averred by the applicant that the construction of this road is a part of the State Highway. It is clear from the record that the project in question relates to 2.3 km long of 24 m, wide road from Vitthalwadi to NH-4 bypass. In other words, it is just a local road connecting two points while the one end meets the bypass of the State Highway. 'Highway' under the Control of national Highways (Land and Traffic) Act, 2002 means a National Highway declared as such under Section 2 of the National Highways Act, 1956 and includes any Expressway or Express Highway vested in the Central Government, whether surfaced or unsurfaced, and also includes (i) all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of the Highway or transferred for such purpose by the State Government to the Central Government; (ii) all bridges, culverts, tunnels, causeways, carriageways, etc. as stated in that definition. The State Highways on that analogy would mean all the State Highways which are so declared in accordance with law. No records have been placed before us to show that this road has been declared

as a State Highway in terms of any law in force. 'Road'simplicitor would mean a way or a passage.

18. From the records before the Tribunal, it is clear that the road project is not a State Highway in fact and in law. As already noticed, it is not even the case of the applicant that it is a State Highway. This being the undisputed position, the question of seeking environmental clearance from SEIAA in terms of Regulation 2 read with Entry 7(f) of the Schedule to Notification of 2006 would not arise."

92. As is clear from that portion of the judgment, the question whether the proposed project falls under Entry 8 (b) was not considered or settled therein. Instead, the question settled wasthat the proposed surface road is neither a part of the National Highways nor State Highways, and hence Entry 7(f) is not applicable and therefore, no prior EC is necessary.

93. Though reliance was also placed by the contesting respondents on the decision of the Western Zone Bench, Pune of the Tribunal, in Application No.85 of 2015 (Supra), we find that the said decision is also not helpful to advance the case projected by the contesting respondents. The challenge in that case was against the construction of third Bridge across river Mandovi in Goa, on the ground that there is no environmental clearance or CRZ clearance. Even according to the applicant in that case, the total built up area was more than 20,000 sq.m and not 1,50,000 sq.m or more. As the built up area of the said proposed construction was only about 67,000 sq.meters, less than the threshold built up area of 1,50,000 sq.meters provided in Entry

8(b) of the Regulations, 2006, the contention of the applicant was that EC is required as the project falls under Entry 8 (b). The Tribunal, in Vikrant Kumar Tongad (supra)case clearly observed that the Hon'ble Supreme Court laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule of the Regulations, 2006 on one hand and on the other hand, held that mere absence of a statute will not preclude the Court from examining the projects' effects on environment, as environment is the one of the facets of right to live as envisaged under Article 21 of the Constitution of India. It is also found in Vikrant Kumar Tongad judgment, that the Signature Bridge project does not fall under Entry 7 (f) of the Schedule to Regulations 2006, as it is neither a National nor a State Highway and in any event, a part thereof. It is based on these reasons, Pune Bench of the Tribunal did not follow the dictum laid down in Vikrant Kumar Tongad case and instead, held that the disputed bridge is a part and parcel of the existing National Highway and its expansion and still it falls under entry 8(a) of the Schedule.

94. That question even otherwise is not *resintegra* in view of the following dictum of the Hon'ble Supreme Court in Re: Construction of Park at Noida [(2011)1SCC744] in Para 53 of the Judgement which reads as follows:

> "In the schedule to the notification "Building and Construction projects" and "Townships and Area Development Projects" are enumerated separately, the former in item 8(a) and the latter

in item 8(b). This would normally suggest that the notification treats those two kinds of projects separately and differently. It would, therefore, be reasonable to say that an "Area Development project" though involving a good deal of construction would yet not be a "Building and Construction project". When it was pointed out to Mr. Bhushan that the project in question may be put more appropriately in category 8(b) as an "Area Development project" rather than a "Building and Construction project" under category 8(a), in reply he took a line that nullifies any distinction between the two. Mr. Bhushan submitted that so far as construction projects are concerned there is no qualitative difference between items 8(a) and 8(b) and the difference between the two items was only quantitative. Projects were categorized under items 8(a) or 8(b) as "Building and Construction projects" or "Townships and Area Development projects" not on the basis of their nature and character but depending upon the extent of construction. Learned Counsel pointed out that the upper limit under item 8(a) (1,50,000 square metres of built-up area) was the threshold mark under item 8(b) and contended that this was a clear indication that projects with built up area up to 1,50,000 square metres would be defined as "Building and Construction projects" and projects with built up area in excess of 1,50,000 square metres would be categorized as "Townships and Area Development projects". In support of the contention, Mr. Bhushan gave the example of a "Building and Construction project", consisting of a number of multi-storied buildings, the aggregate of the built-up area of which exceeds 1,50,000 square metres. Mr. Bhushan submitted that since the total built-up area of the project crosses the upper limit of item 8(a) the project would not fall within that item. But at the same time since the project is a "Building and Construction project" and not a "Township and Area Development project", it would not come under item 8(b) and this would be indeed a highly

