

Item No. 5

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**M.A.No.05/2023(CZ) M.A.No.06/2023(CZ)
M.A.No.09/2023(CZ) M.A.No.10/2023(CZ)
M.A.No.12/2023(CZ) M.A.No.13/2023(CZ)
in
O.A.No.102/2022 (CZ)
(I.A.No.114/2023)**

Anil Mehta

Applicant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of Hearing: **15.02.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s): Mr. Pinaki Mishra, Sr. Adv.
(with Ms. Srishty Kaul, Adv.
Mr. Shantnoo Saxena, Adv.
(with Mr. Nawneet Vibhaw, Adv.)
Mr. Deepesh Joshi, Adv.
Mr. Maitreya Ghorpade, Adv.
(for applicant in O.A.)

For Respondent(s) : Mr. Om Shankar Shrivastava, Adv.
Mr. Dharamvir Sharma, Adv.
Mr. Yadvendra Yadav, Adv.
Mr. Sandeep Singh Baghel, Adv.

ORDER

1. The issues raised in the original application are Enforcement of the Noise (Regulation and Control) Rules, 2000 as amended from time to time due to unauthorized encroachment, by developing residential complexes in close proximity of the wetland and also on account of light pollution by use of high-intensity light in vicinity of the wetland at various commercial complexes within the notified Wild Life Sanctuary i.e. Sajjangarh Wild Life Sanctuary. The area has been notified as eco-sensitive zone and some

activities have been prohibited which cannot be allowed by the authorities concerned. While disposing the Original Application No. 102/2022 (CZ) vide order dated 31.07.2023 this Tribunal framed and considered four issues and disposed of as follows :-

1. *“First question up for consideration is “whether Fatehsagar lake is a wetland to which Rule 4 of Wetland Rule 2017, is applicable”. It is not denied by respondents that ‘Fatehsagar lake’ is included in National Wetland Inventory and Assessment project by MoEF&CC whereby it has identified 201503 wetlands Supreme Court in the order dated 08.02.2017 in M.K. Balakrishnan & Ors. Vs. Union of India & Ors., Writ Petition (Civil) No.230 of 2001 has said:*

“Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India wil identify and inventorize all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.”

2. *In view of Supreme Court’s above direction even if ‘Fatehsagar lake’ is not a ‘notified wetland’, it has to be protected by application of Rule 4 of Wetland Rules of 2017. Rule 4 of Wetland Rules 2017 say as under:*

“4. Restrictions of activities in wetlands.—(1) The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.

(2) The following activities shall be prohibited within the wetlands, namely,-

(i) conversion for non-wetland uses including

encroachment of any kind;

(ii) setting up of any industry and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching.

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority.”

3. The restrictions of activities in wetlands and protection provided in Rule 4 has to be extended to ‘Fatehsagar lake’ and its ‘Zone of Influence’ area. It is the responsibility of Rajasthan State Wetland Authority i.e. respondent 4 to take appropriate action in the matter and do the needful. First question is answered accordingly.

4. *The second question is, “whether partially ‘Zone of Influence’ of Fatehsagar lake including lake area falls within the notified area of Eco Sensitive Zone of Sajjangarh of wildlife sanctuary”, and if so “whether prohibition applicable to Eco Sensitive Zones have to be applied to said area or not.*
5. *Irrespective of the fact whether Eco Sensitive Zone of Sajjangarh Wildlife Sanctuary covers entire Fatehsagar lake area or its ‘Zone of Influence’, we are satisfied that area falls within notified area of Eco Sensitive Zone shall attract restrictions and prohibitions applicable to Eco Sensitive Zone and the same will have to be applied and implemented. On this aspect, we have no manner of doubt and also do not find any otherwise pleading or material on record to take a different view of the matter. In view of the matter, State of Rajasthan through Principal Secretary, Environment and Climate Change as also Principal Chief Conservator of Forest, Wildlife and all its assisting authorities are responsible to take appropriate action and enforce restrictions, prohibitions and regulations applicable to Eco Sensitive Zone of notified Wildlife Sanctuary to the area which falls within ‘Fatehsagar lake’ or its ‘Zone of Influence’ and take appropriate action to implement the same without any further delay.*
6. *Third question is regarding “noise pollution in area of Fatehsagar lake”. It is not disputed by learned counsel of the applicant that no specific standards have been prescribed in respect of wetland regarding noise level or standard of noise. In absence of such standards having not been prescribed, it is difficult to assume that there is violation of Noise Pollution Rules, 2000 which refers to 4 categories of area i.e. Industrial, Commercial, Residential and Silence Zone. With regard to mixed area, Rules permit that such area can be declared by concerned authority but in the present case it is also not the case of*

applicant or respondent, that any such mixed area in the area of Fatehsagar lake or its 'Zone of Influence' has been declared. In absence of any such declaration, we find it difficult to issue any specific direction to take action by concerned authorities, particularly when neither any person is impleaded in OA who is allegedly violating Noise Pollution Rules 2000 nor in absence of any such person a general vague direction can be issued to authorities concerned to comply with law when no specific violation of law against any individual is demonstrated or shown by applicant.

