



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 683 OF 2018

VYAKTI VIKAS KENDRA INDIA ...APPELLANT

VERSUS

MANOJ MISRA (DEAD) & ORS. ...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The present appeal arises from the common judgment dated 07.12.2017 passed by the National Green Tribunal, Principal Bench, New Delhi¹ in a batch of three applications, being Original Application² Nos. 65/2016, 76/2016 and 81/2016. For clarity, it may be noted that in the OAs filed before the NGT, the appellant was arrayed under the name and style of “Art of

¹ Hereinafter referred as “NGT” or “Tribunal”

² Hereinafter referred as “OA”

Living International Centre”. However, in the present appeal, it is indisputably submitted that the correct name of the legal entity is “Vyakti Vikas Kendra, India” and “Art of Living International Centre” is merely a centre run by the said legal entity.

2. Be that as it may, the OAs before the NGT were preferred by respondent no. 1/Mr. Manoj Misra on 08.02.2016 against a scheduled event – *World Culture Festival (WCF)* – from 11th-13th March, 2016, being organized by the appellant herein. The applicant/respondent no. 1 invoked the jurisdiction of the Tribunal by alleging violation of the decision dated 13.01.2015 passed by the NGT in OA No. 06/2012³. The said decision was concerning the environmental concerns associated with river Yamuna and its floodplains, and rehabilitation thereof. Respondent no. 1 alleged that the scheduled event was being organized on the floodplains and wetlands of Yamuna river and had damaged the said areas, thereby causing serious harm to the ecological balance and health of the river and its adjoint floodplains and wetlands.

PROCEEDINGS BEFORE THE TRIBUNAL

3. On 11.02.2016, notice was issued in the matter and on 19.02.2016, the Tribunal appointed an expert committee with mandate to visit the event site and submit its report by

³ Hereinafter referred as “Yamuna matter”

22.02.2016. The committee submitted its interim report on 22.02.2016, whereby it opined that the proposed event would damage the floodplains in a manner that rectification would require an expense of Rs. 100-120 crores. On 09.03.2016, the Tribunal passed an interim order recording that in the preparatory process, the floodplains have been drastically tampered with. It also found that the permission granted by DDA to hold the event was inconsequential. Nevertheless, the Tribunal permitted the event to take place as scheduled, subject to payment of Rs. 5 crores by the appellant in the form of environmental compensation. It also directed the appellant to furnish an undertaking that in case, the floodplains are found to be damaged after the event, the appellant would bear the cost of restoration.

4. The appellant complied with the order by filing an affidavit, without prejudice to its rights and contentions. Notably, vide a subsequent order dated 04.04.2016, the Tribunal clarified that the order dated 09.03.2016 was only an interim order and all rights and contentions of the parties were left open.

5. Post event, the Tribunal passed an order dt. 03.06.2016, thereby directing the committee to furnish a complete report of environmental damage and degradation, environmental compensation payable on account of such damage and for restoration of the flood plain. In view of the approaching rainy season and apprehension of material alteration of the floodplain,

the Tribunal directed the committee to conduct an inspection before 10.06.2016. Accordingly, an inspection was carried out by the committee on 06.06.2016 and on the basis of visual assessment, the committee submitted its report to the Tribunal on 28.07.2016. The committee concluded that the event had severely damaged the floodplain, however, it did not quantify any cost of restoration of the site to the pre-event stage. Accordingly, the committee was directed to submit the tentative costs liable to be recovered for the damage caused to the environment as a result of the event.

6. In furtherance of this direction, the committee submitted its second report on 28.11.2016. In this report, the committee submitted an action plan for rehabilitation of the floodplain, comprising of two components – physical component and biological component. It suggested a time frame of two years for the implementation of the physical component and a cost of about Rs. 28.73 crores. For the biological component, it suggested a time frame of ten years and an approximate cost of Rs. 13.29 crores. The committee further suggested the commissioning of a Detailed Project Report (DPR) for the implementation of the plan.

7. Notably, on 21.07.2017, the Tribunal constituted a committee comprising of the officials of DDA; Irrigation Department, NCT of Delhi; Irrigation Department, State of Uttar

Pradesh and Chief Engineers, with a direction to prepare an action plan in view of the reports of the expert committee in relation to the damage caused to the Yamuna floodplain by the event in question. The committee submitted its report on 28.07.2017. However, the Tribunal rejected this report by observing that the committee exceeded its jurisdiction as, instead of suggesting an action plan, it commented on the nature of damage caused to the floodplain as a result of the event.

TRIBUNAL'S VIEW

8. In view of these proceedings and reports filed by the expert committee and subsequent committee comprising of government officials, the Tribunal concluded that the event organized by the appellant herein had caused significant damage to the floodplain and wetlands. The relevant para reads thus:

“54. The reports submitted by the High Powered Committee examined in light of the orders of the Tribunal and the case pleaded by the official respondents leaves no scope for doubt that there has been damage to the flood plains. The undertaking furnished by Respondent No. 3 which was accepted by the Tribunal has to bear its consequences in law. It needs to be noticed that none of the orders passed by the Tribunal were taken up by any of the parties to the proceedings before the Hon'ble Supreme Court. They not only accepted the same but even acted thereupon. All the respondents including MoEF&CC, DDA and

MoWR clearly admitted that the event was being held on the flood plains. Respondent No. 3 can hardly be permitted to raise the contention that event site does not fall in flood plains. The so called permission granted by DDA itself refers to the area as falling under active flood plains. In fact, it was on that ground that the DDA at one point of time declined the permission to hold the event at the site in question.”

9. As regards the appellant’s contention that none of the notified wetlands was damaged by the event, the Tribunal observed that a wetland does not cease to be one merely because it has not been notified in the extant rules. The relevant part reads thus:

“56. The Committee has specifically referred to the wetlands in their report and the steps that should be taken for conservation and protection of such wetlands. The contention that the wetlands have not been notified, would no way take the case of Respondent No. 3 any further. It is primarily for the reason that in large parts of the country the wetlands as of now have neither been identified nor notified in accordance with law. But that does not by itself establish the fact that the wetlands are not in existence. A wetland could be in existence de horse the fact that it has not been statutorily so notified. It is a part of natural process and is not a man made resource.”

