2025 INSC 1112

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10043 OF 2024

CONFEDERATION OF REAL ESTATE DEVELOPERS ASSOCIATION OF INDIA (CREDAI) ... APPELLANT

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

WITH

CIVIL APPEAL NO. 5532 OF 2025

GODREJ PROPERTIES LTD. ... APPELLANT

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

WITH

CIVIL APPEAL NO. 5533 OF 2025

SAI SAHARA DEVELOPERS LTD ... APPELLANT

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

J U D G M E N T

R. MAHADEVAN, J.

1. We have heard the learned senior counsel appearing for the appellants, including the intervenor, the learned Additional Solicitor General of India appearing for Respondent No. 1, and the learned senior counsel for Respondent No. 3. We have also perused the materials available on record.

2. The appellants herein are the Confederation of Real Estate Developers' Associations of India[1] (Civil Appeal No.10043 of 2024), Godrej Properties Ltd. (Civil Appeal No. 5532 of 2025), and Sai Sahara Developers Ltd. (Civil Appeal No.5533 of 2025). These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010[2], assailing the final order dated 09.08.2024 passed by the National Green Tribunal, Central Zone Bench, Bhopal[3] in Original Application No. 93 of 2024 (CZ).

3. By the impugned order, the NGT allowed the original application filed by Respondent No. 3, and directed Respondent No. 1, Ministry of Environment, Forest and Climate Change[4] to ensure that all building and construction projects falling wholly or partly within 5 km of the following categories: -

(i) protected areas notified under the Wildlife (Protection) Act, 1972,

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[1] In short, "CREDAI"
[2] In short, "the NGT Act"
[3] In short, "NGT"
[4] In short, "MoEF&CC"

(ii) critically polluted areas and severely polluted areas identified by Respondent No. 2, Central Pollution Control Board[5],

(iii) eco-sensitive areas notified under Section 3(2) of the Environment (Protection) Act, 1986[6], and

(iv) inter-state boundaries

shall be treated as 'Category A' projects and appraised at the Central Level by the Sectoral Expert Appraisal Committee[7]. Respondent No. 1 was further directed either to strictly implement the Environmental Impact Assessment Notification dated 14.09.2006[8], or to issue a clarificatory notification.

3.1. In arriving at its conclusion, the NGT held, *inter alia,* that –

(i) The "General Conditions" under the EIA 2006 Notification are applicable to projects and activities covered under item 8(a) – Building and Construction Projects, and item 8(b) – Township and Area Development Projects of the Schedule thereto; and

(ii) The Notification dated 22.12.2014[9] issued by MoEF&CC, inserting a Note under items 8(a) and 8(b) excluding the applicability of the General Conditions, stood quashed by judgment dated 06.03.2024 of the High Court of Kerala in *One Earth One Life v. MoEF*[10]. Consequently, the General Conditions now

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[5] In short, "CPCB"
[6] In short, "the EP Act"
[7] In short, "Central SEAC"
[8] In short, "EIA 2006 Notification"
[9] In short, "EIA 2014 Notification"
[10] WP (C) No. 3097 of 2016

stand revived and are applicable to projects and activities under items 8(a) and 8(b) of the EIA 2006 Notification.

4. Although the appellants were not parties before the NGT, they are directly and substantially affected by the impugned order, as the findings and directions therein have an adverse bearing on their ongoing and proposed real estate projects, resulting in indefinite delays in execution and completion. The appellants, therefore, invoking their statutory right of appeal under Section 22 of the NGT Act, have approached this court with the instant appeals.

5. The learned Senior Counsel appearing for the appellant in Civil Appeal No.10043 of 2024 submitted that the appellant – CREDAI – is the apex body of private real estate developers in India, established in 1999 with the objective of transforming the real estate sector and promoting housing and habitat. It represents more than 13,000 developers across 230 city chapters in 21 States, and plays a significant role in policy formation concerning the real estate industry. The members of the appellant undertake projects falling within items 8(a) – Building and Construction Projects, and Item 8(b) – Township and Area Development Projects – of the Schedule to the EIA 2006 Notification.

5.1. The learned Senior Counsel contended that the "General Conditions" (GC) under the EIA 2006 Notification are inapplicable to Items 8(a) and 8(b). The said Notification issued by the MoEF&CC under Sections 3(1) and 3(2)(v)

of the EP Act, prescribes the process for obtaining environmental clearance for projects and activities listed in its Schedule. Paragraph 2 stipulates that projects under Category A are to be appraised at the Central Level by the Expert Appraisal Committee, whereas Category B projects are to be considered by the State Environment Impact Assessment Authority [11]. Paragraph 4 further bifurcates Category B into B1 and B2 projects, with B1 projects requiring submission of an EIA report, and B2 projects being exempt.

5.1.1. It was further submitted that the Schedule itself contains five columns: Columns 1 and 2 specify the project/activity; Columns 3 and 4 indicate whether they fall under Category A or Category B; and Column 5 records conditions, if any. Under this framework, Item 8(a) – Building and Construction projects – is classified as B2, and Item 8(b) – Township and Area Development projects – is classified as B1. Crucially, Column 5 against these items contains no stipulation that the General Conditions shall apply. By contrast, wherever the legislature intended the General Conditions to apply, it has expressly so provided – for example, Items 1(a), 1(c), 1(d), 2(a), 2(b), 3(a), 3(b), 5(d) to 5(k), 6(b), and 7(d) to 7(i). The deliberate omission in respect of Items 8(a) and 8(b), it was argued, unmistakably reflects legislative intent.

5.2. In support of his contention, the learned Senior Counsel placed reliance on the judgment of this Court in ***In Re: Construction of Park at Noida Near***

[11] In short, "SEIAA"

Okhla Bird Sanctuary[12], wherein, this Court, after referring to the minutes of a high-level meeting chaired by the Hon'ble Prime Minister on 06.07.2006, noted that the decision to exclude Items 8(a) and 8(b) from the sweep of the General Conditions was consciously taken to promote decentralisation. Paragraph 84 of the Judgment expressly observed that "*the question of application of general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute*". Consistent with this, the EIA Notification dated 22.12.2014[13] inserted in Column 5 against Items 8(a) and 8(b), the explicit stipulation: "General Conditions shall not apply".

5.3. It was also submitted that the NGT, relying on the Kerala High Court's judgment in ***One Earth One Life v. MoEF*** (supra), erroneously concluded in Paragraph 40 of the impugned order that the General Conditions are "undisputably applicable" to Items 8(a) and 8(b).