- 7. Joint Committee report has found that in some areas, particularly in night time, noise standards even of highest level i.e. prescribed for industrial area or commercial area are being breached on account of the activities of marriage procession etc. undertaken in various hotels campus, inside and outside, which are located in the area of 'Fatehsagar lake' and its 'Zone of Influence' and recommendations have been made for taking several steps to mitigate such violation of noise pollution by directing hotels not to permit certain activities within area of 'Zone of Influence' of Fatehsagar lake or Eco Sensitive Zone of Sajjangarh Wildlife Forest which includes within its ambit the area of Fatehsagar lake. No serious objection has been raised by respondents with regard to the recommendations made by Joint Committee. Applicant though has filed objection to Joint Committee report but during course of the arguments stated that those recommendations be directed to be acted upon and should be implemented.*
- 8. We are also of the view that by taking out processions like marriage processions etc. and by beating the drums or using bands, noise pollution levels cannot be breached particularly during night hours. At least these activities cannot be permitted to go on in area falling within 'Zone of Influence' of Sajjangarh Wildlife*

Sanctuary. Therefore to that extent respondents shall ensure and impose complete prohibition on such activities. Concerned hotels etc. shall be notified of this prohibition so that they may not allow such activities to go on.

9. Fourth question is regarding “light pollution”. Learned counsel for applicant drew our attention to annexure 23 and 24 to OA which are some articles published in different journals on the aspect of ‘light pollution’. However, it is not disputed that till date no authenticated investigation or research with regard to light pollution has been conducted in the context of Indian conditions and at least none has been placed on record. It cannot be doubted that in certain circumstances high Intensity Lights may be detrimental to wildlife and other species of different categories and also to nature as such. But this aspect requires a detailed study on the matter, and if necessary, appropriate guidelines/regulations need be framed. On this aspect we find it appropriate to direct MoEF&CC, respondent 6, and Ministry of Science and Technology, Government of India to take up requisite study on the issue of ‘light pollution’ and take appropriate action to regulate such pollution in the context of Indian conditions and if necessary different provisions may be made for different areas depending on nature of flora, fauna and other relevant factors available in those areas.”

2. Aggrieved by the order the appellant the Royal Retreat Resort & SPA and Ors. filed Civil Appeal Diary No. 39904/2023 before the Hon’ble Supreme Court of India and vide order dated 17.10.2023 the appeal was finally disposed as withdrawn giving liberty to applicant to move before the Tribunal for appropriate relief. Now, by moving the application M.A. No. 05/2023, the applicant moved this application for impleading the applicant as a party in decided case (original application no. 102/2022).

3. In other application M.A. No. 06/2023 has been filed for modification of the order dated 31.07.2023. All other applications have been filed to review and recall the order and restrain the Rajasthan Pollution Control Board not to act in accordance with the notice issued on 13.09.2023 sent on whatsapp group without any violation.
4. The submission of the opposite party are that :

- i. *The primary contention of MA Nos. 5 and 6 of 2023 in OA 102/2022/CZ is that the interpretation/conclusion/observations of this Hon'ble Tribunal made with regards to the prohibition of polluting activities within the 'zone of influence' of Fatehsagar Lake, as stated in Para 23 of the impugned order dated 31.07.2023, will adversely affect the operations of the Miscellaneous Applicant. Such has been stated on Pg. 5, Para 7 of the MA No. 6 of 2023 and that the Miscellaneous Applicant has stated he will be adversely affected due to the said interpretation of this Hon'ble Tribunal regarding the prohibition of activities enforced in the 'zone of influence' of Fatehsagar Lake by virtue of the above-mentioned Para 23 as he would be situated within the 'zone of influence'.*
- ii. *However, the Miscellaneous Applicant in Prayer Clause (b) of MA No. 6 of 2023 has himself prayed for directions to "the concerned statutory authorities to clearly demarcate the 'zone of influence' with respect to Fatehsagar lake and any other relevant area in the vicinity". That similar submissions have been made as on Para 18(b)(v) on Pg. 16 of the MA No. 6 of 2023, wherein the Miscellaneous Applicant has stated as follows:*

v.... However, even if it is assumed that the Wetland Rules, 2017 are applicable on Fateh Sagar Lake, it is important for the concerned authorities to delineate the zone of influence of the lake as per the established procedure and after taking into

consideration the views of all the affected stakeholders.

Furthermore, the Miscellaneous Applicant has not submitted any evidence on record which establishes to a legal certainty that he is situated within the 'zone of influence' of Fatehsagar Lake and that his operations will be adversely affected due to the impugned order dated 31.07.2023 in any manner.

5. The Learned Counsel has further submitted that the enforcement of the rules and acts and protection of the eco-sensitive zone and wildlife sanctuary and the enforcement of the Environmental (Protection) Act, 1986 is within the domain of the National Green Tribunal and Hon'ble the Supreme Court of India as repeatedly directed the position in *Mantri Techzone vs. Forward Foundation* 2019, SCC Online, SC 322 as follows :

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and

toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

...

46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.