> anomalous position where a project with a smaller built-up area would fall within the ambit of the notification, whereas a project with a larger built-up area would escape the rigours of the notification."

95. In Vikrant Kumar Tongad(supra) and Sushil Raghav (supra)cases the distinction between the Entry 8(a) and Entry 8(b) of the Schedule to Regulations 2006 has been considered and held that there is fine line of distinction between these two entries and the building and construction projects provided under Entry 8(a) and Townships and Area Development projects provided under Entry 8(b) of the Schedule to Regulations 2006 are specific and distinct . Following the decision of the Hon'ble Supreme Court in Re: Construction of Park at Noida Near Okhla Bird Sanctuary Vs Union of India and others (2011) 1 SCC 744, it was held that the Township project was different, both quantitatively and qualitatively from a mere 'Building and Construction Project' and the area development project may be connected with township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

Therefore, for the sole reason that the built up area falls short of the threshold limit provided in Entry 8(b) of the Schedule, a Township and Area Development project will not fall under the Building and Construction Projects, falling under Entry 8(a).Hence, based on the decision in Goa Foundation case,(A.No.85 of 2015 (WZ)) also, we cannot agree with the submission of the learned counsel appearing for the contesting respondents that the proposed project in question does not require prior EC.

96. Learned Advocate General as well as Mr.Sanjay Upadhyay argued that as distinct from the facts of the Vikrant Kumar Tongad (supra) and Sushil Raghav (supra), the construction of the proposed project is not in an eco-sensitive area butover an existing road and therefore, it is to be separately appreciated. The argument is that being a sixlane elevated road connecting two other existing roads, which are neither National Highway nor a State Highway, no Prior EC is necessary as the project if at all can only fall under Entry 7(f) of the Schedule. The argument is that in no case, the construction of an elevated bridge could be treated as area development project because the area is already a developed area and the construction is only over an existing road. The Tribunal had already found in Vikrant Kumar Tongad(supra)case that the Signature Bridge proposed to be constructed across the river Yamuna is part of an Area

Development and in Sushil Raghav (supra) case, followed the said decision, holding that construction of an elevated bridge, connecting two existing roads, though cannot be treated as a part of the National Highway or State Highway, would fall under Entry 8(b) of the Schedule. When we have already found that the reasons for holding so, are applicable to the facts of this case, we cannot accept the submission of the contesting respondents and take a contrary view that the project will not fall under Entry 8(b) of the Schedule.

97. It is also to be borne in mind that Article 48 A in Part IV (Directive Principles) of the Indian Constitution mandates that the "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country" and also to have compassion for living creatures. When the word 'environment' is to be appreciated on a broad spectrum, it brings within its ambit the hygienic atmosphere and ecological balance also. It is the duty of the State to maintain ecological balance and hygienic environment. As Article 21 of the Constitution of India protects 'Right to Life' as a fundamental right, which encompasses with in its ambit, the protection and preservation of environment, ecological balance, free from pollution of air, water and sanitation, the State is bound to ensure and safeguard, proper environment and also take sufficient measures to promote, protect and improve the environment.

When the State is the Project Proponent and there is a likelihood of adverse environmental impacts, the State of Karnataka should have evaluated the environmental impact of the project, though it is true that the purpose of the project is to allow smooth and speedy flow of traffic and thereby reduce air pollution. We are not holding that the project shall not be proceeded with. But before proceeding with the project, respondent No.6, the Project Proponent is bound to obtain prior EC as mandated under para 2 of Regulations 2006.