10. The Tribunal also turned down the appellant’s contention that the reliance placed by the expert committee on the google imagery of September, 2015 was erroneous. The Tribunal was of

the view that the committee not only relied upon the images but also conducted visual inspection on 06.06.2016. Furthermore, the Tribunal was impressed by the fact that some of the members of the expert committee had been visiting the floodplains and river stretch in relation to the earlier Yamuna matter which culminated in the 2015 judgment. The relevant observation in this regard is reproduced as:

“56. ... In fact the Expert Committee in its Report of 28th July, 2016 stated that the report is not merely based on the satellite images on 5th September, 2015 but the Committee on Page No. 4 (Internal) records that it visited both side of the river on 6th July 2016 having visual assessment and that the observations of the presence or otherwise of the wetlands, wet land vegetation and the assessment of damage to the flood plains. This is further substantiated in the report of 28th November 2016 that the damage was extensive.

*57. The Committee has also referred to the status of flood plains even prior to the event as some of the Members of the Committee have been visiting over the 22 KM of river stretch and its flood plains in connection with the preparation of the Reports to the NGT in Yamuna Judgement matter and had actually visited these areas during 2nd to 4th October, 2015 and noticed wet lands natural vegetation comprising trees, shrubs, reeds, etc., and other vegetation including water hyacinth. The Committee also noticed several species of aquatic vegetation including presence of shallow to deep water below them. **The contention of Respondent No. 3 that the damage assessment of***

the flood plains and wetlands is only based on satellite imagery of Google of September 5, 2015 is misplaced as Google imagery has only supplemental value to the field inspection that was carried out by the Committee. Google images have only been used to support what the committee found during the field visits. ”

(emphasis supplied)

11. Another contention dealt with by the Tribunal is that the expert committee’s report indicated that there was no prospect of restoration of the floodplain, and rehabilitation thereof was beyond the scope of Section 15 of National Green Tribunal Act, 2010⁴. The Tribunal turned down the contention and observed that a purposive interpretation has to be given to the words - *restoration* and *rehabilitation*, in order to achieve the objective of environmental protection. The relevant part reads thus:

“58. ...This contention is misplaced as the Expert Committee has discussed this aspect in detail and pointed out that since the flood plain is completely destroyed, levelled, compacted, water body flattened and depressions covered and in several places debris and soil dumped with crisscross paths through channels and water bodies, there is no way the original topography of the area including all the pre-existing water bodies streams channels and wetlands along with the vegetation can be restored to its original shape. In fact complete restoration and restitution of any pre-

⁴ Hereinafter referred as “NGT Act”

existing land mass or natural ecosystem is neither practicable nor possible. The choices of the word restitution and restoration have to be understood and given meaningful construction with a view to achieving the objective of protecting the environment and the flora and fauna of the area that existed prior to the destruction. With such an interpretation as given to the word restitution and restoration the word rehabilitation has to be read as conveying identical meaning.”

12. Further, the Tribunal discussed the nature of liability of the appellant, being the project proponent, and observed that the appellant was liable to face no-fault liability. It further observed that the onus lay upon the appellant to show that all due precautions were taken by it and no damage was caused to the environment as a result of its actions. The relevant part is important and it reads as:

“62. Unlike, the laws of other countries where the Courts or the Tribunals dealing with environmental issues are to determine first whether they could apply the principle of absolute liability or not and, if so, to what extent. In India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Act, 2010 to apply the principles of no fault. Thus, application of this principle is inescapable. This doctrine imposes an obligation upon the project proponent or body intending to carry on an activity to bear the consequences of its actions. The consequences would obviously include amongst others such as cost of restoration/restitution. The onus lies upon the actor to satisfy that they took all the

precautions that were required to be taken actually prior at the time and subsequent to the event and in fact there was neither any damage/degradation to the river or the flood plain nor was there any pollution after the event.

..

..

64. In our considered view, Respondent No. 3 has not been able to discharge his onerous burden in all aspects. Of course, in some areas justification has been provided particularly in the field of taking permission but in other areas the reports of the High Powered Committee on the contrary does not benefit Respondent No. 3 and in no uncertain terms places the fault on the said respondent. Principle of No Fault Liability is a tool for guiding the Tribunal in determining the liability of Respondent No. 3.

65. In view of the detailed discussion above, we have to hold that Respondent No. 3 is liable for restitution/restoration of the flood plains in accordance with the reports of the High Powered Committee. No use of repeating that the DDA itself is responsible for contributory negligence and its failure to act in accordance with law and directions contained in the Yamuna judgement (supra).”

13. In finality, the Tribunal held that the appellant was responsible for causing damage to the Yamuna floodplains and

passed various directions for restitution/rehabilitation in the following manner:

“66. ...

...

3. We hold Respondent No. 3 responsible for restoration and

restitution of the flood plain limited to portion that was allotted to Respondent No. 3 in the original condition in which it was allotted to it prior to the event. However, the restoration/restitution and other works connected thereto are to be carried out by DDA as follows:

a) The Delhi Development Authority shall assess the said

quantum of damage caused to the flood plain and the costs of restoration thereof in line with the reports of the High Powered Expert Committee.

4. We further direct the Delhi Development Authority, under the guidance of the Expert Committee to carry out restoration/restitution/other necessary works and would also ensure construction/establishment of Bio-diversity park at the site which is part of Phase-II of the plan prepared by DDA for restitution/restoration and beautification of the flood plains of river Yamuna.

5. A sum of ₹5,00,00,000/- (Rupees Five Crores) deposited by Respondent No. 3 with DDA shall be utilised for restitution/restoration and other necessary works for the flood plains of river

Yamuna in accordance with this judgement and under the supervision of the Expert Committee.

6. In the event, the expenditure for that purpose on the portion of the land forming part of Phase-II of the project of DDA is found to be in excess of ₹5,00,00,000/- (Rupees Five Crores), the DDA would be at liberty to recover the said amount and Respondent No. 3 shall be liable to pay the said amount on demand.