6. The contention of the original applicant are that the present miscellaneous applicant were not respondents in O.A. No. 102/2022 and were entirely alien to it and nothing adverse order has been passed against them and there is no grievance against the order thus they have no status to move any application to recall the order or to review the order. Actual grievance of the applicant is subsequent notices issued by the Statutory Authorities/ State PCB, Wetland Authority to enforce the rule of law and enforce the wetland rules and eco-sensitive zone and aggrieved by that order passed by the statutory authorities they have moved this application to review the order which is not tenable in eyes of law. If they are aggrieved by the order or notice of the respondent, they can submit the explanation, reply to the notice before the statutory authority and the statutory authority PCB may dispose of the application according to rules after providing an opportunity of hearing and after that, if still anyone is aggrieved they can file an appeal or revision against the order according to rules.
7. The miscellaneous applicant is not directly affected by the impugned order dated 31.07.2023 and has not cited even a single line relating to an inherent statutory or constitutional right of the miscellaneous applicant which has been violated by the virtue of impugned order and thus have no *locus standi* to file an application.
8. The original application was filed with the intention to carry on noise pollution polluting activities of playing of loud music through sound system and other noise amplifying technologies in close proximity to the ecologically fragile wetland of Fathesagar Lake which has been especially prohibited for which everyone has arrived and no others doing the business have right create nuisance and noise pollution for their own benefit.
9. In the reply submitted by the Respondent Nos. 1, 2 and 4 State Pollution Control Board and the Wetland Authority it has been submitted that State

Pollution Control Board had issued advisory notices on 13.09.2023 to the units violating the environmental norms in eco-sensitive zone of the Sajjangarh Wildlife Sanctuary and instead of replying the notice they have moved this application to recall the order though they were not part in this case. It is further submitted that as per Rule No 4 (2) of Noise Pollution (Regulation and Control) Amendments Rules, 2017. The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise and definition of authority :-

“Authority” means and includes any authority or officer authorised by the Central Government or as the case may be the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force.

National Green Tribunal, Principal Bench, Delhi in the Original Application No. 681/2018 (CZ) titled as News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15" passed an order on dated 15.03.2019 inter alia reproduced as follows :-

"The State PCBs may undertake noise level monitoring in conjunction with the Police Department and take remedial action. The Police Departments of all the States may obtain the noise monitoring devices within a period of three months. The Police Department of all the State/UTs may also train their staff regarding the use of such devices and develop a robust protocol for taking appropriate action against the defaulters".

3. Criteria for making Noise Complaints as described under Noise Rules : Copy of The Noise Pollution (Regulation and Control) Rules, 2000 (As amended till 10.08.2017 vide S.O., 2555 (E) annexed.

As per Rule No. 7 of Noise Pollution (Regulation and Control) Rules, 2000, complaints to be made to the authority.

- i. A person may, if the noise level exceeds the ambient noise standards by 10 db (A) or more given in the corresponding columns against 'any area/zone (or, if there is a violation of tiny provision of these rules regarding restrictions imposed during night time), make a complaint to the authority.
- ii. The authority shall act the complaint and take (talon against the vi later in accordance with the provisions of these rules Lind any other law in force.

Ambient Air Quality Standards in respect of Noise:-

Area Code	Category of Area/Zone	Limits in db(A) Leq* Day Time] -Night Ming	
		Day Time	Night Time
1	Industrial area	75	70
2	Commercial area	65	55
3	Residential area	55	45
4	Silence zone	50	40

Criteria to make a complaint to the authority

Area Code	Category of Area/Zone	Limits in db(A) Leq* Day Time] -Night Ming	
		Day Time	Night Time
1	Industrial area	85	80
2	Commercial area	75	65
3	Residential area	65	55
4	Silence zone	60	50

Note:-

- 1.Day time shall mean from 6.00 am. to 10.00 p.m.
- 2. Night time shell mean from 10.00 p.m. to 6.00 a.m.
- 3. Mixed categories of areas May be declared as one of the four above mentioned categories by the competent authority,

db(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing,*

A "decibel" is a unit in which noise is measured.

"A", in dB (A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear."

10. In another miscellaneous application 12/2023 and 13/2023 have been moved for the same relief to impleading the applicant as a party or to modify the order.
11. In all the applications the prayers are the same first to implead the applicant of the miscellaneous application as a party and to modify the order dated 31.07.2023. such a prayer for modification of order dated 31.07.2023 is untenable through the means of filing of MA No. 13 of 2023, due to the fact that the present Miscellaneous Applicant is in substance seeking a review of the impugned order dated 31.07.2023, which is not statutorily permissible through Miscellaneous Applications, as the procedure for filing of Review Applications has been specified in the NGT Act, 2010, and the National Green Tribunal (Practice and Procedure) Rules, 2011 ('NGT Rules, 2011') and this position has been upheld by the Hon'ble Supreme Court of India prohibiting the filing of review application in the guise of miscellaneous applications or applications for modification and filing of such miscellaneous applications amounts to an abuse of process. Hon'ble Supreme Court of India in a recent order dated 4.10.2023 in MA 1572 of 2021 in CA No. 5041 of 2021 titled Supertech Limited v Emerald Court Owner Resident Welfare Association and Ors. has reiterated the above-stated position, and accordingly held as follows:

"8. In successive decisions, this Court has held that the filing of applications styled as "miscellaneous applications" or "applications for clarification/modification" in the guise of a

review cannot be countenanced. In Gurdip Singh Uban (supra), Justice M Jagannadha Rao, speaking for a two-Judge Bench of this Court observed:

“17. We next come to applications described as applications for “clarification”, “modification” or “recall” of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

...

By describing an application as one for “clarification” or “modification”, — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in Sone Lal v. State of U.P. [(1982) 2 SCC 398] deprecating a similar practice.)

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for “clarification”, “modification” or “recall” if the application is in substance one for review. In that event, the Court could either reject the application straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.”