5.4. According to the learned Senior Counsel, the EIA 2014 Notification was merely clarificatory, issued pursuant to this Court's directions in ***Okhla Bird Sanctuary***, reaffirming what was already implicit in the scheme of the EIA 2006 Notification – namely, that the General Conditions were never intended to apply to Items 8(a) and 8(b). The absence of such stipulation in Column 5 against these entries itself establishes this position.

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[12] (2011) 1 SCC 744
[13] In short, "EIA 2014 Notification"

5.5. It was further submitted that the Kerala High Court set aside the EIA 2014 Notification only on procedural grounds, i.e., deviation from the draft notification and inadequate consideration of objections. The High Court did not pronounce upon the substantive correctness of the clarification or the underlying legal position. In fact, the consistent view of the MoEF&CC, as reflected in several Office Memoranda and its Counter Affidavit before this Court, was that Items 8(a) and 8(b) are exempt from the General Conditions. The NGT's assumption that the quashing of the EIA 2014 Notification automatically revives the applicability of General Conditions is, therefore, untenable.

5.6. Thereafter, the learned Senior Counsel drew our attention to paragraph 41 of the impugned order, whereby the NGT issued consequential directions. It was urged that since those directions rest entirely on the erroneous finding in paragraph 40, they are without legal foundation and defeat the very purpose of decentralization – a purpose expressly recognized by this Court in ***Okhla Bird Sanctuary***.

5.7. Regarding the maintainability of the application, the learned Senior Counsel argued that the jurisdiction of the NGT under Sections 14, 15, and 2(m) of the NGT Act, is confined to substantial environmental questions arising in a *lis* between parties, and not to academic or abstract issues. Reliance was placed on ***Techi Tagi Tara v. Rajendra Singh Bhandari***[14], wherein this Court

[14] (2017) 11 SCC 734

cautioned against the NGT transgressing its statutory mandate by entertaining policy-oriented or academic questions.

5.7.1. On this basis, it was submitted that the application of Respondent No. 3 before the NGT was not maintainable, as it was not founded on any personal grievance or demonstrable nexus with the projects concerned. Sections 14 and 15 contemplate reliefs such as compensation, restitution of property, or restoration of the environment – all of which necessarily presuppose the existence of a claimant seeking redress. In the absence of such a claim, the proceedings were beyond the NGT's jurisdiction.

5.8. The learned Senior Counsel further pointed out that Respondent No. 1 – MoEF&CC – in its pleadings, categorically clarified that the scrutiny conducted at the State Level by SEIAA / SEAC is of the same rigour as that undertaken by the Central EAC. These bodies, though constituted by the Central Government, are manned by experts meeting the eligibility criteria under the EIA 2006 Notification, and are fully competent to appraise projects and grant environmental clearances.

5.9. It was submitted that the decentralization of Items 8(a) and 8(b) to the State Level was a conscious legislative choice, designed to secure timely and effective decision-making. The NGT's order directing such projects to be

shifted to the Central Authority, frustrates legislative intent, overburdens the Centre, and causes avoidable delays.

5.10. It was also argued that the NGT's reliance on Respondent No. 3's submission, premised on the Office Memorandum dated 31.10.2019, is misplaced. That Memorandum dealing with projects in critically polluted areas[15] and specially polluted areas[16] is inapplicable to projects under Items 8(a) and 8(b). The subsequent Office Memorandum dated 13.03.2020 clarified that the earlier Memorandum dated 24.05.2011 would continue to govern projects under Items 8(a) and 8(b), which would remain within the jurisdiction of SEIAA / SEAC. The order in O.A. No. 1038 of 2019, which formed the basis of the 31.10.2019 Memorandum, did not direct any change in the appraisal process for such projects.

5.11. In conclusion, it was urged that the impugned order of the NGT is vitiated by want of jurisdiction, misreading of statutory notifications, disregard of legislative intent, and failure to follow binding precedent. The order, apart from causing grave prejudice to stakeholders, does not advance any genuine or substantial environmental objective, and accordingly, deserves to be set aside.

6. The learned Senior Counsel appearing for the appellant in Civil Appeal No. 5532 of 2025 submitted that the appellant – Godrej Properties Ltd.– is a public limited company forming part of the Godrej Industries Group, which has

[15] In short, "CPA"
[16] In short, "SPA"

diversified business interests including real estate development. The appellant is amongst the fastest growing luxury real estate developers in the country, with a portfolio of approximately 239 million square feet of development comprising 79 ongoing projects and 34 forthcoming projects across India. A substantial portion of its customer base is located in Mumbai.

6.1. The learned Senior Counsel adopted the submissions advanced on behalf of CREDAI.

6.2. It was further submitted that pursuant to the directions issued by the NGT, there is presently no authority competent to appraise applications for Environmental Clearance in respect of projects falling under Items 8(a) and 8(b) of the Schedule. By virtue of the impugned order, the State SEACs have been precluded from granting Environmental Clearance for such projects; and, as stated by the Union of India in its reply affidavit in CA. No. 10043 of 2024, the Central Authority is also not in a position to appraise these projects.

6.3. It was also pointed out that this policy paralysis has severely prejudiced the appellant's ongoing projects as well as hundreds of homebuyers. Of the five projects presently under consideration, four pertain to expansion of Environmental Clearances already granted under the EIA 2006 Notification, while one project involves a fresh application filed before the SEIAA. During the pendency of the present appeal, in order to avoid delay and protect the interests of stakeholders, the appellant submitted all five projects to the Central

SEAC for appraisal. However, as matters stand, neither the State SEIAA nor the Central SEAC is appraising the projects, leaving the appellant without any effective remedy.

6.4. The learned Senior Counsel further submitted that as a direct consequence, more than 1,469 flat purchasers are affected, whose homes are at stake, since the appellant has already created third party rights on the strength of the Environmental Clearances initially granted by the SEIAA. Additionally, approximately 613 families whose houses are being redeveloped by the appellant are indefinitely deprived of possession. All these projects are registered under the Real Estate (Regulation and Development) Act, 2016 (RERA). The appellant is therefore bound by statutory as well as contractual obligations to complete construction and hand over possession within the prescribed timelines. Non-compliance would expose the appellant to serious consequences under RERA, including liability to pay interest for delayed possession, imposition of penalties, and directions to ensure timely completion and delivery of flats. In effect, the appraisal process for projects under Items 8(a) and 8(b) has come to a complete standstill by reason of the impugned order, resulting in cascading adverse consequences not only for the appellant but also for thousands of innocent stakeholders.

7. The learned Senior Counsel appearing for the appellant in Civil Appeal No.5533 of 2025 submitted that the appellant – Sai Sahara Constructions –is a

partnership firm engaged in the business of purchase and sale of land and construction of residential and commercial buildings under the trade name "Sai Sahara Developers". The firm was constituted by a Partnership Deed dated 01.10.2022 at Nashik, Maharashtra.