If finally the expenditure to be incurred on that amount is less than ₹5 Crores, the remaining amount would be refunded by DDA to Respondent No.3.”

CONTENTIONS

14. The decision of the Tribunal stands impugned before us and broadly, the following contentions have been raised by the parties before us:

On Behalf of Appellant/Vyakti Vikas Kendra India

15. It is submitted on behalf of the appellant that the event site was allotted to the appellant in a sordid and damaged condition and therefore, no damage was caused to the site by the event in question. To buttress, the appellant has relied upon the expert committee's report dated 19.04.2014, submitted in O.A. No. 06/2012, which recorded that the site was in poor and damaged condition and no flood plains were left due to numerous constructions and dumping of garbage and debris. It is further

submitted that the restorative directions issued by the NGT in Yamuna matter judgment dated 13.01.2015 were never complied with till the allotment of event site to the appellant. In this regard, reliance is placed upon the Tribunal's order dated 14.07.2015. It is further submitted that even after the allotment of land, the appellant had issued a letter dated 14.12.2015 to DDA which recorded that as of that date, construction debris was lying over 25-30 acres of the allotted land. Moreover, DDA permitted the appellant to remove the said debris, thereby admitting its existence.

16. The appellant has vehemently challenged the committee reports submitted before the Tribunal, both on findings as well as the methodology adopted by the committee. It has contended that the report dated 28.07.2016 described the state of event site as different from the committee's earlier reports dated 19.04.2014 and October, 2015, which indicated that the event site was already damaged. It is further contended that the committee neither adopted any scientific techniques nor benchmark to arrive at its findings. It is submitted that the committee relied upon one google image and visual inspections, and the Tribunal erred in relying upon the same, as the appellant's images were rejected by the Tribunal without any sound basis and by holding them inconclusive.

17. The appellant further submitted that the second report dated 28.11.2016 was also unreliable, as the committee had taken a completely contrary stand in the said report and observed that the exact state of event site could not be ascertained. It is urged that this stand itself demonstrated that restoration of the event site was not possible. It is urged that the committee unilaterally decided that the event site needed to be rehabilitated and such course of action was not within the domain of 'restoration'. It is further submitted that the Tribunal erred in equating the concepts of rehabilitation and restoration, despite the fact that even the expert committee opined that these concepts were distinct. It is further submitted that the second report is unreliable as the committee prepared the same for rehabilitation of an area even larger than what was allotted to the appellant for the event.

18. The appellant has further contended that the Tribunal erred in not relying upon the third report dated 28.07.2016, despite the fact that there was no factual dispute to the same and the rejection was only on the basis of jurisdictional excess. It is submitted that the reports relied upon by the Tribunal were inconsistent and contradictory and therefore, unreliable.

19. The appellant has also questioned the manner in which its undertaking furnished in pursuance of the order dated 09.03.2016 was held against it by the Tribunal. It is submitted that the interim order was passed without reasons and no objections were

permitted to be raised against it by the Tribunal. Furthermore, it is submitted that the undertaking furnished by the appellant was not unconditional, as it was without prejudice to the rights and contentions of the parties.

20. As regards DDA, the appellant has submitted that the question of grant of permission by DDA is not relevant to determine whether any damage has been caused by the appellant at the event site. It is submitted that if there was any breach of duty on the part of DDA, the Tribunal ought to have penalized DDA for it and not the appellant.

On Behalf of Respondent No. 2/DDA

21. It is the case of DDA that the permissions granted by it to the appellant were conditioned and precautionary in order to prevent any environmental damage. It is submitted that the Tribunal did not prohibit the appellant from going ahead with the event and in fact, it found no fault with the permission granted by DDA and allowed the event subject to the same terms and conditions as imposed by DDA in its original permission. It is further submitted that in terms of this Court's order dated 20.04.2023, DDA has carried out restoration of the allotted areas at the cost of Rs. 8.03 crores and the accounts/figures of DDA have remained unchallenged. It is further submitted that the expenditure incurred on restoration work ought to be incurred by

the appellant in view of the polluter pays principle. Notably, DDA has submitted that the Tribunal's observation that DDA acted contrary to its obligations and duties, is contrary to facts and law.

On Behalf of Respondent No. 1/Manoj Misra (Dead)⁵

22. On behalf of respondent no. 1 (original applicant before NGT), it is submitted that there is no infirmity in the impugned judgment, as the Tribunal passed a detailed judgment after three years and after examining different expert committee reports on the issue. It is contended that the event in question was organized in gross violation of the Tribunal's Yamuna matter judgment dated 13.01.2015, as it was organized on active flood plain of the river.

23. It is further submitted that the expert committee's reports were filed in addition to the photographs of the event site which indicated huge destruction on the active flood plain of the river. It is urged that the interim order dated 09.03.2016 was based on categorical findings that the flood plain was drastically tampered and the event destroyed the natural flow of the river, reeds, grasses and natural vegetation of the river bed. It is submitted that the interim order was never challenged by the appellant and the same has attained finality.

⁵ Substituted by Mr. Vikrant Tongad as per order dated 14.07.2023

24. It is further submitted by respondent no. 1 that the Tribunal had elaborately dealt with all the objections and contentions, and arguments advanced before this Court are untenable. It is further submitted that the liability fastened upon the appellant was in accordance with the principle of no-fault liability, and there is no infirmity in the same.