9. The same view has been expressed in a subsequent decision in Ram Chandra Singh (supra) wherein another two-Judge Bench of this Court observed as follows:

“15. In Gurdip Singh Uban [(2000) 7 SCC 296] the law has been laid down in the following terms:

“17. ... This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of ‘no hearing’, we find that sometimes applications are filed for ‘clarification’, ‘modification’ or ‘recall’ etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation.

Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order 40 Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for ‘clarification’ or ‘modification’, — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly.”

16. In Common Cause [(2004) 5 SCC 222] Lahoti, J. (as the learned Chief Justice then was) speaking for a Division Bench observed:

“2. ... We are satisfied that the application does not seek any clarifications. It is an application seeking in substance a review of the judgment. By disguising the application as one for ‘clarification’, the attempt is to seek a hearing in the open court avoiding the procedure governing the review petitions which, as per the rules of this Court, are to be dealt with in chambers. Such an

attempt on the part of the applicant has to be deprecated.”

...

12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”].

13. Further, there is another legal principle which is applicable in the present case. It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden. This Court too, has adopted this maxim. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way.”

12. Furthermore, in I.A. No. 03 of 2006 in CA No. 7797 of 2003 APRSTC and Ors. v. Abdul Kareem, the Hon’ble Supreme Court vide Judgment dated 12.01.2007 has accordingly observed as follows:

“The petition is in essence and substance seeking for a review under the guise of making an application for clarification apparently being fully aware of the normal procedure that such applications for review are not, unless Court directs, listed for open hearing in court, at the initial stage at least, before ordering notice to the other side and could be summarily rejected, if found to be of no prima facie merit. The move adopted itself is unjustified, and could not be countenanced also either by way of review or in the form of the present application as well. The nature of relief sought, and the reasons assigned are such that even under the pretext of filing a review such an exercise cannot be undertaken, virtually for rehearing and alteration of the judgment because it is not to the liking of the party, when there is no apparent error on record whatsoever to call for even a review. The said move is clearly misconceived and nothing but sheer abuse of process, which of late is found to be on the increase, more for selfish reasons than to further or strengthen the cause of justice. The device thus adopted, being otherwise an impermissible move by mere change in nomenclature of the applications does not change the basic nature of the petition. Wishful thinking virtually based on surmises too, at any rate is no justification to adopt such undesirable practices. If at all it should be for weighty and substantial reasons.”

13. There is no statutory or constitutional right conferred upon the miscellaneous applicant that has been infringed upon by virtue of any of the order or clauses of the Order dated 31.07.2023 and no information or details have been provided by the miscellaneous applicant detailing the manner in which the miscellaneous applicant will be adversely affected by the order impugned. None of the provisions of CTO issued to miscellaneous applicant have been infringed by any of the clauses of the order and the miscellaneous applicant continues to be at complete liberty to fully plan, execute, operate the activities for which permission has been issued by the CTO by the competent authority subject to compliance of the environmental rules and the guidelines and conditions of the CTO.
14. This Tribunal has passed orders in furtherance of the objectives of conservation and protection of ecology which are powers exercisable entirely within the domain of this Tribunal and in no way impeding/ infringing upon any of the permissions/right conferred upon the miscellaneous applicant by virtue of the CTOs issued by the competent authority.
15. At the same place no person has any absolute right to cause any kind of noise even in his own premises which would trouble beyond his precincts and causes nuisance to neighbours or others as directed by the Hon'ble Supreme Court of India in re-noise pollution A.I.R. 2005 SCC 3136. The utilization of loudspeakers/sound amplifiers/musical or sound producing instruments can only be done after obtaining written permission from notified authority as per Rule 5 of the Noise Pollution Rules, 2000.
16. This Tribunal can intervene when there is a violation of fundamental rights guaranteed under the Constitution of India, violation of any provisions of the Constitution of India, failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the Enabling Act and nothing has been shown by the applicant as to what fundamental right of

the applicant had been violated. The mere fact that it would heard personal interest of the party does not justify invalidating the act of the policy or the action of the statutory authorities.

17. Section 114 read with O.47 R.1 of the Code of Civil Procedure, 1908 (hereinafter called C.P.C.) prescribes the limitations for entertaining a review petition. The same are; that the party filing the application for review has discovered a new and important matter or evidence after exercise of due diligence which was not within its knowledge or could not be produced by it at the time when the decree was passed; or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

The aforesaid limitations are prescribed in a crystal clear language and before a party submits that it had discovered a new and important matter or evidence which could not be produced at the earlier stage, the condition precedent for entertaining the review would be to record the finding as to whether at the initial stage, the party has acted with due diligence. "Due" means just and proper in view of the facts and circumstances of the case (vide A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27).

18. Some mistake or error, if made ground for review, it must be apparent on the face of record and if a party files an application on the ground of 'some other sufficient reason' it has to satisfy that the said sufficient reason is analogous to the other conditions mentioned in the said rule i.e. discovery of new and important matter or evidence which it could not discover with due diligence or it was not within his knowledge and, thus, could not produce at the initial stage. Apparent error on the face of record has been explained to include failure to apply the law of limitation to the facts found by the Court or failure to

consider a particular provision of a statute or a part thereof or a statutory provision has been applied though it was not in operation. Review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-line demarketing an error simplicitor from the error apparent on the face of record. But there cannot be a ground for entertaining the review in the former case. "Sufficient reason" may include disposal of a case without proper notice to the party aggrieved. Thus, if a person comes and satisfies the Court that the matter has been heard without serving a notice upon it, review is maintainable for the "sufficient reason" though there may be no error apparent on the face of record.