7.1. It was contended that the NGT passed the impugned order based on a fundamentally flawed reading of the ***Okhla Bird Sanctuary*** judgment. A contextual interpretation of paragraph 84, alongside paragraphs 59 and 60 of the judgment, makes it clear that the legislative intent was to exempt Items 8(a) and 8(b) under the EIA 2006 Notification from the operation of the General Conditions. The authority to determine the level of appraisal lies exclusively with the legislature and the competent authority under the EIA framework. Since State-level appraisal for these items is expressly mandated, the NGT lacked jurisdiction to alter this statutory scheme. The omission of any condition in Column 5 for Items 8(a) and 8(b), unlike other entries, reflects a deliberate legislative choice to exclude the General Conditions. This interpretation is further supported by the plain language of the Notification and multiple Office Memoranda issued by MoEF&CC. Accordingly, by reinterpreting an unambiguous statutory scheme, the NGT overstepped its jurisdiction, contrary to the principle of strict interpretation and the binding precedent in ***Okhla Bird Sanctuary***.

7.2. The learned Senior Counsel further submitted that the Kerala High Court's judgment quashing the EIA 2014 Notification does not alter the existing

legal framework, as the 2014 Notification was purely clarificatory. The original EIA 2006 Notification never extended the General Conditions to Items 8(a) and 8(b), which deal with building and construction projects. Moreover, the Kerala High Court's decision has no binding effect outside its territorial jurisdiction and cannot determine the interpretation of law by other High Courts or by this Tribunal. The principle of *stare decisis* operates only within the territorial limits of the concerned Court. Paragraphs 41 and 42 of the impugned order, however, led to indefinite delays not only in the appellant's project but also in numerous real estate projects across the country. Such delays jeopardise the financial and practical viability of these projects, and the blanket suspension of environmental clearances has had a cascading impact on housing development, thereby infringing the fundamental rights to shelter and livelihood under Article 21 of the Constitution for thousands of affected persons, including slum dwellers, society members, and homebuyers.

7.3. It was also contended that the impugned order failed to consider the Office Memoranda dated 24.05.2011 and 13.03.2020, which clearly stated that the General Conditions are inapplicable to projects under Items 8(a) and 8(b) of the Schedule. These Memoranda reaffirmed that, since the inception of the EIA 2006 Notification, such projects have consistently been appraised at the State level by SEAC/SEIAA. However, Respondent No. 3 suppressed these crucial documents and failed to place them before the NGT, leading to their non-consideration in the impugned order.

7.4. On the issue of jurisdiction, learned Senior Counsel referred to the Preamble of the NGT Act, which emphasizes that the Tribunal is constituted for the effective and expeditious disposal of cases relating to environmental protection and conservation of natural resources, including the enforcement of legal rights relating to the environment and the grant of relief and compensation for damages to persons and property.

7.4.1. Reference was also made to Chapter III of the Act, which deals with the jurisdiction, powers, and procedure of the Tribunal. In particular, Sections 14 and 15, confine its jurisdiction to civil cases involving a substantial question relating to the environment, and to disputes capable of settlement through relief, compensation, or restitution. On a combined reading of these provisions, it was submitted that the Tribunal's jurisdiction does not extend to abstract policy issues or to directions in the nature of mandamus against the MoEF&CC.

7.5. It was further submitted that in the present case, Respondent No. 3 approached the Tribunal *suo motu*, without any existing *lis* or locus, seeking directions to classify and appraise certain building and construction projects as Category A at the Central level and to extend the General Conditions to Item 8 of the Schedule. Such directions fall outside the Tribunal's jurisdiction. The Notification under challenge in WP (C) No. 166 of 2025 is purely clarificatory, reaffirming the pre-existing legal position that the General Conditions do not apply to Items 8(a) and 8(b).

7.6. In view of the above submissions, the learned Senior Counsel prayed that the impugned order of the NGT be set aside and the present appeal allowed.

8. The learned Senior Counsel appearing for the Intervenor – Ricardo Constructions Pvt., Ltd., submitted that the Intervenor became the lawful owner of the project pursuant to a registered conveyance deed dated 29.06.2019, executed after the erstwhile promoter failed to complete the development and defaulted on loan repayments, leading to SARFAESI proceedings in 2019. The project is situated at Village Mulund, Jata Shankar Dosa Marg, Mulund (W), Mumbai, on plots bearing CTS Nos. 661/1/4 to 661/1/8. The Intervenor planned an expansion comprising 10 residential buildings. Out of these, 5 buildings (1A, 3, 4, 7, 8) were completed prior to the EIA Notification; 3 buildings (5, 6, 9) obtained Environmental Clearance on 03.09.2014; and 2 new buildings (1B and 2) are presently proposed. The project enjoys excellent connectivity, being 0.39 km from Mulund Railway Station and 14 km from Mumbai International Airport, with hospitals, schools, colleges, and banks in close proximity. Since the project site is located 1.06 km from Sanjay Gandhi National Park and Thane Creek Flamingo Sanctuary, it falls within Category A under the EIA 2006 Notification. Accordingly, the Intervenor applied to the Expert Appraisal Committee (EAC) on 09.09.2024 and also obtained Consent to Establish and Operate from the Maharashtra Pollution Control Board on 02.08.2024, valid up to 02.08.2025. The estimated project cost is approximately Rs. 980 crores.

8.1. It was submitted that the General Conditions under the EIA 2006 Notification, are inapplicable to Building and Construction Projects. Items 8(a) and 8(b) of the Schedule expressly leave Column 5 (Conditions, if any) blank, whereas in other categories, where General Conditions apply, the same are specifically mentioned. This Court in ***Okhla Bird Sanctuary*** clarified that General Conditions do not apply to Building and Construction Projects. Hence, even prior to the 2014 amendment, Items 8(a) and 8(b) stood exempt from General Conditions.

8.2. Learned Senior Counsel further pointed out that the Kerala High Court in ***One Earth One Life v. MoEF*** (supra) quashed the EIA 2014 Notification only insofar as it operated within the State of Kerala. That judgment has no application beyond the territorial jurisdiction of that High Court. Reliance was placed on the decision of this Court in ***East India Commercial Co. Ltd. v. Collector of Customs***[17], wherein, it was held that judgments of High Courts are binding only within their respective territorial jurisdiction. The NGT, therefore, erred in extending the effect of the Kerala High Court's judgment across the country, thereby stalling thousands of projects nationwide without legal justification.