DISCUSSION

25. Since the subject matter at hand involves a multi-faceted discussion on law and facts, it is necessary to delineate the scope of adjudication in this matter. There is no gainsaying that it is neither advisable nor desirable for this Court to over or under adjudicate the issue at hand. Let us now advert to some admitted facts. The *lis* pertains to an event organized under the name and style of World Cultural Festival from 11-13th March, 2016. The event was organized on the active flood plains of Yamuna river in Delhi over an area comprising of 25 hectares upstream of DND flyway. It is further admitted that the event was organized by the appellant after obtaining due permissions from the authorities, including the Delhi Development Authority/DDA, which was admittedly responsible for the Yamuna flood plains in the capital. There is no dispute that the appellant had obtained the requisite approvals and permissions from the concerned authorities. Be it noted, the legality of the permission granted by DDA to hold the event in question is not the issue before us. We feel constrained

to express this in clear terms, at the threshold itself, because the Tribunal has dealt with the *vires* of the permission granted by DDA in some detail in the impugned judgment and we fail to understand the rationale for it. For, the Tribunal itself acknowledged that it was beyond its jurisdiction to decide the question of grant of permission by DDA. Further, the Tribunal did not alter the permission in any manner and retained all the terms and conditions imposed by DDA while granting permission for the event in question. Be that as it may, the permission is not impugned before us, and the only issue that arises for consideration is whether the appellant had caused damage to the floodplain of river Yamuna by organizing the event in question and consequently, whether it is responsible for restoration or rehabilitation of the same.

Pre-Event

26. Pursuant to the appellant's application, DDA granted permission to hold the event on 15.12.2015, subject to fulfilment of various conditions which were duly accepted by all concerned. Pursuant thereto, a total area of 25 hectares was handed over to the appellant in December, 2015 and the same was retained till 16.04.2016. Interestingly, on 14.12.2015, the appellant addressed a letter to DDA stating that huge construction material/debris was lying at the allotted site and sought permission to remove the

same. Pursuant thereto, DDA granted permission to the appellant to remove the construction material/debris on 21.12.2015.

27. Thereafter, the original application was filed by Mr. Manoj Misra before the NGT contending that the event was being organized in violation of the Tribunal's judgment in O.A. No. 06/2012; that the event involved massive construction activity on the floodplain; that the authorities failed to fulfil their duties and obligations and that the appellant must be held accountable for causing damage to the Yamuna floodplain in the course of preparation of the event. The Tribunal issued notice on 11.02.2016 and made it returnable on 17.02.2016. On 17.02.2016, DDA informed the Tribunal about the constitution of an inspection team to inspect the site. The Tribunal called for a report on 19.02.2016 and on the said date, the Tribunal constituted a High Powered Committee (expert committee) comprising of four members – Professor Babu, Professor A.K. Gosain, Professor Brij Gopal and Secretary of Ministry of Water Resources (or his nominee). The report was filed on 22.02.2016. On 09.03.2016 i.e. two days prior to the scheduled event, the Tribunal passed an interim order whereby it declined to restrain the event, however, it burdened the appellant with an environmental compensation of Rs. 5 crores on account of the damage caused by it to the floodplain in the course of preparation

for the event. The relevant part of this interim order is crucial and it reads as:

“7. It is the consistent view of the Experts and is sufficiently evident from the documents placed on record that the flood plains have been drastically tampered with while destroying the natural flow of the river, reeds, grasses, natural vegetation on the river bed. It has further disturbed the aquatic life of the river and destroyed water bodies and wet lands on the flood plains, which were in existence, as noticed in our judgment in the case of Manoj Misra vs. Union of India and Ors., OA No.6 of 2012 decided on 13th January, 2015. Furthermore, they have constructed ramps, roads, compaction of earth, pontoon bridges and other semi-permanent or temporary structures etc. even without the permission of the concerned authorities including Ministry of Water Resources. The permission granted by Government of NCT of Delhi is of no consequence as it is not the competent authority for rights over the river and in any case, it was a permission for only flood situation as is evident from the bare reading of the permission. In fact, that is the stand of Government of NCT of Delhi itself before the Tribunal.

For the damage caused to the environment, ecology, biodiversity and aquatic life of the river, the Foundation should be held liable for its restoration in all respects. In that regard and in exercise of our powers under Sections 15 and 17 of the NGT Act, 2010 we impose an Environmental Compensation, initially of Rs. 5 crores. This amount would be paid by the Foundation prior to the commencement of the event. This amount

would be adjusted towards the final compensation determined to be paid by the Foundation for restoration work. We hereby direct the Principal Committee constituted under the judgment, to submit a report within four weeks from today, in relation to the steps required to be taken for restoration, restitution and rejuvenation of the flood plains to its original status. It will also state the approximate cost that would have to be incurred for such restoration and restitution. We further direct that the entire area in question shall be developed as a biodiversity park in terms of our judgment in the case of Manoj Misra (supra). The cost thereof shall be paid by the Foundation and DDA in the proportion as would be directed by the Tribunal finally. The Foundation shall, by tomorrow, file an undertaking before the Tribunal that it would, within two weeks from date of demand by DDA, pay the balance amount for restoration, as directed by the Tribunal.”

28. The interim order makes it evident that the Tribunal’s observation of drastic damage and tampering of floodplain was based on the view of the expert committee and documents placed before it. It makes it further evident that the environmental compensation was ordered for restoration work for restoring the event site to its original status. By this order, the Tribunal also made it clear that the entire area in question ought to be developed into a biodiversity park in accordance with its earlier judgment, and cost thereof shall be paid by the DDA and the appellant.

29. Thus, it can be seen that at the time of interim order itself, the Tribunal had concluded that drastic damage had been caused to the floodplain by the appellant. This view was formed on the basis of the report submitted before the Tribunal on 22.02.2016 by the expert committee. Interestingly, the said report is based on a visual inspection of the floodplain at the time of the committee's visit and the report merely describes the dilapidated condition of the floodplain at that time. It does not state that the floodplain was in a different and better condition before the commencement of appellant's preparatory work for the event. The whole basis of the *lis* before the Tribunal was the causation of damage by the appellant and not mere existence of damage on the floodplain. The first report on the basis of which the Tribunal went on to return a finding of guilt against the appellant was, in our opinion, inadequate to justify such a finding. In fact, the report completely missed the mark, as discussed ahead.