19. The expression 'any other sufficient reason' contained in O.47 R.1 Code of Civil Procedure means "sufficient reason" which is analogous to those specified immediately to it in the provision of O. 47 R. 1 CPC. In *Chhajju Ram Vs. Neki & Ors*, AIR 1922 PC 112, it was held by the Privy Council that analogy must be discovered between two grounds specified therein namely; (i) discovery of new and important matter or evidence; and (ii) error apparent on the face of record, before entertaining the review on any other sufficient ground. The same view has been reiterated in *Debi Prasad & Ors Vs. Khelawan & Ors*, AIR 1957 All. 67; and *Mohammad Hasan Khan Vs. Ahmad Hafis Ahmad Ali Khan & Anr.*, AIR 1957 Nag. 97.
20. In *S. Nagraj & Ors. Vs. State of Karnataka & Anr.*, 1993 Supp (4) SCC 595, the Hon'ble Apex Court explained the scope of review observing as under: -

"Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

The Court further held that the purpose of review is rectification of an order which stems from the fundamental principle that the justice is above all and it is exercised only to correct the error which has occurred by some accident without any blame. While deciding the said case the Hon'ble Supreme Court placed reliance upon a large number of judgments including in *Raja Prithwi Chand Lal Choudhury Vs. Sukhraj Rai & Ors.*, AIR 1941 FC 1; and *Rajunder Narain Rae Vs. Bijai Govind Singh* (1836) 1 MOO PC 117. The same view has been reiterated by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. & Anr. Vs. Gokulprasad Maniklal Agarwal & Anr.* (1999) 7 SCC 578.

21. A Full Bench of the Himachal Pradesh High Court, in *D. Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram* AIR 1981 HP 1, considered the scope of review and held that not considering an existing judgment of the Hon'ble Supreme Court may be a ground of review and for the same it placed reliance upon the judgments of the Privy Council in *Rajah Kotagiri Venkata Subbamma Rao Vs. Rajah Vellanki Venkatrama Rao*, (1900) 27

IA 197 (PC), wherein it was held that the purpose of review, inter alia, is to correct an apparent error which should not have been there when the judgment was given. The Court also placed reliance upon the judgment of the Federal Court in Sir Hari Sankar Pal & Anr. Vs. Anath Nath Mitter & Ors., 1949 FC 106 wherein it was held as under:-

“.....the error could not be one apparent on the face of record or even analogous to it. When, however, the Court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of O.47 R.1, Civil Procedure Code.”

In Thadikulangara Pylee's Son Pathrose Vs. Ayyazhiveettil Lakshmi Amma's son Kuttan & Ors., AIR 1969 Ker 186, the Kerala High Court considered a review application which was filed on the ground of subsequent judgment of the Court and dismissed the same observing as under:-

“If it is borne in mind that a judicial decision only declares and does not make or change the law, although it might correct previous erroneous views of the law, a review on the basis of subsequent binding authority would not be a review of a decree which, when it was made, was rightly made, on the ground of the happening of a subsequent event.”

While deciding the said case, the Court placed reliance upon the judgments of the Privy Council in Rajah Kotagiri Venkata Subbamma (supra); Chhajju Ram (supra); Bisheshwar Pratap Sahi & Anr. Vs. Parath Nath & Anr, AIR 1934 PC 213; and on judgments of

the Hon'ble Supreme Court in M/s. A.C. Estates Vs. M/s. Serajuddin and Co. & Anr., AIR 1966 SC 935; and Moran Mar Basselios Catholicos & Anr. Vs. Most Rev. Mar Poulouse Athanasius & Ors., AIR 1954 SC 526.

22. *In Sow. Chandra Kanta & Anr. Vs. Sheik Habib, AIR 1975 SC 1500, the Hon'ble Apex Court dismissed a review application observing as under:-*

“.....thus, making it that a review proceeding virtually amounts to a rehearing. May be a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious subject and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave of error is crept in earlier by judicial fallibility.”

Similar view has been reiterated by the Hon'ble Supreme Court in Sajjan Singh & Ors Vs. The State of Rajasthan & Ors, AIR 1965 SC 845; Girdhari Lal Gupta Vs. D.N. Mehta & Anr, AIR 1971 SC 2162; M/s. Northern India Cateerers' (India) Ltd. Vs. Lt. Governor of Delhi, AIR 1980 SC 674; Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma & ors., AIR 1979 SC 1047; and Green View Tea & Industries Vs. Collector, Golaghat & Anr (2002) 1 SCC 109.

23. Similarly, in Devaraju Pillai Vs. Sellayya Pillai, AIR 1987 SC 1160, the Hon'ble Apex Court held that if a party is aggrieved of a judgment by a Court, the proper remedy for such party is to file an appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a Court entertained the application for review then it has totally exceeded its jurisdiction in allowing the review merely because it takes a different view in construction of the document.

In Delhi Administration Vs. Gurdip Singh Uban & Ors., AIR 2000 SC 3737, the Hon'ble Apex Court deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bye-pass the procedure prescribed for hearing a review application. The Court also rejected the argument that review application should be entertained to do justice in the case, observing as under:-

“The words ‘justice’ and ‘injustice’, in our view, are sometimes loosely used and have different meanings to different persons, particularly to those arrayed on opposite sides.... Justice Cardozo said, ‘The Web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken. Many hues that seems to be simple, are found, when analysed, to be complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded.’”