8.3. It was further urged that the quashing of the 2014 Notification does not result in automatic revival of the pre-existing regime of General Conditions. It is a settled principle that annulment of a law or notification does not *ipso facto*

[17] AIR 1962 SC 1893

revive an earlier law unless there is an express provision to that effect. Reference was made to the Doctrine of Eclipse as explained in ***Bhikaji Narain Dhakras v. State of Madhya Pradesh***[18], which holds that a law rendered inoperative is not obliterated but remains in a dormant state, and does not automatically revive unless re-enacted or specifically revived. Since there was no such revival in the present case, the General Conditions cannot be applied to Item 8 projects.

8.4. Finally, it was contended that the impugned order of the NGT is vitiated by breach of the principles of natural justice. The order has a far-reaching impact on construction projects across the country, including the Intervenor's project, yet no opportunity of hearing was afforded to affected stakeholders. This omission amounts to a clear violation of the principle of *audi alteram partem*. The NGT, by misinterpreting the scope of its jurisdiction and the EIA Notification, has exceeded its authority. Hence, the impugned order deserves to be set aside by this Court to rectify the legal error, prevent undue losses, and safeguard the rights of lawful project developers.

9. *Per contra*, the learned Additional Solicitor General of India, appearing for Respondent No.1, made the following submissions:

9.1. The Ministry, in exercise of its powers under Section 3(1) and clause (v) of Section 3(2) of the Environment (Protection) Act, 1986, issued S.O. 1533(E) dated 14.09.2006 (*principal notification*) mandating prior Environmental

[18] AIR 1955 SC 781

Clearance (EC) for projects listed in the Schedule thereto. The EC is granted following the Environmental Impact Assessment (EIA) process laid down in the notification, as amended from time to time.

9.2. The EIA 2006 Notification prescribes "General Conditions" (GC), which provide for the re-categorization of certain Category 'B' projects as Category 'A' where they are located, wholly or partly, within 5 km or 10 km, as the case may be, of: (i) Protected Areas under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted Areas notified by CPCB, (iii) Notified Eco-Sensitive Areas, or (iv) Inter-State / International boundaries. However, GC applies only where expressly mentioned in Column 5 of the Schedule. Since no such reference was made in respect of items 8(a) and 8(b), the General Conditions were never applicable to them. This was clarified by an Office memorandum dated 24.05.2011, which specifically stated that Building and Construction Projects [8(a)] and Township / Area Development Projects [8(b)] do not attract GC, even in critically polluted areas and hence, remain within SEIAA jurisdiction.

9.3. A further Notification dated 22.12.2014 amended the EIA 2006 Notification to explicitly reaffirm that GC did not apply to items 8(a) and 8(b). However, the High Court of Kerala in ***One Earth One Life v. MoEF&CC*** (supra), quashed the 2014 Notification on the sole technical ground that the final notification differed from the draft, while leaving liberty to the Ministry to issue a fresh notification.

9.4. Subsequently, the NGT, by the impugned order dated 09.08.2024, directed Respondent No.1 either to comply with the provisions relating to GC applicability to Items 8(a)and 8(b) or issue a clarificatory notification. That order proceeded on a misreading of the Kerala High Court's judgment. In fact, Items 8(a) and 8(b) were never subject to GC, even under the principal notification.

9.5. Pursuant to the NGT's directions, the Ministry prepared a draft clarificatory notification, which was referred to the Ministry of Law and Justice (MoLJ) for vetting. MoLJ opined that since the 2014 Notification had substituted Entry 8, and the Kerala High Court had quashed the substituted entry, the original entry did not automatically revive. Relying on ***B.N.Tiwari v. Union of India***[19] MoLJ advised that a fresh notification was necessary to reinsert the provision. A legal vacuum thus arose, necessitating issuance of a fresh notification. Accordingly, a draft notification dated 07.11.2024 was published, inviting objections and suggestions. After considering 668 responses and consulting the Expert Appraisal Committee, the Ministry finalized and issued a notification dated 29.01.2025, explicitly reiterating that GC does not apply to items 8(a) and 8(b).

9.6. This notification was challenged in ***Vanashakti v. Union of India*** [W.P. (C) No. 166 of 2025], wherein this Court granted an exparte stay on 24.02.2025.

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[19] AIR 1965 SC 1430

Consequently, another legal vacuum has arisen, and the Ministry is unable to process any application under item 8.

9.7. On the competence of SEIAAs and SEACs, it was submitted that these bodies were constituted to decentralize decision-making, avoid delays, and ensure efficiency in granting ECs. SEACs comprise experts of comparable standing to members of Central EACs, with eligibility criteria prescribed in Appendix VI of the EIA 2006 Notification. Both SEIAAs and SEACs, being constituted by the Central Government are technically competent to appraise projects under Item 8. Directing that such projects be appraised only by MoEF&CC would create inequality, encourage forum-shopping, and overburden MoEF&CC, thereby frustrating the timelines prescribed under EIA 2006 Notification and undermining the efficiency of the decentralized system.

9.8. In these circumstances, it was urged that the NGT's order dated 09.08.2024, founded on an erroneous interpretation of the Kerala High Court's decision, be quashed, that Respondent No. 3 be restrained from engaging in forum-shopping, and that the settled position – that Items 8(a) and 8(b) are not subject to GC and remain within SEIAA jurisdiction – be reaffirmed.

10. The learned Senior Counsel for Respondent No. 3 however, submitted that Original Application No. 93 of 2024 was filed before the NGT in pursuance of Respondent's commitment to environmental protection, particularly to ensure that Building and Construction Projects – among the most pollution-intensive

industries in the country – are subjected to higher scrutiny by sector-specific Expert Appraisal committees (EACs) at the Central Level. Such projects, especially those located in CPA, SPA, Eco-Sensitive Zones or Protected Areas, demand rigorous appraisal by experts with relevant domain expertise.

10.1. It was urged that the NGT correctly appreciated the statutory mechanism notified on 24.10.2019 under Section 5 of the EP Act, which covers both CPA and SPA areas. While the General Conditions expressly refer only to CPA areas, a cumulative reading of the mechanism and the notification led the Tribunal to rightly conclude that projects within CPA/SPA, including Building and Construction Projects, must be appraised at the Central level by sectoral EACs. In so holding, the NGT relied on Clause 7(i)(III)(i)(d), Appendix VI of EIA 2006, its earlier decisions in ***Vkrant Tongad, Karukampally Vijayan Biju, M/s.Ardent Steel Ltd.***, and this Court's decision in **In Re: News Item published in 'The Asian Age'**.