30. In fairness, it may be noted that the report dated 22.02.2016 referred to an earlier report of October, 2015, which was filed in the Yamuna matter to monitor the implementation of the Tribunal's judgment dated 13.01.2015. In that report, the committee itself observed that the directions of the Tribunal in Yamuna matter were not implemented and the floodplain was in damaged condition. Similar view was expressed by the Tribunal in the order dated 14.07.2015 after noting complete non-

implementation of its judgment dated 13.01.2015 for rehabilitation of the floodplain in question. Therefore, it can be observed with certainty that prior to handing over of the site in question to the appellant, the site was in damaged condition. In such circumstances, whether the preparation work carried out by the appellant from 15.12.2015 (date of grant of permission) to 19.02.2016 (date of inspection) caused additional damage to the floodplain, is a question that the Tribunal ought to have answered before holding the appellant liable. Unfortunately, it did not.

31. The impugned judgment also does not examine other contemporaneous material which was not only relevant for the adjudication but could have even led the Tribunal to a different outcome. Such material included the appellant's letter dated 14.12.2015 addressed to DDA regarding the presence of debris and construction material at the site. In response to this letter, DDA admitted the presence of such material at the site and permitted the appellant to remove the same. Notably, this communication took place in ordinary course and prior to the institution of proceeding before the NGT. Therefore, the Tribunal could not have overlooked the same and attributed the presence of construction material/debris to the appellant. In this regard, a reference to the Tribunal's order dated 14.07.2015 is again warranted. In the said order, the Tribunal recorded DDA's submission that the entire construction material/debris had been

cleared from the site and restoration work was going on. Evidently, DDA's submission made before the Tribunal on 14.07.2015 stood falsified by its letter dated 21.12.2015 addressed to the appellant, whereby it permitted the removal of construction material/debris by the appellant.

32. We are afraid, the Tribunal got swayed by the expert committee's report that massive preparatory work is going on at the site and went on to conclude that by undertaking such work, the appellant has severely damaged the floodplain. This conclusion was reached by the Tribunal without examining the contemporaneous evidence regarding pre-existing damaged condition of the floodplain and conspicuous failure of the authorities to implement its earlier judgment in the Yamuna matter. Moreover, the finding was based on a report which was of a sweeping nature and was based on a subjective assessment of the members. The sweeping character of the report is evident from the initial statement of one of the expert members that restoration of the floodplain would require an expense of around Rs. 100-120 crores. This statement was also released in media by one of the members and was incorporated in the report without any basis whatsoever. In fact, the Chairman of the committee (vide a separate letter dated 03.03.2016) distanced himself from this finding by calling it unscientific. Unfortunately, instead of questioning the same, the Tribunal relied upon it to infer the

extent of damage. The statement was not only without basis but also stood falsified by the subsequent report of the same committee, specifically the report dated 28.11.2016, wherein the required expense was suggested to be significantly lesser. The objection in this regard was noted by the Tribunal, however, it was rejected cursorily. In view of the material on record and the findings recorded in the interim order dated 09.03.2016, we feel constrained to observe that the order was passed in utter disregard of material facts and without any objective analysis.

33. In fact, it also appears that the interim order was passed hastily as it was based on one visual inspection by the committee and did not incorporate any appreciation of the counter material. The interim order, moreover, was passed without recording reasons and reasons were expected to follow the same. However, they never followed and subsequent proceeding was limited to ascertainment of damages and rehabilitation expenses and proposed measures. Insofar as the culpability of the appellant is concerned, it stood finally decided by the Tribunal in its interim order and that too, without reasons except its reliance on the report dated 22.02.2016. Importantly, the appellant sought to revisit the interim order at various stages of the proceeding, however, the Tribunal declined to do so on the ground that the order had attained finality as the appellant never challenged the same and deposited the amount in its compliance. Surprisingly,

the Tribunal declined to revisit its findings in the interim order despite its own clarification that the interim order was passed without prejudice to the rights and contentions of the parties. If the order was without prejudice to the rights and contentions of the parties, it must have been re-tested by the Tribunal after giving due opportunity to the parties to assail the findings and prove otherwise. However, the Tribunal erroneously held on to the interim order and bound itself as well as the parties with an order which was purportedly passed in *interim* and without prejudice to their rights.

34. The findings in an interim order are interim for a reason, and the plain and simple reason is that such findings are not based on full analysis of facts and evidence. If an interim order is supposed to be treated as binding in a permanent sense and is not to be questioned in the course of a proceeding, it ceases to be an interim order and assumes finality. The Tribunal's observation that the appellant itself failed to challenge the interim order before this Court, is unsustainable. Since the order was interim in nature and was passed without prejudice to the rights of the appellant, there was no occasion for the appellant to assail it before the appellate Court and the appellant cannot be faulted for seeking to revisit the same before the Tribunal.

35. Unfortunately, the interim order was treated as final by the Tribunal throughout the proceeding, not because it was delivered

as a final order, but only because it was not assailed by the appellant and was duly complied by it by furnishing an undertaking. As regards compliance, the appellant's submission that it had no choice but to comply with the order as it was passed two days prior to the scheduled event, is not without merit. The timing of the interim order left the appellant with no choice but to bow down to it. Although, the appellant still took caution to obtain a clarification from the Tribunal that the order was only interim in nature and was passed without prejudice.

36. On an analysis of the impugned judgment, we find that the interim order had a cascading effect on the remaining proceeding as well. The entire proceeding before the Tribunal after 09.03.2016 proceeded on a conclusive assumption that extensive damage has been caused by the appellant to the floodplain, and no endeavour was made to revisit the findings of the interim order on the basis of appreciation of counter material. Somehow, on the strength of the interim order, the Tribunal proceeded with the belief that the entire damage to the floodplain was attributable to the appellant only and the proceeding was only focused on the extent of damage and rehabilitation measures/expenses. Let us now have a look at subsequent reports.

