2026 INSC 956

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7367 OF 2024

M/S PUNAHCHAKRAN PRIVATE LIMITED …APPELLANT(S)

VERSUS

INDOTECH WASTE SOLUTION & ORS …RESPONDENT(S)

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

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1. This appeal arises from the judgment and order dated 05.07.2024 passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter, the "**Tribunal**") in Appeal No. 04 of 2024 (hereinafter, the "**impugned decision**"), whereby the Tribunal set-aside the Environmental Clearance ("**EC**") dated 20.12.2023 and Consent to Establish ("**CTE**") dated 20.12.2023 respectively granted in favour of the appellant herein in connection with the establishment of a Common Bio-medical Waste Treatment Facility ("**CBWTF**").

I. FACTUAL MATRIX

2. The Environmental Impact Assessment Notification dated 14.09.2006 ("**EIA, 2006**") issued by the Ministry of Environment, Forest and Climate Change, Government of India ("**MoEF&CC**") makes provisions requiring prior EC in respect of certain projects/activities/industries. Initially, a CBWTF did not fall within its ambit. However, *vide* notification dated 17.04.2015, the expression "bio-medical waste treatment facility" was inserted to the Schedule of the EIA, 2006, thereby adding it to the list of projects/activities requiring a prior EC.

3. M/s Punahchakran Private Limited (hereinafter, the "**appellant**") submitted two applications dated 06.07.2021 to the Uttar Pradesh State Industrial Development Authority ("**UPSIDA**") for the allotment of plot nos. E-25 and E-26 admeasuring 0.45 acres and 0.44 acres respectively, situated at the UPSIDC Industrial Area, Babrala, District Sambhal, Uttar Pradesh, for the purpose of establishing a CBWTF.

4. Before the said land could be allotted to the appellant, on 11.08.2021, it submitted an application in Form 1 before the Uttar Pradesh State Impact Assessment Authority ("**UP SEIAA**") for the issue of Terms of Reference ("**ToR**") to commence the Environmental Impact Assessment ("**EIA**") study.

5. On 12.08.2021, the UPSIDA rejected the allotment applications made by the appellant. In the immediate aftermath of this rejection, the appellant submitted yet another application before the UPSIDA seeking allotment of the same plots but for a different purpose i.e., for the establishment of an industrial unit for "*fabrication of industrial equipment*".

6. On 17.08.2021, the UP SEIAA issued a standard ToR (hereinafter, the "**first ToR**") to the appellant, thereby commencing the process for an EIA study.

7. On 15.09.2021, the appellant's land allotment application for establishing an industrial equipment fabrication unit was allowed by the UPSIDA.

8. Thereafter, the appellant approached the Uttar Pradesh Pollution Control Board (hereinafter, the "**UPPCB**") and submitted an application dated 27.09.2021 seeking the grant of a Consent to Establish ("**CTE**") for the CBWTF under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 ("**Water Act**") and the Air (Prevention and Control of Pollution) Act, 1981 ("**Air Act**") respectively. Plots E-25 and E-26 respectively of the UPSIDC Industrial Area were indicated to be the land in which the CBWTF was proposed to be set-up.

9. It is pertinent to note that as per the O.M. dated 27.04.2018 the requirement of a public hearing under Paragraph 7(i)(III)Stage(3)(i)(b) of the EIA, 2006 was exempted since the site was located in an industrial area. Therefore, on 18.02.2022, after obtaining the EIA study report, the appellant submitted its proposal to the UP SEIAA for grant of prior EC.