98. Mr.Sanjay Upadhyay, learned counsel appearing for the respondent No.6 BDA as well as the learned Advocate General submitted that as the proposed project does not fall in any of the Entries in Schedule of the Regulations 2006, a communication was sent to SEIAA on 11.12.2015 seeking clarification whether prior EC is necessary for the project and in reply dated 22.12.2015, the SEIAA clarified that EC would be necessary, if the proposed project is to be carried out as a State Highway or National Highway Project and if not, the project does not require prior EC. SEIAA thereafter sought information whether the road over which the elevated road is to be constructed is a Highway by communication dated 27.01.2016 addressed to the BBMP. By reply dated 09.02.16, BBMP informed that the entire stretch of the road is under its jurisdiction and it is neither a National Highway nor a State Highway. The argument is that pursuant to

this communication by letter dated 18.02.2016 SEIAA was informed that the proposed project is to be carried out not on a National Highway or State Highway and therefore, SEIAA clarified that the project does not require prior EC. As rightly argued by the learned counsel appearing for the applicant,Regulations 2006 does not empower either the SEIAA or the MoEF to provide any opinion or clarification on whether a proposed project requires prior EC or not. As rightly pointed out by the learned counsel appearing for the applicants, as is clear from Paragraph 3 (7) of Regulations 2006, any decision of the SEIAA shall be taken in the meeting and shall ordinarily be unanimous, though decision by the majority view is also provided. The communication from SEIAA to BDA does not reveal that there was any such meeting of the SEIAA, to consider the question whether prior EC is necessary or not for the proposed project, as provided in paragraph 3 (7) of the Regulations 2006. Therefore, it cannot be considered as a decision of the SEIAA. Therefore, based on that clarification, BDA is not entitled to contend that no prior EC is necessary if in law, prior EC is required. Even otherwise, even if SEIAA takes a decision on whether prior EC is required or not for a project, it is not binding on the Tribunal. Hence based on that opinion of the SEIAA we cannot hold that prior EC is not necessary for the proposed project.

99. Though the learned counsel appearing for the contesting respondents also relied on the reply submitted by the MoEF to the effect that the project does not fall under any of the Entries listed in Schedule and therefore, no prior EC is required, we cannot accept the submission that irrespective of the legal position on whether prior EC is necessary or not, the opinion of the MoEF is to be accepted or is binding on the Tribunal. It is also to be taken note that even in Vikrant Kumar Tongad (supra) case it was the specific stand of the MoEF in the reply filed before the Tribunal, that no prior EC is required for the said project and it was without accepting, the said contention the Tribunal found that prior EC is necessary. Therefore, basedon the opinion of the SEIAA or reply of the MoEF, we cannot hold that no prior EC is necessary, if otherwise prior EC is necessary for the project.

100. Learned Advocate General and learned counsel appearing for BDA also argued that when the State of Karnataka has enacted the Karnataka Preservation of Trees Act, (KPTA) 1976, which addresses the question of impact on environment by cutting trees and as the BDA has already provided for planting 81000 trees, apart from translocating some of the trees proposed to be cut for the project, the issue of effect on environment consequent to the cutting of trees, would stand addressed. It was also submitted that the KPTA, 1976 provides for public participation before finalizing the question whether

permission is to be granted to cut the trees and not and therefore, the applicants could raise their objections with regard to the cutting of trees before the Tree Officer as provided under the KPTA 1976 and therefore, that question need not be considered by the Tribunal.

101. Statements of objects and reasons for the enactment of KPTA 1976 shows that industrialization and pressure of population growth have resulted in heavy destruction of trees grown in urban areas. Trees, which provide shade, mitigate the extremes of climate, render aesthetic beauty, purify the polluted atmosphere, mute the noise, have been one of the first casualties of pressure on space in the cities and towns. We have reached the stage when it is incumbent to legislate to restrict and regulate the felling of trees and prescribe growing of a minimum number of trees where none exists and therefore, the Act is enacted.