Post-Event

37. Post-event, the Tribunal passed an order dated 03.06.2016 whereby the expert committee was directed to assess "*if there has*

been any environmental damage and degradation; in relation to the environmental compensation payable in that behalf and compensation payable for restoration of the flood plain etc.”. The direction of the Tribunal seemed to be an opportunity for the committee to re-assess its interim findings and to objectively assess whether any environmental damage has been caused by the event in question. The committee filed its report on 28.07.2016. The report carries a separate section to describe the “*State of the Floodplain before the Event*”, which reads as:

“I. STATE OF THE FLOODPLAIN BEFORE THE EVENT

Some members of the Committee had been visiting the Floodplains of River Yamuna for the past couple of years for preparing their Reports to the NGT on ecological restoration of the Yamuna flood plain in the 22 km stretch of the river passing through Delhi, as ordered by the Hon'ble NGT. One such visit was made during 2-4 October 2015.

Accordingly, the floodplain of the Main Event site had huge tract of wetlands, natural vegetation comprising of trees and shrubs, tall reeds, cattails, sedges and other aquatic vegetation including water hyacinth (in the foreground). Several large water bodies and some patches of agriculture (Photos A1, A2) can be seen. The nature of aquatic vegetation also indicates the presence of shallow to deep water below them.

The status of the site is seen clearly from the satellite image of 5th Sept, 2015 (Image A3) which

shows the then-existing scenario circled in different subheads on the map. The presence of natural vegetation and large expanse of water can be readily recognised. A side channel of the river running almost parallel to it and passing under the DND flyover is also noteworthy. Some agricultural activity can be seen in the area between the side channel and the river.

These wetlands as shown in the photographs performed many ecological functions which included flood control, ground water recharge, supporting large biodiversity (birds, fish, reptiles, amphibian, numerous invertebrates and microorganisms). The invertebrates such as nematodes, snails and insects served as food for other animals whereas the microorganisms contributed to decomposition, cycling of nutrients and supported food chain. Whereas some wetland vegetation was grazed upon, large reeds, shrubs and trees contributed most significantly to carbon sequestration (storing carbon in biomass and soil), Further valuable function of wetland vegetation was to process nutrients and other pollutants thereby assimilating wastes entering the area and hence, maintaining water quality in the river and below ground.

The Eastern Floodplain (on the left of the river) has been largely under seasonal agriculture but there were some large wetlands. These can be clearly seen in the satellite image of the same date (05 September 2015) (Image A4) where the wetlands have been specifically marked.”

38. The assessment of pre-event condition of the event site begins with the personal knowledge of the committee members

of the floodplain. The report states that “*some of the members*” of the committee had been visiting the floodplain during the past couple of years for the preparation of various reports for NGT. One such visit took place from 2-4th October, 2015. The report does not specify the members who had actually visited the floodplain in October, 2015. Nonetheless, the report states that the floodplain was flourishing at the time of their visit. This observation is purely drawn out of personal knowledge of some ‘unknown’ members of the expert committee. As proof, the committee relied upon two photographs A1 and A2 to show patches of agriculture and presence of large water bodies. It is not clear whether the photographs pertain to the event site only or the other parts of the large floodplain which is significantly more expansive than the event site. The person who captured these two photographs is also not specified in the report and therefore, the source and description of these photographs are not clear. In fact, the report itself refers to a different google generated satellite image of the event site to demonstrate the state of event site before the event. The said image is dated 05.09.2015. After referring to this image and the presence of healthy floodplain in the said image, the report moves on to describe the damage caused by the appellant.

39. Thus, effectively, the expert committee’s report is based on a satellite image dated 05.09.2015 to ascertain the pre-event state

of the floodplain. The Tribunal accepted this description, almost without question, and placed reliance on the report as well as the sole satellite image generated from google earth. In a judicial proceeding, it was expected of the Tribunal to have tested the report and solitary satellite image with other contemporaneous evidence on record before giving a stamp of judicial approval to the opinion of the committee. More so, because the committee's report appears to be palpably contrasting with other material, including its own reports filed earlier.

40. Since, soon before this proceeding, the Tribunal was seized of another proceeding pertaining to the same floodplain, the reports filed in the said proceeding ought to have weighed with the Tribunal as independent, contemporaneous and dispassionate evidence. One such report was filed on 19.04.2014 which described the dilapidated and damaged state of the Yamuna floodplain. This report as well as the condition of the floodplain described therein were accepted by the Tribunal and it culminated in the final judgment passed on 13.01.2015. After judgment, an order dated 14.07.2015, already referred above, was passed by the Tribunal in the said matter wherein it lamented the state of floodplain and called out the inaction of the authorities. Pursuant thereto, it is the admitted position that a report was submitted by the same committee in October, 2015 wherein the committee submitted a restoration plan and recommended immediate action

for ecological restoration by DDA. In fact, the committee in the present matter referred to this report in its interim report dated 22.02.2016.

41. On appreciation of this contemporaneous material, it could be observed with certainty that the pre-event state of the floodplain did not present a happy picture, and it was in a damaged condition till the handing over of the site to the appellant. Despite so, the satellite image dated 05.09.2015 depicted something in stark contrast to other material. The Tribunal ought to have questioned as to how the satellite image presented a flowery picture of the floodplain, however, it did not. In fact, huge amount of debris/construction material was removed by none other than the appellant, immediately after handing over of site, to make way for the event. In the face of such material, the committee's description of the pre-event state of the floodplain, describing it as a green vista, is unreliable. In our opinion, the satellite image dated 05.09.2015 is not a reliable document, not only because it is generated from the internet, but also because it is in stark contrast with the entire surrounding material. Moreover, we fail to understand as to how the Tribunal found the google generated image of the committee as reliable, while failing to grant the same indulgence to the images produced by the appellant.

42. Be that as it may, the only fault that the Tribunal found with the report dated 28.07.2016 was that it did not suggest any cost for restoration of the floodplain. Accordingly, it directed the committee to furnish another report regarding the cost of restoration of the floodplain. It culminated in the report dated 28.11.2016, which we may now advert to. Interestingly, in this report, the committee impliedly acknowledged some inherent flaws in its earlier reports. Most importantly, it stated that there were some inherent limitations/constraints in restoration of the site as it was not possible to “*assess the ecological status of the riparian ecosystems at the site before event*”. Therefore, the committee ended up questioning its own assessment of the ecological status of the site before the event. In its earlier report, the committee described the pre-event condition of the floodplain as a green vista and in the subsequent report, it admitted the impossibility of restoration as the earlier status was not known. A complete flip. The committee went on to state that it was not possible “*to determine the state of ecosystem to which restoration has to be carried out*”. The relevant part reads thus:

“Committee takes this opportunity to further request the Hon'ble NGT, that the entire floodplain area has to be re-planned to restore topographic features, restore water bodies, and check erosion along river banks. This aspect has already been submitted in the Committee's report on restoration of flood plains in October 2015.