10. On 26.04.2022, the UPPCB had granted a conditional CTE (hereinafter, the "**first CTE**") to the appellant.

11. On 03.06.2022, in compliance with Clause 2 of the Revised Guidelines for Common Bio-Medical Waste Treatment and Disposal Facilities, 2016, (hereinafter, the "**RG, 2016**"), a GAP Analysis Report was submitted to the UP SEAC by the Member, Secretary, UPPCB. This report indicated the details of the bio-medical waste generated in the eight nearby districts along with the proposed/operating CBWTFs in the concerned areas as under:

S. No.	District	Bedded, HCF	Non-Bedded HCF	No Beds	Covered Facility
1	Muradabad	481	707	6699	• Sushila Bio-Medical (Operated) • Bhagwatsaran (Proposed)
2	Sambhal	111	252	1034	• M/s Punahchakran Pvt. Ltd. (Proposed)
3	Badayu	147	30	1988	-
4	Aligarh	474	387	9512	-
5	Hathras	148	207	1822	-
6	Etah	122	128	1319	-
7	Kasganj	81	102	1043	-
8	Bulandsheha	293	243	4482	-
Total Beds		**1857**	**2056**	**27899**	
Amount of Bio-Medical Waste in Kg			**102.8** Kg	**6974.75** Kg	Total – **7080.55** Kg

12. Upon a consideration of the GAP Report and taking into account all the other details, the UP SEAC in its 663rd meeting dated 16.06.2022 recommended the grant of EC to the appellant. Thereafter, on 05.07.2022, the UP SEIAA in its 625th meeting expressed agreement with the recommendation of the UP SEAC. As a consequence, the EC (hereinafter, the "**first EC**") was issued to the appellant on 13.07.2022.

13. However, on 19.08.2022, the first CTE and first EC granted in favour of the appellant by the UPPCB and UP SEIAA respectively were challenged before the Tribunal in Original Application No. 622 of 2022 titled ***Aniruda Panwar and Anr. v. Ministry of Environment, Forests and Climate Change and Ors***.

14. After obtaining the first CTE and the first EC and after the institution of the aforesaid O.A., the appellant approached the UPSIDA through its online application dated 15.09.2022 requesting consent for a change in the nature of use and category of industry being proposed to be set-up in the allotted plots i.e., from *"fabrication of industrial equipment"* to "*CBWTF*". This change was allowed by the UPSIDA *vide* letter dated 19.09.2022.

15. Indotech Waste Solution (hereinafter, the "**respondent no. 1**") situated in the District Kasganj is also engaged in the business of treatment and disposal of bio-medical waste generated by health care facilities. It had similarly made a Form 1 application sometime in the year 2021 to establish a CBWTF. The UP SEAC and UP SEIAA respectively are said to have also arrived at a decision to issue an EC to the respondent no. 1 in their meetings dated 19.10.2022 and 14.11.2022 respectively i.e., after the first EC was already issued to the appellant. However, it is admitted that a consequent order of EC was not issued in favour of the respondent no. 1.

16. The Tribunal *vide* its judgment dated 31.07.2023 in ***Aniruda Panwar*** *(supra)* converted the O.A. No. 622 of 2022 in Appeal, allowed the same and declared the first CTE and first EC respectively to be illegal, null, void and of no effect for the following reasons:

i. ***First***, Clause 2 of the RG, 2016 unequivocally establishes that procurement of land for the purpose of establishing a CBWTF is a condition precedent for filing an application seeking the grant of EC and CTE respectively.

ii. ***Secondly***, subsequent approval of change in land use granted by the UPSIDA could neither legalise nor validate the first CTE and first EC respectively.

iii. ***Lastly***, Clause 7 of the RG, 2016 requires that the CBWTF be set-up in a plot size of not less than one acre. As an exception, relaxation of this land requirement may be granted after the fulfilment of certain criteria and along with the imposition of additional control measures. Considering that the appellant's plot size was 0.89 acres and that the UPPCB and UP SEIAA had not specifically granted any such relaxation or, stipulated additional control measures or, consulted with the CPCB to do so, the first EC and first CTE respectively could not have been validly issued.