102. The Tree Officer is defined as a Forest Officer appointed as such by the Head of the Karnataka Forest Department for the purpose of the Act. Under Section 5, The Head of the Karnataka Forest Department has to appoint a Tree Officer for each urban and rural area. Section 7 provides the duties of the Tree Officer. Under the Section, the Tree Authority

shall be responsible for (a) preservation of all trees within its jurisdiction; (b) carrying out a census of the existing trees; (c) specifying the standards regarding the number and kind of trees which each locality, type of land and premises shall have and which shall be planted, subject to a minimum of five trees per hectare in the case of rural areas;(d) development and maintenance of nurseries, supply of seed, saplings and trees, planting and transplanting of tree necessitated by construction of new roads or widening of existing roads or replacement of trees which have failed to come up along roads or for safeguarding danger to life and property; (e) planting and transplanting of trees necessitated by construction of roads; (f) organizing and assisting private and public institutions connected with planting and preservation of trees and (g) planting and maintaining such number of trees as may be considered necessary according to the prescribed standards on roads, in public parks and gardens and on the banks of rivers or lakes or seashores and undertaking such schemes or measures as may be directed by the State Government for achieving the objects of the Act. Section 8 provides restriction on felling of Trees and Section 9 provides for planting adequate number of trees. Section 10 deals with planting, in place of fallen or destroyed trees. Section 11 provides preservation of trees. Under this Section, subject to the provisions of section 12, it shall be the duty of the owner or occupier of the land, which is required by an order under

Sections8, 9 or10 to plant a tree or trees to ensure that they grow properly and are well preserved. Section 14 provides an appeal against the order of Tree Officer, under Section 8 or 9 or 10, to Tree Authority. Under sub-section 2 of Section 8, any person desiring to fell a tree, shall apply in writing to the concerned Tree Officer for permission in that behalf. Sub-Section 3 of Section 8 provides that on receipt of the application, after inspecting the tree and holding such inquiry as it deems necessary, the Tree Officer may either grant permission in whole or in part or refuse permission.

103. Proviso (vi) of sub-Section 3 of Section 8 provides that permission shall not be refused if the tree is required to be removed for cultivation and proviso (vii) provides that permission shall not be refused if the tree felling is more than 50 that are necessitated for any public purpose like road widening, construction of road, canal, tanks, buildings, etc. subject to the condition that permission be issued after issue of public notice to invite objections from the public and the same is considered by the Tree Officer. It is based on this proviso, learned counsel appearing for the contesting respondents argued that a public consultation is contemplated under KPTA, 1976. The enquiry contemplated by the Tree Officer as provided under Section 8 of KPTA is not equivalent to the Environment Impact Assessment contemplated under Regulations 2006.

104. The case of the applicants is also that the eco-sensitive zone is to be adversely affected by the construction of the project. The applicants argued that the Tribunal in Forward Foundation VS State of Karnataka (Original Application No.222/2014) issued directions with regard to the lakes and if the project is permitted to be materialized, it would be in violation of the said directions. The relevant portion of directions of the Tribunal reads :

> " Thus, we direct that the distance in the case of respondent Nos.9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:
>
> In the case of lakes, 75 me from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e lakes/wetlands.
>
> This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purpose of sustainable development particularly keeping in mind the ecology and environment of the areas in question."

105. The case of the applicants is that the construction of the project would adversely affect the Hebbal lake as well as the palace lake. Learned counsel appearing for BDA as well as Advocate General submitted that palace lake is only a water body in a private land and is not a lake as per the revenue records. With respect to the objection of Hebbal lake, the submission is that in the original application, though it was stated that the

distance is less than 20 meters from the Hebbal Lake, that fact alleged is not correct and in any case, the project route has now been realigned to avoid any portion of buffer land around the Hebbal lake. The applicants are disputing this fact. Whatever it be, no material has been produced before the Tribunal to prove that there has been a realignment of the project route as claimed by the respondents. In any case in the light of the directions of the Tribunal in Forward Foundation case, this is also definitely a factor to be assessed to decide whether there would be any adverse impact on the environment of the lakes.

106. Though it was submitted by the contesting respondents that as against the loss of 812 trees, BDA will plant 80,000 saplings, in addition to the replanting of some of the trees and hence any loss on account of cutting of trees, to the environment would be remedied we find that as per the DPR, the number of trees to be felled is 548. But even in the reply submitted by BDA as well as at the time of arguments,it is admitted that the trees to be felled are 812. When the discrepancy with regard to the number of trees in the DPR is pointed out, the explanation was that, the number of trees shown in DPR excludes the trees which are already permitted to be cut by the Hon'ble Supreme Court and standing in the palace compound for the purpose of widening the road. If that be the case, and permission was given prior to the preparation of DPR,