There are certain constraints/limitation to ecological restoration of AoL site. For example, it is not possible to: (i) assess the ecological status of the riparian ecosystems at the site before event and also to determine the state of ecosystem to which restoration has to be carried out, as the ecosystems exist in more than one state. Further, the Committee in its earlier Report clearly pointed out that:

"It is extremely difficult to assess the costs of environmental damage and degradation accurately and its restoration in terms of compensation payable because: It requires substantial time, human and other resources to collect detailed quantitative information on the nature, extent and magnitude of various activities listed earlier for the restoration. For example, the amount of debris to be dredged out and its nature and the time required, and where and how far has it to be transported for disposal has to be decided accordingly.

(a) Another major factor is the long time period required for restoration that may be a decade or more for the trees and many other species to establish.

(b) Estimation of the costs of restoration requires the preparation of a Detailed Project Report that may take several months to a year besides financial resources. ""

(emphasis supplied)

43. After noting the impossibility of restoration of the site to its pre-event status, the committee went on to suggest that

complete rehabilitation of the site ought to be carried out so that the floodplains perform their optimum ecological functions. The relevant part of the report reads thus:

“In light of above mentioned limitations it was decided to rehabilitate the impacted site to the state that enable the rehabilitated ecosystems to perform their ecological functions — (i) regulation of floods, storage of flood water, recharge ground water, stabilization of banks, purification of water, habitat for biodiversity and other ecological functions.

Ecological Rehabilitation

The ecological rehabilitation is not similar to ecological restoration in the sense that the impacted site is restored to some states of riparian ecosystems that render ecological functions/services and may not be to restored to its original natural states.”

(emphasis supplied)

44. Therefore, a careful examination of the reports filed by the expert committee suggests that in its earlier reports dated 22.02.2016 and 28.07.2016, the committee described the pre-event status of the event site in a certain manner and stated that the appellant was responsible for damaging the same. Thereafter, the committee did a somersault, as rightly submitted by the appellant herein, and admitted its inherent “limitation” or “constraint” in suggesting any restorative exercise as the pre-

event ecological status of the site was not known. It ended up admitting that the committee was clueless about the condition to which restoration ought to be carried out. Having acknowledged so, the committee went on to suggest “*rehabilitation*” of the floodplain and gave various recommendations on the lines of its earlier recommendations in the Yamuna matter. It also suggested costs for the proposed rehabilitation exercise. We have no doubt in observing that the committee’s mandate was limited to suggest measures and expenses for restoration of the event site to its pre-event condition, and to fix the liability of the appellant as it had earlier submitted that the appellant had caused the damage. Rehabilitation of the floodplain was never the issue before the committee or the Tribunal.

45. Evidently, the committee not only exceeded its mandate but also brought its earlier opinions on the issue under scanner. Unfortunately, the Tribunal could not see through the inherent flaws in the committee’s reports and instead of holding the committee’s views as unaccountable and unreliable, the Tribunal went on to adjudicate the matter by holding the appellant liable for “*rehabilitation*” of the floodplain. Notably, the appellant objected to the same and even raised a question of jurisdiction by submitting that *restoration* and *rehabilitation* could not be equated as identical concepts. However, the Tribunal cursorily rejected this objection by holding that on a purposive outlook of

the Tribunal's mandate of environmental protection, *restoration* could very well extend to *rehabilitation* of the affected area.

46. In our view, the Tribunal fell in error in equating the distinct concepts of *rehabilitation* and *restoration*. Going by its plain meaning in the context of environmental jurisprudence, rehabilitation refers to complete reparation of the affected area in a manner that it becomes fully functional and provides optimum ecological services. Restoration, however, refers to a process whereby the affected area is simply brought back to its original state, regardless of how optimum the original state was. Whereas the focus of rehabilitation is to achieve optimum ecological functionality; the focus of restoration is to achieve the original state, irrespective of functionality. No doubt, rehabilitation is supposed to be the ideal end goal for any ecologically affected area, however, we are not contemplating the same in this *lis*. The task of rehabilitation of public resources falls upon the shoulders of the State and it must be undertaken by the State by upholding the spirit of public trust doctrine and the principle of intergenerational equity. The responsibility of private persons gets triggered when environmental damage or degradation is attributable to them.

47. The present matter pertains to alleged environmental damage by one party and if so proved, the ascertainment of environmental compensation payable by that party for restoration

of the area to its original state. The Tribunal, while deciding the subject matter in question, was exercising its powers under Section 15 of NGT Act, which provides for restitution/restoration of the environment and compensation in lieu thereof. In the exercise of this power, the Tribunal could have ordered the compensation for restoration or restitution of the event site to its original condition. However, the same was clearly ruled out as the expert committee itself admitted in its report dated 28.11.2016 that the original ecological condition of the event site could not be known. In order to take the proceeding to a logical conclusion, the expert committee exceeded its own mandate and proposed full-fledged rehabilitation of the floodplain in view of its earlier recommendations in the Yamuna matter, and the Tribunal got swayed and ended up passing directions for rehabilitation of the floodplain. In doing so, it missed the fine distinction between rehabilitation and restitution/restoration, and exceeded its jurisdiction under Section 15 of NGT Act. Notably, even the expert committee underscored this distinction in its report dated 28.11.2016 and specifically observed that *“ecological rehabilitation is not similar to ecological restoration in the sense that the impacted site is restored to some states of riparian ecosystems that render ecological functions/services and may not be to restored to its original natural states”*.