24. In M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, the Hon'ble Apex Court held as under:-

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say

that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

In *Union of India & Ors. Vs. Mohd. Nayyar Khalil & Ors.*, (2000) 9 SCC 252, the Hon'ble Apex Court rejected the review application which was filed on the ground that the High Court had decided the case placing reliance upon the decision of the Hon'ble Supreme Court, the correctness of which had been doubted and the matter had been referred to the Large Bench of the Supreme Court. Subsequently, the Larger Bench had taken a contrary view. The review petition was dismissed on the grounds, inter alia, that the situation had not been pointed out by the counsel to the Bench when the matter was initially heard.

25. In *Subhash Vs. State of Maharashtra & Anr.*, AIR 2002 SC 2537, the Hon'ble Apex Court emphasised that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

The first and foremost requirement of entertaining a review application is that the order, review of which is sought (a) suffers from any error apparent on the face of the record, and (b) permitting the order to stand will lead to failure to justice. (Vide *Rajendra Kumar & Ors. Vs. Rambhai & Ors.*, AIR 2003 SC 2095; *Green View Tea and Industries Vs. Collector, Golaghat, Assam & Anr.*, (2004) 4

SCC 122; and Des Raj & Ors. Vs. Union of India & Anr., (2004) 7 SCC 753).

In *Zahira Habibullah Sheikh Vs. State of Gujarat*, (2004) 5 SCC 353, the Apex Court referred to its earlier judgments in *P.N. Eswara Iyer etc. Vs. Registrar Supreme Court of India*, (1980) 4 SCC 680; *Suthendraraja Vs. State*, (1999) 9 SCC 323; *Ramdeo Chauhan Vs. State of Assam*, AIR 2001 SC 2231; and *Devender Pal Singh Vs. State of NCT of Delhi*, AIR 2003 SC 3365; and observed that review applications “are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well.

26. A Division Bench of the Calcutta High Court, in re: *Mahamaya Banerjee*, AIR 1989 Cal. 106, held that a review under O. 47 R. 1 of the Code is permissible if there had been misconception of fact and/ or law by the counsel, as it will fall within the ambit of expression "sufficient reason" in O. 47 R. 1 of the Code. The Calcutta High Court proceeded with the presumption that in order to do justice, which has been denied to a party owing to patently wrong step taken by its counsel, the Court can exercise its inherent power to come to its rescue and to do justice. With all due respect, the said judgment does not lay down the correct law for the reason that it is settled legal proposition that inherent powers cannot be used by the Court where a Statute provides for a specific remedy.
27. Undoubtedly, inherent powers conferred upon the Court either under Section 151 of the Code or any other analogous provision, can be exercised by the Court to do justice or to further the cause of justice.

(Vide Manohar Lal Chopra Vs. Rai Bahadur Rao Seth Hirala, AIR 1962 SC 527; Union of India Vs. Ram Charan, AIR 1964 SC 215; and Vikas Aggarwal Vs. Anubha, (2002) 4 SCC 468). However, inherent powers cannot be used by a Court where Statute itself provides for a remedy as held by the Hon'ble Supreme Court in Manohar Lal Chopra (supra); Arjun Singh Vs. Mohindra Kumar & Ors, AIR 1964 SC 993; M/s. Ramchandra & Sons Sugar Mills Pvt. Ltd., Barabanki (U.P.) Vs. Kanhayalal Bhargava & Ors., AIR 1966 SC 1899; Nainsingh Vs. Koonwarjee & Ors., AIR 1970 SC 997; State of West Bengal Vs. Karan Singh Vinayak & ors., (2002) 4 SCC 188).

In Bhagwati Singh Vs. Deputy Director of Consolidation & Anr., AIR 1977 All. 163, the Allahabad High Court rejected the review application filed on a ground which had not been argued earlier because the counsel, at initial stage, had committed mistake in not relying on and arguing those points, observing as under:-

“It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks it should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued.”

The Court also considered the judgment of the Federal Court in Mt. Jamna Kuer Vs. Lal Bahadur & Ors., AIR 1950 FC 131, wherein an observation has been made that review is permissible if mistake has been committed by a counsel. The Court did not follow the said judgment, observing that it was a case in which a mistake had crept in the judgment of the High Court owing to an over-sight. Therefore,

it was a case wherein review was maintainable on other grounds also and the ratio of that judgment is certainly not that review lies if a counsel commits mistake.

28. More so, the expression “discovery of new and important matter of evidence” contained in the provisions of O. 47 R. 1 CPC means, discovery of an evidence or any material which may be adduced in evidence. It cannot take it in its ambit an argument which could have been advanced by the counsel.