10.2. It was further submitted that subsequent to the impugned order, MoEF&CC issued Notification dated 29.01.2025 inserting Note 2 in Item 8 to clarify that "General Conditions do not apply". That notification has been challenged in ***Vanashakti v. Union of India*** [WP (C) No. 166 of 2025], and operation thereof has been stayed by this Court on 24.02.2025. Hence, the issue of GC applicability is sub judice. Even so, the mechanism dated 24.10.2019 operates independently of GC applicability. That mechanism issued under Section 5 of the EP Act and upheld by this Court's judgment dated 25.02.2022

in a batch of Civil Appeals (CA Nos. 2218-2219, 2220-2221, 2434, 2463, 3319-3321 of 2020), continues to mandate that all projects within 5 km of CPA/SPA be treated as Category A and appraised at the Central Level.

10.3. The learned Senior Counsel further placed reliance on the *suo motu* proceedings in OA No. 1038 of 2018 [News item in 'The Asian Age' by Sanjay Kaw] wherein, the NGT noted the grave environmental impact of high pollution in CPA/SPA, temporarily prohibited new activities, and directed MoEF&CC to evolve a mechanism for stringent scrutiny of projects in such areas. The Ministry thereafter issued the 24.10.2019 mechanism. Since this Court has affirmed the same, it has attained finality and binds all projects, including Building and Construction.

10.4. It was emphasized that MoEF&CC itself, in its counter before the Tribunal and written submissions before this Court, did not dispute applicability of the mechanism to Building and Construction Projects. Thus, it is implicit that such projects are included. Excluding them alone while all other 37 activities in the Schedule remain covered, would defeat the object of the mechanism and the environmental protection mandate.

10.5. It was further submitted that the EIA 2014 Notification inserting Note 2 to Entry 8 (excluding GC) itself shows that GC otherwise applied to Building and Construction projects. This amendment was struck down by the Kerala High Court in ***One Earth One Life v. MoEF*** (supra). Likewise, the 29.01.2025 Notification has been stayed by this Court. Hence, GC continues to apply.

Administrative circulars such as OMs dated 24.05.2011 and 13.03.2020, being non-statutory, cannot override a statutory mechanism under Section 5 of the EP Act [See: ***Alembic Pharmaceuticals v. Rohit Prajapati***[20]]

10.6. On jurisdiction, it was submitted that the plea regarding excess of jurisdiction by the NGT under Section 14 of the NGT Act was not raised in the pleadings and hence, cannot be urged belatedly. In any event, this Court in ***Mantri Techzone v. Forward Foundation***[21], ***Municipal Corporation of Greater Mumbai v. Ankita Sinha***[22] and ***Indian Oil Corporation Ltd v. V.B.R. Menon***[23], has affirmed the wide powers of the NGT to direct effective measures for environmental protection.

10.7. It was finally urged that the NGT's purposive interpretation of EIA 2006 Notification, in holding GC applicable to Building and Construction Projects, is consistent with this Court's approach in ***Workmen of American Express v. Management***[24] and ***SEBI v. Ajay Agarwal***[25]. Where two interpretations are possible, that which furthers the object of environmental protection must prevail.

10.8. Accordingly, it was prayed that the appeals be dismissed, the impugned NGT order upheld, or in the alternative, this Court may direct that all Building and Construction projects within 5 km of CPA/SPA as notified by CPCB, be

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[20] (2020) 17 SCC 157
[21] (2019) 18 SCC 494
[22] (2022) 13 SCC 401
[23] (2023) 7 SCC 368
[24] (1985) 4 SCC 71
[25] (2010) 3 SC 765

treated as Category A and appraised at the Central level by the Sectoral EAC, in terms of the mechanism dated 24.10.2019, which already stands affirmed by this Court.

11. On the basis of the submissions advanced by the parties, the core issue that arises for determination in these appeals is whether the General Conditions under the EIA 2006 Notification, are applicable to Item 8(a) (Building and Construction Projects) and Item 8(b) (Township and Area Development Projects) of the Schedule thereto, and, if so, whether such projects – when situated within 10 km (subsequently reduced to 5 km) of environmentally sensitive areas – are required to be appraised as Category A projects by the Central Expert Appraisal Committee, rather than being considered by the State Expert Appraisal Committees (SEACs) and the State/UT Environment Impact Assessment Authorities (SEIAAs).

12. At this stage, it would be apposite to briefly advert to the background in which the present appeals have been instituted.

13. On 14 September 2006, the Union of India, in exercise of powers conferred under Section 3 of the EP Act, issued the EIA 2006 Notification. The Notification classified projects into two categories: Category A, requiring prior environmental clearance from the Central Expert Appraisal Committee (EAC), and Category B, requiring clearance from the State Expert Appraisal Committee (SEAC) and the State Environment Impact Assessment Authority (SEIAA). The

Schedule to the Notification contains a General Condition (GC), under which projects falling in Category B would be treated as Category A if located within a specified distance of certain environmentally sensitive areas. Column 5 of the Schedule, titled *"Conditions, if any,"* enumerates the items to which the GC applies. Significantly, Items 8(a) [Building and Construction Projects] and 8(b) [Townships and Area Development Projects] were not subjected to the GC under the Schedule. The General Condition stipulated that projects situated within 10 km (subsequently reduced to 5 km) of the following would be treated as Category A:

- Protected Areas notified under the Wildlife Protection Act, 1972;
- Critically Polluted Areas as identified by CPCB;
- Notified Eco-sensitive Zones; and
- Inter-State or International Boundaries.

14. The scope of the GC arose for consideration before this Court in ***Okhla Bird Sanctuary.*** While examining whether the GC under the EIA 2006 Notification extended to projects under Items 8(a) and 8(b), this Court noted the contention that since Column 5 does not expressly apply the GC to these items, the legislative intent was to leave such projects within the jurisdiction of the States. Reference was also made to the meeting of 6 – 7 July 2006 chaired by the then Prime Minister, wherein it was decided that construction and township projects would be regulated at the State level, irrespective of their size. The Court further observed that greater clarity was required, both in the description

of projects under Items 8(a) and 8(b), and in the application of the GC. The following extract from paragraph 84 is apposite:

> "… *question of application of the general condition to the projects/activities listed in the Schedule also needs to be put beyond any debate or dispute*".

15. Pursuant to the above, the MoEF issued an Office Memorandum dated 24 May 2011 clarifying that projects under Items 8(a) and 8(b) of the EIA 2006 Notification do not attract the GC. Consequently, building and construction projects and township and area development projects would remain in Category B, irrespective of their location vis-à-vis critically polluted or eco-sensitive areas, and would continue to be appraised at the State level.

16. Thereafter, on 22 December 2014, the MoEF&CC issued Notification S.O. 3252(E) amending the Schedule to the EIA 2006 Notification by inserting a Note to Items 8(a) and 8(b), expressly stipulating that the GC shall not apply to building, construction, township and area development projects.