DPR should have specifically shown the total number of trees that had tobe felled for the construction of the elevated road as 812 and permission is to be obtained for the remaining 548 trees only. If the DPR was prepared, prior to the permission granted by the Hon'ble Supreme Court for widening the road as submitted by the learned counsel appearing for the contesting respondents, DPR should have shown the number of trees to be felled as 812 with a clarification that permission under KPTA would be necessary only for 548 trees, as for the remaining, permission is being sought before the Hon'ble Supreme Court. Therefore, the discrepancy with regard to the number of trees to be felled disclosed in the DPR and admitted in the reply, assumes importance, while assessing the adverse effect of the felling of the trees on the environment. Hence their impact is also to be properly assessed.

107. The Hon'ble Supreme Court in Research Foundation for Science and Technology and Natural Resource Policy VS Union of India (2005) 10 SCC 510) dealing with legal position regarding 'precautionary principle' and 'polluter pays principle' held that 'precautionary principle' and the 'polluter pays principle' are accepted as part of customary international law and hence, there should be no difficulty in accepting them as part of the domestic law. The Hon'ble Supreme Court in Vellore Citizens' Welfare Forum VS Union of India (1996 (5) SCC 647), laid down

that the principle of good governance is an accepted principle of international and domestic laws and it comprises of the Rule of law, effective State Institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. It was held :

> " Reference has also been made to Article 7 of the draft approved by the Working Group of the International Law Commission in 1996 on "Prevention Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary "legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by courts as facets of those fundamental rights and hence enforceable as such (see *People's Unionfor Civil Liberties V. Union of India).* The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-enshrined principles have been kept in view by us while examining and determining various aspects and facets of the problems in issue and the permissible remedies. "

108. In re: Construction of park at Noida near Okhla Bird Sanctuary and Anand Arya and T.N.Godavarman Thirumulpad VS Union of India and Ors {(2011) 1 SACC 744}, the Hon'ble Supreme Court declared that the absence of a statute will not preclude the Court from examining the projects' effects on environment. It was held :

> "66. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution, Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in."

109. Therefore, the case of the contesting respondents that the State of Karnataka had invited the opinion of the general public with regard to the project and more than 70%, accepted the proposal and therefore, the project, being a public project in the interest of the public, has to be permitted to be proceed with, cannot be accepted. Such a public opinion can never be a substitute for the public consultation contemplated under Regulations 2006. When the right to information and community participation for protection of environment and human health is declared to be a right that flow from Article 21 of the Constitution by the Hon'ble Supreme Court, public participation would definitely be the integral part of the procedure for

deciding whether a particular project has any environmental impact on the public. Based on the so called public opinion invited by the State as canvassed by the learned counsel appearing for the contesting respondents, we cannot accept as the public consultation provided under Regulations 2006.

110. Though it was argued that by construction of an elevated road, the pollution being caused by the vehicles would be reduced and such reduction would compensate the adverse impact on the environment, due to the loss of trees, we find from the DPR, that there was no proper study on this aspect. True, the question whether the construction of an elevated road would decrease the pollution level resulting from vehicular movement and whether it would compensate the loss to environment due to the felling of trees is definitely a relevant factor to be looked into. Unfortunately, we find there was no balancing of the gain and loss to the environment by the felling of trees, the additional heat that may be generated by the construction of an elevated road (built on a Steel flyover) and the reduction on the pollution of air and noise on the environment due to the construction. These aspects are to be seriously considered while deciding on the grant of prior EC as the project involves more than 1,50,000 sq.meters built up area and the project falls under Entry 8(b) of the schedule to the Regulations 2006.

111. In view of the earlier discussions and findings, we hold that the proposed project of construction of the six lane elevated road from Basaveshwara Circle to Hebbal flyover would fall under Entry 8(b) of the Schedule of Regulations 2006. Therefore, the project requires prior EC as provided under Para 7 of Regulations 2006. Respondent No.6, BDA, the Project Proponent shall not proceed with the construction without obtaining prior EC. Respondent No.6, BDA, the Project Proponent is at liberty to apply for granting EC before SEIAA, Karnataka. If such application is received, the SEIAA, Karnataka is directed to pass appropriate orders in accordance with law.

112. The applications are disposed accordingly, with no order as to costs.

Justice M.S.Nambiar
Judicial Member

P.S.Rao
Expert Member