To sum up, the substance of the said judgments is that the entire concept of writ jurisdiction is founded on equity and fairness and if the Court has committed a mistake, it should be removed entertaining a review application so that the result may not lead to miscarriage of justice, as rectification of an order stems from the fundamental principles that justice is above all. Provisions of Order XLVII Rule 1, C.P.C. permits the review even on the mistake of fact or even on ignorance of material fact. The review jurisdiction should be exercised to prevent miscarriage of justice or to correct grave and palpable errors committed by the Court. The power of review inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. (Vide *Shivdeo Singh & Ors. Vs. State of Punjab & Ors.*, AIR 1963 SC 1909; *Aribam Tuleshwar Sharma Vs. aribam Pishak Sharma & Ors.*, AIR 1979 SC 1047; *Union Carbide Corporation Vs. Union of India & Ors.*, AIR 1992 SC 248; *S. Nagaraj & Ors. (Supra)*; *Parision Devi & Ors Vs. Sumitri Devi & Ors.*, (1997) 8 SCC 715; *Surjit Singh & Ors. Vs. Union of India & Ors.*, (1997) 10 SCC 592; *Revenue Divisional Officers & Ors Vs. A. Aruna & Ors.*, (1998) 6 SCC 494; & *Rajendra Kumar & Ors. Vs. Rambhal & Ors.*, AIR 2003 SC 2095).

We do not dispute the legal propositions settled by the Hon'ble Supreme Court in the aforesaid judgments and that is the ratio of the judgments, referred to by us over and above. The power of review is to be exercised within the definitive limits. More so, a person who seeks equity must do equity and he should approach the Court with clean hands, clean mind and with clean objective. The perception of justice varies from person to person, and a litigant who succeeds in Court, claims that justice has been done with him but the litigant who loses, though may not have a case at all, raises grievance that justice has not been done with him.

29. In view of the above discussion, the law of review can be summarised that it lies only on the grounds mentioned in O. 47 R. 1CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in O. 47 R. 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. Even the judgment given subsequent to the decision in a case can be no ground for entertaining the review. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. If a counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review for the reason that he was the master of his case and might not have considered

it proper to press the same or could have thought that arguing that point would not serve any purpose. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even under the garb of doing justice or substantial justice, to engage the court again to decide the controversy already decided. If a party is aggrieved of a judgment, it must approach the Higher Court but entertaining a review to re-consider the case would amount to exceeding its jurisdiction, conferred under the limited jurisdiction for the purpose of review. Justice, as explained above, connotes different meaning to different persons in different contexts, therefore, courts cannot be persuaded to entertain a review application to do justice unless it lies only on the grounds mentioned in the statutory provisions.

30. Further relying on *Budhia Swain and others v. Gopinath Deb and others*; (1999) 4 SCC 396, the order can be recalled, if it was obtained by misleading the Court. Paras 6, 8 and 9 of the above citation are quoted below:

“6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order

- i. obtained by fraud practised upon the Court,*
- ii. when the Court is misled by a party, or*
- iii. when the Court itself commits a mistake which prejudices a party.*

In A.R. Antulay Vs. R.S. Nayak & Anr. AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,

(vi) a judgment was obtained by fraud,

() a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

i. the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

() there exists fraud or collusion in obtaining the judgment,

(i) there has been a mistake of the court prejudicing a party

or

(ii) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering

them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni Vs. Sri Kali Nath AIR 1962 SC 199, it was held :-

“The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.”

31. In our opinion a tribunal or a court may recall an order earlier made by it if:

- i. the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,
- ii. there exists fraud or collusion in obtaining the judgment,
- iii. there has been a mistake of the court prejudicing a party or
- iv. a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or

where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

32. The prayers in all application are for impleading the applicant as a party in the decided case in which he was not party. Impleading of other party can be only in the pending matters and not a decided matter. Secondly, nothing has been shown by the applicant which may adversely affect directly to the applicant. Thirdly, the original application was decided on 31.07.2023. The real cause and grievance and cause of action of the applicant is the notice issued by the Rajasthan State Pollution Control Board dated 13.09.2023 with the direction to follow the rules. Even if this order is not issued, it does not in any way authorise the citizen to violate the rules. Further, they can submit their reply before the State Pollution Control Board and the Pollution Control Board may after giving an opportunity of hearing decide the application finally and in case of any grievance they can move before the appropriate forum for revision or appeal of the order.
33. Patently, the order dated 31.07.2023 is not the real cause of the filing of this miscellaneous application and not in any way passed against the respondent.
34. The Learned Counsel for the Respondent Mr. Shantanoo Saxena has argued that the zone of influence as raised in paragraph 22 of the impugned order applied to Wetland Rules and not to Wildlife Sanctuary because the word zone of influence has been used in Wetland Rules and if the area is not coming within the Wildlife Sanctuary or not violating any Rules of Wildlife Sanctuary a blanket order cannot be passed by the State Pollution Control Board to close down the unit without specifically mentioning the violation. It is further argued that the case has to be decided in case of violation by a particular unit after issuing notice of show cause notice and after giving an

opportunity of hearing to the parties concerned. The Learned Counsel for the applicant has clearly admitted that zone of influence is applicable in case of Wetland Rules.

35. However, we make it clear that in case of any dispute with regard to “zone of influence” as mentioned in the Wetland Rules or the area of Wildlife Sanctuary, the Chief Wildlife Warden of the area and the Wetland Authority will hold the meeting and finally decide the area and the communicate decision to Collector concerned, who will notify it by way of publication. The State PCB will only act after that clarification and that too in case of violation. The application moved by Shri Shantnoo Saxena are disposed of in view of the above facts.

36. Learned Counsel Mr. Pinaki Mishra has submitted that :-

- i. In the report para 4 it has been mentioned that noise monitoring of point source carried out by the Noise Level Meters, there is contribution of noise of activities doing on in nearby area viz. horn honking by vehicles, engine voices, noise of vehicle silencer, music playing in vehicle and there is no mechanism to measure the noise pollution causes by point source only. The contention of Learned Counsel is that for the reasons as mentioned in paragraph 4 the RSPCB has to specifically examine the violation in particular case and then to issue notice and after providing an opportunity of hearing, have to decide the particular case in the matter of violation.