17. The validity of the EIA 2014 Notification was challenged before the High Court of Kerala in ***One Earth One Life v. MoEF&CC*** (supra). By judgment dated 6 March 2024, the High Court quashed the Notification on two grounds: (i) that the final notification erroneously recorded that no objections had been received, despite objections having been submitted; and (ii) that there existed impermissible variance between the draft and final notification.

18. Meanwhile, in *suo motu* proceedings initiated on the basis of a newspaper report (News item published in "The Asian Age" authored by Sanjay Kaw, O.A. No. 1038 of 2018), the NGT by order dated 19 August 2019, directed formulation of a mechanism for environmental management of CPAs and SPAs, and for regulation of projects in such areas. Pursuant thereto, the MoEF&CC issued Office Memoranda dated 31 October 2019, and 30 December 2019, and on 13 March 2020, reiterated that projects under Items 8(a) and 8(b) would continue to be appraised by the SEIAA / SEAC in terms of the earlier OM of 24 May 2011.

19. The orders of the NGT in O.A. No. 1038 of 2018 were assailed before this Court in a batch of Civil Appeals (CA Nos. 2218-2219 of 2020 and connected cases). By a common judgment dated 25 February 2022, this Court dismissed the appeals and upheld the directions issued by the NGT.

20. Subsequently, Respondent No. 3 instituted Original Application No. 93 of 2024 before the NGT, contending that unregulated proliferation of large-scale construction projects in critically polluted and eco-sensitive areas posed grave risks to the right to life and health of local residents, and that such projects ought to be treated as Category A. By its order dated 9 August 2024, the NGT disposed of the application, holding *inter alia* that the GC under the EIA 2006 Notification applies to Items 8(a) and 8(b). The Tribunal directed the MoEF&CC to ensure that all building and construction projects falling wholly

or partly within 5 km of protected areas, CPAs, SPAs, eco-sensitive zones, or inter-State boundaries be treated as Category A projects requiring appraisal by the Central EAC. In doing so, the Tribunal reasoned that, since the EIA 2014 Notification had been quashed by the Kerala High Court, the exclusion of Items 8(a) and 8(b) from the GC no longer survived. It is this order of the NGT that is assailed in the present appeals.

21. In the aftermath of the impugned order, the MoEF&CC issued Notification S.O. 523(E) dated 29 January 2025, once again inserting in Column 5 of Item 8 a Note expressly providing that "General Conditions shall not apply". The Notification records that it was issued in the backdrop of the Kerala High Court judgment dated 6 March 2024 and the NGT's order dated 9 August 2024. A consequential Office Memorandum dated 30 January 2025 was issued, clarifying that the Notification would apply to the State of Kerala.

22. The constitutional validity of Notification S.O. 523(E) dated 29 January 2025, together with the consequential Office Memorandum dated 30 January 2025, was challenged in Writ Petition (C) No. 166 of 2025, ***Vanashakti v. Union of India***, before this Court. By order dated 5 August 2025, this Court partly allowed the writ petition. The relevant paragraphs read as follows:

> *"**14.** For considering the rival submissions, it will be appropriate to refer to the particulars of the schedule to the 2006 Notification, which is extracted hereinbelow.*

"SCHEDULE

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		*Category with threshold limit*		*Conditions if any*
(1)		*A*	*B*	
		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	*(2)*	*(3)*	*(4)*	*(5)*

15. *It can thus be seen that the Schedule has five columns. In the first column, serial number of the project or activity is mentioned. In the second column the details of the activity are mentioned. In the third column the projects which are approved by the MoEF&CC are mentioned. In the fourth column, the projects which are approved by the SEIAA are mentioned and the fifth and the last column deals with the conditions, if any, which would be applicable.*

16. *The projects with which we are concerned in the present lis are at Entry 8 of the Schedule, which reads thus:-*

Project or Activity		*Category with threshold limit*		*Conditions if any*
(1)		*A*	*B*	
		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
8		*Building / Construction projects /Area Development projects and Townships*		
8(a)	*Building and Construction projects*		*≥ 20000 sq. mtrs and < 1,50,000 sq. mtrs. of built-up areas #*	*# (built up area for covered construction; in the case of facilities open to the sky, it will be activity area)*
8(b)	*Townships and Area Development projects*		*Covering an area ≥ 50 ha and or bilt up area ≥ 1,50,000 sq. mtrs++*	*++ All projects under item 8(b) shall be appraised as Category B1*

17. *If we compare column 5 of Entry 8 to Entry 1(a) which deals with mining of minerals and slurry pipelines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas, Entry 1(c) which deals with river-valley projects, Entry 1(d) which deals with the Thermal Power Plants, Entry 2(a) which deals with Coal washeries, Entry 2(b) which deals with Mineral beneficiation, Entry 3(a) which deals with Metallurgical industries (ferrous & non-ferrous), Entry 3(b) which deals with Cement plants, Entry 4(b) which deals with Coke oven plants, Entry 4(d) which deals with Choir-alkali industry, Entry 4(f) which deals with Leather/skin/hide processing industry, Entry 5(d) which deals with manmade fibers manufacturing, Entry 5(e) which deals with petrochemical based processing, Entry 5(f) which deals with synthetic organic chemicals industry, Entry 5(g) which deals with distilleries, Entry 5(h) which deals with integrated paint industry, Entry 5 (i) which deals with pulp & paper industry, Entry 5(j) which deals with sugar industry, Entry 6(b) which deals with isolated storage and handling of hazardous chemicals, Entry 7(c) which deals with industrial estates/parks, complexes/areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech parks, leather complexes, Entry 7(d) which deals with common hazardous waste treatment, storage and disposal facilities, Entry 7(e) which deals with ports, harbours, break waters, dredging, Entry 7(f) which deals with highways, Entry 7(g) which deals with Aerial ropeways, Entry 7(h) which deals with common effluent treatment plants, Entry 7(i) which deals with common municipal solid waste management facility, column 5 specifically provides that General Conditions shall apply.*

18. *It is thus clear that wherever the delegated legislation required the General Conditions should be applied, the notification specifically provided for the same.*

19. *It can clearly be seen that Entry 8(a) and 8(b) of the Schedule do not provide for applicability of General Conditions, however, they provide for some other conditions as can be seen from the 2025 notification.*

Project or Activity		*Category with threshold limit*		*Conditions if any*
(1)		*A*	*B*	
		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
8	*Building / Construction projects /Area Development projects and Townships*			
8(a)	*Building and Construction projects*		*≥ 20000 sq. mtrs and < 1,50,000 sq.*	*The term "built up area" for the purpose of this notification is*

			mtrs. of built-up areas	*defined as the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects.* *Note 1. The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.* *Note 2. "General Conditions" shall not apply.*
8(b)	*Townships and Area Development projects*		*Covering an area $\geq$ 50 ha and / or built-up area $\geq$ 1,50,000 sq. m.*	*A project of Township and Area Development Projects covered under this item shall require an Environment Impact Assessment report and be appraised as Category 'B1' project.* *Note. "General*

				Conditions" shall not apply.