48. Importantly, while passing rehabilitative directions, the Tribunal also directed the recovery of costs of proposed biodiversity park from the pocket of the appellant. Whereas, it is no one's case that any biodiversity park was in existence at the event site allotted to the appellant. The proposal of biodiversity park at the Yamuna floodplain was a result of the Tribunal's judgment dated 13.01.2015 and it was a standalone responsibility of the concerned public authorities/DDA. The Tribunal completely altered the character of the dispute before itself and converted it into a proceeding for fresh development of the Yamuna floodplain, and in doing so, it burdened the appellant to bear the expenses of such development activity. Effectively, the Tribunal burdened the appellant with the task of developing something that it never destroyed.

49. We may, at this stage, also take note of the third report filed by a different committee, mainly constituted by government officials. This committee was directed to propose an action plan for rehabilitation of the event site and it filed its report on 28.07.2017. Interestingly, this committee inspected the event site and reported that the site where the event in question was held was fully covered with grass and portions thereof were under water. It also reported that there was no debris at the site and no significant wetland/water body was found in the area allotted for the event. Furthermore, this committee examined the google

earth images of the event site taken before and after the event, and reported that there was not much difference in the condition of the area before and after the event. The difference, if any, was attributable to the monsoon season at the time when the pre-event picture dated 05.09.2015 was taken. The committee further reported that no compaction of soil was found at the event site and the said land was used for agriculture purposes as well.

50. Therefore, the third report effectively nullified the allegations of damage and removed the taint of causing damage/degradation from the event organized by the appellant. However, the Tribunal rejected this report on the ground that the committee was not supposed to report on damage, and was only tasked to propose an action plan. In doing so, the facts reported by the committee were neither challenged nor disproved. Notably, even prior to the third report, the question of damage at the hands of the appellant had become a moot question. For, the original state of the event site could not be ascertained by the expert committee and whatever could be ascertained indicated that the site was already in a dilapidated state. However, the third report fully seized the question and left no doubt that the entire issue was a complete non-starter. Despite so, the Tribunal chose to focus on the fact that the committee had exceeded its domain and needlessly reported about the absence of any damage at the site. We cannot approve of the approach adopted by the Tribunal.

As a neutral fact-finding body, the Tribunal ought to have taken all relevant material into consideration for deciding the liability of the appellant.

51. Before parting, we feel constrained to note the manner in which the principle of no-fault liability has been invoked by the Tribunal in this matter. The Tribunal has observed that it was for the appellant to have shown that it took due precautions or that it caused no damage or deterioration of the environment. The impugned judgment notes that the appellant could not discharge its burden and therefore, the appellant must bear the liability on account of the principle of no-fault liability. Since the Tribunal has drawn its powers from Section 17 of NGT Act, we reproduce the same as follows:

“17. Liability to pay relief or compensation in certain cases.

—(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or

operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault.”

52. Section 17 provides that where any injury is caused to the environment as a result of the adverse impact of any activity, the person responsible for such activity shall be responsible for the injury. Sub-section (3) of the provision specifically applies to the cause of an accident. The Tribunal has relied upon Section 17(3) of the Act, however, it is quite evident that we are not dealing with the consequences of any accident. The word “*accident*” would refer to cases involving hazards, such as gas leak, etc. Nevertheless, *polluter pays principle* has assumed a place of permanence in our environmental jurisprudence and Section 17 is merely a legislative manifestation of the same. Therefore, there is no doubt in the proposition that the polluter must pay and must be held as absolutely liable for environmental degradation caused by it.

53. However, the applicability of this principle is contingent upon various factors and the foremost factor is the causation of

real damage. Further, the establishment of a causal link between the actions of the project proponent and the resultant environmental degradation is equally necessary. In other words, the alleged person must be a “*polluter*” before it is held as absolutely liable in law. No doubt, if this link is established, no excuse matters. However, the principle cannot be invoked unless the degradation is attributable to the alleged person. In the present case, the causal link has not been established by any standard. In fact, there is ample material on record to show that the event site was already in a dilapidated condition prior to its handing over to the appellant. We also find ourselves in disagreement with the Tribunal’s view that the appellant could not prove that it did not cause the damage. It is so because the Tribunal simply disallowed the appellant from questioning its earliest findings in the interim order dated 09.03.2016, and denied any opportunity to the appellant to revisit the said findings. Moreover, the material on record actually goes on to prove that damage, if any, cannot be attributed to the appellant. It is a different matter that the Tribunal overlooked the exculpatory material.

54. Having said that, we find ourselves in agreement with the observations regarding DDA. The manner in which permission was granted by DDA to hold the event on an active floodplain of the river cannot be approved. It was not only avoidable, but was also not consistent with the precautionary principle and doctrine

of public trust. We feel that the DDA was bound to act in a manner that the trust reposed in it, as the agency responsible for the rehabilitation and ecological maintenance of the Yamuna floodplain, is not shaken in any manner. Further, DDA was bound to take all preventive steps and precautions to avoid any further deterioration of the active floodplain. Evidently, the authority failed to act in accordance with its duties towards the public at large.

55. However, as noted above, the question of grant of permission by DDA is not a subject matter of consideration before us and the task of rehabilitation of the Yamuna floodplain has already been assigned to the authority. In this regard, the Tribunal has already rendered a comprehensive judgment in the Yamuna matter on 13.01.2015 and no further direction is necessitated from this Court.

56. In view of the foregoing discussion and findings, the impugned judgment dated 07.12.2017 is set aside along with all consequential and interim actions taken against the appellant herein. The appellant is entitled to refund of the amount of Rs. 5 crores deposited by it to DDA, in compliance of the Tribunal's order dated 09.03.2016. The same shall be refunded by DDA within four weeks from today. Suffice to note that DDA shall continue to carry out the rehabilitation work at the Yamuna floodplains as per the proposed plan and directions issued by the

Tribunal from time to time. We have not altered the responsibilities entrusted to DDA concerning the management or rehabilitation of the Yamuna floodplains, in any manner.

57. Accordingly, the appeal stands disposed of along with pending application(s), if any.

.....J.
[SATISH CHANDRA SHARMA]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI
AUGUST 22, 2026.