37. The committee has submitted that the residential/ commercial silence zone have not been notified by the Municipal Council Udaipur and without notifying the silence zones, no further action can be clearly taken by the State Pollution Control Board. Accordingly, we direct that the Udaipur

Municipal Council to notify the silence zone in consultation with the RSPCB and thereafter further proceed in accordance with the rules.

38. In the comment (page 97 of report) it has been narrated that during visit in morning/evening time no music was played but in evening time in a half hours 165 times honking of horn was heard at site and the result were more than morning. Hence indicating contribution of plying vehicles in the noise pollution. On the basis of above the RSPCB is again duty bound to examine the specific parameter and main cause of pollution and after that have to make a complaint according to the noise rules.
39. The committee has suggested to install Continuous Ambient Noise Level meters and the CCTV and the units have installed it and regularly monitored it. Thus no allegation can be levelled for violation of pollution unless specific instance is given. In para 9 of the report there is a prohibition of marriage procession bursting of fire crackers, Dhol Nagada, and Laser Light for which it is contended that these are the actions taken by the organizer of the marriage party and not by the hotel owners thus hotel owners cannot be made responsible for this. Learned Counsel for the applicant has clearly suggested and admitted that this procession and use of DJ sound system, Laser Light System, Dhol Nagada can be permitted only by the competent Authorities i.e. District Magistrate and it is for the administration and district magistrate to examine it. Accordingly, we make it clear that the functions using these items in the parties should first avail the requisite permission from the District Magistrate and they have to follow the conditions of Environmental rules and noise parameters and in case of any violation State PCB has to take action in a particular way by issuing notice mentioning the specific points of violation.
40. Main contention and grievances of the learned counsel for the respondents Shri. Deepesh Joshi is the notice issued by the State PCB, Regional officer

vide whatsapp message dated 13.09.2023 addressing to “General Manager all Hotels, Udaipur” and the contention of the learned counsel is that this is not notice in eyes of law and this cannot be issued on whatsapp and further that without mentioning the name of the hotel and without mentioning real violation under specific rule, notice is not valid and cannot be issued as presented in this case.

41. He has further submitted that an affidavit with the exact parameter of the sound level recorded within the hotel has been attached with this application that there is no violation of any parameter of noise pollution act or rules. It is further contended that the unit/hotel owner are responsible only for the noise level which is inside the hotel. Any noise exceeding the limit outside the hotel or on the road, unit holders cannot be held responsible unless and until there is a specific notice that the real cause of the noise pollution is by the unit.
42. It is further submitted that the unit have been given CTE and CTO up to 23.11.2027 and they are continuously monitoring and complying the concerned condition accordingly the whimsical notice cannot be issued in general without examining the parameter in specific unit.
43. Learned counsel for the applicant had clearly admitted that though no adverse order has been passed in the order impugned against the respondents/present applicant but even if they were not a party in this present case they cannot be permitted to violate the rules. On the other hand, the learned counsel for the present applicant after the order and directions of the Hon’ble Supreme Court of India advanced the argument that action can be taken only after notice and providing opportunity of hearing in case by any specific violation. Nothing has been shown by the State PCB as to which unit has violated which condition or what are the

specific allegation against the particular unit. Learned counsel for the applicant has fairly admitted further that none of the miscellaneous applicant was prohibited or prevented to run the hotel and no right have been violated.

44. After hearing the applicant and learned counsel for the parties the crux of the matter is the notice issued by the RSPCB on 13.09.2023 addressing “All Hotels” without mentioning any specific name of the hotel or any specific violation that to on whatsapp group which is not in accordance with the law and it is not the method of issue of the notice. Simply mentioning the original application number of the case decided by this Tribunal does not give any right to the RSPCB to proceed without examining the particular matter and violation.
45. Accordingly, we direct the State PCB, Rajasthan to specifically monitor the parameters of the noise level in a scientific manner and periodically monitor it and to examine as to whether the unit is solely responsible for the noise pollution and then to issue notice with specific facts and after providing the opportunity of hearing to the unit, State PCB is to decide the application of the matter and to communicate the unit holders and to further proceed according to rules.
46. Accordingly, the whatsapp notice (dated 13.09.2023) addressed to more than 30 hotel owners without mentioning any name of the hotel addressed to “All Hotels” without mentioning the violation of particular rules by the particular unit is null and void and will not be taken effect to. We further direct the State PCB to proceed in accordance with law and to ensure the compliance of Wetland (Conservation and Management Rules, 2017 with regard to Eco-Sensitive Zone and Rules with regard to the Wildlife Protection Act, 1972 and Noise Pollution (Regulation and Control) Rules, 2000 and to

ensure that the permissible limit as prohibited in the rules should not exceed as provided in the rules and in case of violation State PCB has to proceed in accordance with law.

47. **All Miscellaneous Applications** stands **disposed of** accordingly.

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

15th February, 2024
M.A.No.05/2023(CZ) M.A.No.06/2023(CZ)
M.A.No.09/2023(CZ) M.A.No.10/2023(CZ)
M.A.No.12/2023(CZ) M.A.No.13/2023(CZ)
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