20. *Insofar as 2014 notification is concerned, the same, as fairly accepted by Shri Shankaranarayan, learned senior counsel appearing on behalf of the petitioner, was quashed and set aside by the Kerala High Court on 06th March, 2024 in WP(C) No. 3097 of 2016 on a technical ground, since the procedural formalities for publication of the notification was not found in consonance with the final notification.*

21. *Insofar as the judgment and order of the learned NGT dated 08th December, 2017 is concerned, what has been set aside is (i) clause 14(8) of the 2016 notification which provided for establishment of the Environmental Cell at the level of State Governments or local authorities, (ii) the provisions relating to exclusion of Consent to Operate and Consent to Establish under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 in clause 14 of 2016 notification and (iii) Appendix-XVI to the said notification relating to constitution and functioning of the said Environmental Cell.*

22. *It is thus clear that the issue that arises for consideration in the present lis was not an issue for consideration before the learned NGT. In any case, the Environmental Cell at the level of a municipal body cannot be equated with SEIAA, which is a statutory body constituted by the Central Government under a statute namely the Environment (Protection) Act, 1986. The learned NGT was, therefore, justified in holding that an important task of granting environmental clearances cannot be entrusted to a body at the municipal level. However, at the cost of repetition, it is observed that the SEIAA is a statutory body comprising of experts.*

23. *Insofar as the order dated 26th November, 2018 passed by the Delhi High Court granting stay is concerned, the said order considered the 2018 notifications dated 14th and 15th November, 2018 vide which the area of 20,000 sq.mtr., was increased to 50,000 sq.mtr for Building or Construction projects or Area Development projects and Townships and from 20,000 sq.mtr to 1,50,000 sq.mtr for industrial sheds, educational institutions, hospitals and hostels for educational institutions.*

24. *By the impugned notification, however, there is no variation with regard to the built-up area of 20,000 sq.mtr. and 1,50,000 sq.mtr for Building and Construction projects and with regard to Townships and Area Development projects having an area of 50 ha. to 1,50,000 sq.mtr which was provided in the 2006 notification.*

25. *Insofar as the second judgment of the learned NGT dated 9th August, 2024 is concerned, no doubt that the learned members of the NGT have referred to the General Conditions, we, however, find that the learned NGT has not considered the 2006 notification in its correct perspective.*

26. *It is a settled principle of law that while interpreting any legislation including a subordinate legislation, the first principle that has to be adopted is the literal rule of interpretation. Applying literal interpretation to the 2006 notification, it would be clear that said notification does not provide for applicability of the General Conditions to projects in Entry 8(a) and 8(b) of the Schedule. As already observed hereinabove, wherever the delegated legislation wanted the General Conditions to be made applicable it has been specifically provided in column 5 of the projects/activities.*

27. *At the cost of repetition, we observe that insofar as the projects/activities at Entries 8(a) and 8(b) are concerned, General Conditions have not been provided for right from the 2006 notification.*

28. *It is further to be noted that the judgment dated 09th August, 2024 passed by the learned NGT did not have the benefit of considering the 2025 notification.*

29. *We, therefore, see no reason to accept the request of the learned senior counsel for the petitioner to keep the present matter pending in order to await the judgment of the coordinate Bench.*

30. *In any case, the validity of 2025 notification is not being considered by the Coordinate Bench.*

31. *No doubt that the courts have consistently insisted upon protecting environment and consistently held that the natural resources are held in trust by the present generation for the future generations. However, at the same time, the courts have also consistently taken into consideration the need for developmental activities.*

32. *A country cannot progress unless the development takes place. As such, this Court in a catena of decisions has adopted the principle of sustainable development. Some of the notable decisions of this Court are Vellore Citizens' Welfare Forum v. Union of India and Others, Jagannath v. Union of India and Others3, Consumer Education & Research Society v. Union of India and Others, Intellectuals Forum, Tirupathi v. State of A.P. and Others, Tata Housing Development Company Limited v. Aalok Jagga and Others and State of Uttar Pradesh and Others v. Uday Education and Welfare Trust and Others.*

33. *A reference in this respect can also be made to the recent judgment of this Court rendered In Re: Zudpi Jungle Lands, wherein all the earlier judgments of*

this Court have been considered by a coordinate bench, to which one of us (B.R. Gavai, CJI.) was a party. It would be apposite to refer to paragraphs 117, 118 and 119 of the said judgment:

> *"117. Another aspect that needs to be considered is the balance between environmental protection and the need for sustainable development. It will be apt to refer to paras 87-88 of the judgment of this Court in the case of State of Uttar Pradesh v. Uday Education and Welfare Trust (2022 SCC OnLine SC 1469), which read thus:*
>
> > *"87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.*
> >
> > *88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck."*
>
> *118. Much prior to that, this Court, in the case of Vellore Citizens' Welfare Forum v. Union of India and others (1996) 5 SCC 647 : 1996 INSC 952, had an occasion to consider the conflict between the development and ecology. This Court observed thus:*
>
> > *"10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-*

> *binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists."*
>
> *119. The principle of Sustainable Development as a balancing concept between ecology and development has been accepted as a part of the Customary International Law by this Court in various judgments including S. Jagannath v. Union of India (1997) 2 SCC 87 : 1996 INSC 1466, Consumer Education & Research Society v. Union of India and Others (2000) 2 SCC 599 : 2000 INSC 81, Intellectuals Forum, Tirupathi v. State of A.P. (2006) 3 SCC 549: 2006 INSC 101 and Tata Housing Development Company Limited v. Aalok Jagga (2020) 15 SCC 784 : 2019 INSC 1203."*

34. *It is thus clear that the courts have taken a view that while development is permitted to be undertaken, it is also required that a precaution is needed to be taken so that the least damage is caused to the environment and ecology. The courts have also insisted upon the mitigation and compensatory measures so as to compensate the loss which is caused to the environment and ecology on account of the damage that would be caused by the developmental activities.*

35. *As already submitted by the learned Additional Solicitor General of India, it is not possible for the MOEF&CC to consider the projects from all the states of the country. We are in agreement with the same. In any case, we are of the considered opinion that the SEIAA is a body of experts constituted/appointed by the Central Government itself and it is better equipped to undertake study qua environmental impact of proposed projects in the respective state/union territory.*

36. *We, therefore, see no reason as to why the SEIAA should not be permitted to consider the proposal pertaining to the respective States/Union Territories, if it is a properly constituted body in accordance with the statute.*

37. *As a matter of fact, the 2006 notification itself provides for the constitution and appointment of members of SEIAA. From paragraph 3 of the said notification it can be seen that the SEIAA consists of three members out of which one shall be the Member Secretary, who is required to be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws and other two members shall either be a professional or expert fulfilling the eligibility criteria given in Appendix VI to the notification; one of them who is an expert in the Environmental Impact Assessment process, shall be the Chairman of the SEIAA. The procedure as to how the SEIAA shall conduct impact assessment and arrive at a decision is also prescribed under the said notification.*

38. *Another reason that is given for issuance of 2025 notification is that the 2006 notification was somewhat ambiguous with regard to the built up area as was observed by this Court in the case of In Re: Construction of Park at Noida near Okhla Bird Sanctuary.*

39. *Accordingly, in the 2025 notification, the "built up area" has been specifically defined to be the built up or covered area on all floors put together including the basement and other service areas, which are proposed in the building or construction project.*

40. *While we are inclined to uphold the impugned notification, we are of the considered view that the exemption of applicability of 2006 notification, by way of Note 1 in column 5 of Entry 8(a) of the impugned notification, to the projects or activities for industrial shed, school, college and hostel for educational institution does not appear to be in tune with the purpose for which the Environment Protection Act has been enacted.*

41. *Ms. Bhati, learned Additional Solicitor of India, submits that the detailed guidelines have been provided so as to ensure that the industrial shed, school, college and hostel for educational institution shall adhere to the environmental aspects. Moreover, we find that no mechanism like the impact assessment to be done by an expert body like SEIAA has been provided in the said guidelines.*

42. *It cannot be gainsaid that if any construction activity for an area of more than 20,000 sq. mtr. is to be carried out, it will naturally have an effect on the environment and ecology, even if the building is for industrial shed or for educational purpose, including hostels etc. There is neither any rational nexus with the object to be achieved by excluding such buildings from the rigors of the*

notification. We, therefore, see no reason to discriminate the other buildings with the buildings constructed for industrial or educational purposes.

43. *It is by now common knowledge that education is no more exclusively a service oriented activity and that it has in fact become a flourishing and thriving industry. We, therefore, see no reason behind the exemption of 2006 notification to the industrial or educational buildings by way of Note 1 in Column 5 of the 2025 notification.*

44. *Insofar as the clarification by O.M. dated 30th January, 2025, is concerned, it only clarifies that the 2025 notification would also be applicable to the State of Kerala.*

45. *It can thus be seen that the clarificatory O.M. dated 30th January, 2025, which has also been impugned in the present petition, rather than being adverse to the environmental interest is conducive to the environmental interest, inasmuch as it also makes the conditions applicable to the State of Kerala.*

46. *Therefore, while upholding the impugned notification dated 29th January, 2025, we hold that Note 1 to Entry 8(a) is arbitrary and liable to be quashed and set aside.*

47. *In the result, we pass the following order:*
i. The Writ Petition is partly allowed;
ii. The notification dated 29th January, 2025 excluding Note 1 to Entry 8(a) is upheld;
iii. Note 1 to Entry 8(a) of the notification dated 29th January, 2025 is quashed and set aside;
iv. The O.M. dated 30th January, 2025 issued by the MoEF&CC is also upheld; and
v. In the facts and circumstances, no orders as to costs."

23. Notably, the latest notification dated 29.01.2025 was issued by Respondent No. 1 on the basis of the order impugned in these appeals. The said Notification, together with the consequential official Memorandum dated 30.01.2025 was challenged before this Court in Writ Petition (C) No. 166 of 2025. By order dated 05.08.2025, this Court partly allowed the writ petition by upholding the Notification and the Office Memorandum, save and except Note 1

to Entry 8(a), which was struck down. The decision so rendered has a direct bearing on the present appeals. Since the issues raised herein already stand adjudicated, it is neither necessary nor proper for us to re-examine them afresh. In the interest of judicial propriety, therefore, we are inclined to dispose of the present appeals in light of the aforesaid judgment.

24. In the order dated 05.08.2025, this Court had already taken note of the pendency of the present appeals. It was the categorical stand of Respondent No. 1 therein that, from inception, the General Conditions were never made applicable to the projects or activities covered under Items 8(a) and 8(b) of the Schedule to the EIA 2006 Notification; and wherever their application was intended, Column 5 of the Schedule expressly so provided. It was further submitted that the 2025 Notification was issued in the backdrop of this Court's decision in ***Okhla Bird Sanctuary***, wherein, it had been observed that General Conditions were inapplicable to Entries 8(a) and 8(b), though certain clarifications were required to put the controversy at rest.

24.1. Upon considering the matter, this Court held that wherever the delegated legislation intended the General Conditions to apply, the Schedule itself made a specific provision, and consequently Entries 8(a) and 8(b) did not attract the applicability of the General Conditions. With respect to the impugned order dated 09.08.2024 of the NGT, this Court found that the Tribunal had failed to construe the EIA 2006 Notification in its correct perspective. A plain reading of

the Notification revealed that the General Conditions were never attracted to projects falling under Items 8(a) and 8(b).

24.2. This Court also observed that one of the reasons for issuing the 2025 Notification was the ambiguity concerning the built-up area requirement, as noted in ***Okhla Bird Sanctuary***. While reaffirming the consistent approach of courts in protecting the environment and safeguarding natural resources as trustees for future generations, the Court emphasized the necessity of balancing such concerns with the principle of sustainable development. It was further held that the SEIAA, being an expert body constituted by the Central Government, was best suited to assess the environmental impact of projects within the respective States and Union Territories.

24.3. Accordingly, while upholding the 2025 Notification, this Court set aside Note 1 in Column 5 of Item 8(a), holding that the exclusion of projects such as industrial sheds, schools, colleges, and hostels for educational institutions was inconsistent with the object and scheme of the Environment Protection Act, 1986. With respect to the OM dated 30.01.2025, it was further held that the 2025 Notification would apply to the State of Kerala as well. Thus, the 2025 Notification (excluding Note 1 to Entry 8(a)) and the OM dated 30.01.2025 were upheld, and the writ petition was allowed in part.

25. We are in full agreement with the view so taken by the coordinate Bench in Writ Petition (C) No. 166 of 2025. In consequence, the impugned order dated 09.08.2024 of the NGT, on the basis of which the 2025 Notification was

subsequently issued and which has been upheld by this Court, does not survive for consideration. The 2025 Notification, excluding Note 1 to Entry 8(a), presently holds the field.

26. All these appeals are, accordingly, disposed of. There is no order as to costs.

27. Pending Application(s), if any, stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

NEW DELHI
SEPTEMBER 12, 2025.