17. Having held so, the Tribunal nevertheless granted liberty to the appellant to re-apply for the grant of EC and CTE respectively, either after procuring additional land or after seeking relaxation of the land requirement in accordance with law. The operative portion of the Tribunal's decision in ***Aniruda Panwar*** *(supra)* is reproduced thus:

> *"78. In view of the above, the application converted to appeal is allowed and CTE and EC being violative of CBWTF Guidelines 2016 are held to be illegal, null and void and to be of no effect.*
>
> *79. However, the Applicant shall be at liberty to apply again for grant of EC and CTE for establishment of CBWTF after procuring additional land in Babrala Industrial Area or seek relaxation of land requirement in accordance with law and in case any such application is filed by Respondent no. 7 again UPPCB and UPSEIAA shall be bound to dispose of the same strictly not only in accordance with the statutory provisions /environmental norms but also CPCB Guidelines."*

(Emphasis supplied)

18. It is the case of the appellant that they made earnest efforts to pursue both the alternatives suggested by the Tribunal in ***Aniruda Panwar*** *(supra),* i.e., procure additional land and apply for relaxation in land requirement respectively. It seems to have approached the UPSIDA for procuring the adjacent plot no. E-27 and was waiting to participate in the bidding process. Since the EC process is site-specific, on 07.08.2023, it also submitted a fresh Form 1 application for the issuance of a new ToR accounting for plot E-27 along with plots E-25, and E-26 respectively. On, 10.08.2023, a new ToR (hereinafter, the "**second ToR**") inclusive of plot E-27 was also issued by the UP SEIAA. Parallelly, the appellant approached the UPPCB through its representation dated 08.08.2023 seeking relaxation in the land area requirement in consultation with the CPCB.

19. While the fate of the bidding process for plot no. E-27 is unknown, it appears that land area relaxation was granted by the CPCB as per the proposal made by the UPPCB, with accompanying control measures on 17.11.2023 and the same reads thus:

> *"It is to inform that the criteria outlined under CPCB revised guidelines for development of new CBWTF is required to be followed to ensure effective compliance of BMWM Rules, 2016. <u>However as requested by UPPCB the area criteria may be relaxed for the proposed plot from 1.0 Acre (4046 m^2) to 0.89 Acre (3601 m^2) by adopting the following additional measures.</u>*
>
> *a. UPPCB shall assess the increased stack height with stringent emission norms and take other measures to ensure that the operation of CBWTF shall have minimal impact on human health & environment around the proposed site;*
>
> *b. Effluent generated shall be treated up to the standards as prescribed under the BMWM Rules, 2016 and shall be utilized completely for vehicle floor washing, cooling tower make up, gardening etc. CBWTF shall maintain zero liquid discharge from the CBWTF*
>
> *c. Adequate measures shall be taken for odour control by the CBWTF*
>
> *d. OCEMS should be installed and connected with CPCB and UPPCB server for transmission of real time data for prescribed parameters of incinerator.*
>
> *e. Initially the Operating capacity of incinerator of CBWTF may be restricted to 2.5 ton/day. UPPCB shall monitor the CBWTF for six months and based on its performance operational capacity may be increased accordingly with prior information to CPCB.*

This is issued with the approval of Competent Authority, CPCB".

(Emphasis supplied)

20. After the UP SEIAA had revoked the appellant's first EC in accordance with the Tribunal's judgment in ***Aniruda Panwar*** *(supra)*, on 17.10.2023, the appellant had submitted a fresh proposal to the UP SEIAA for the grant of prior EC.

21. *Vide* its e-mail communication dated 17.11.2023, the respondent no. 1 addressed a complaint against the appellant to the UP SEAC highlighting the following aspects: **(i)** that plot no. E-27 had not yet been allotted to the appellant, **(ii)** that since plot nos. E-25 and E-26 respectively were originally allotted to the appellant for the establishment of a 'green category' industry i.e., the fabrication of industrial equipment, the process of allotment should not have been revisited by the UPSIDA to entitle the appellant to establish a 'red category' industry in the same plot, and **(iii)** that the GAP Analysis for the entire State as mandated by the RG, 2016 had not been conducted and therefore, the appellant's case must not be considered for the issuance of CTE.

22. Since relaxation was granted by the CPCB and it was no longer necessary to procure plot E-27, *vide* letter dated 21.11.2023, the appellant applied to withdraw the second ToR issued in its favour.

23. Despite the aforesaid allegations levelled by the respondent no. 1, on 20.11.2023, the UP SEAC in its 810th meeting recommended the grant of EC to the appellant. It must be noted that it was the first ToR and its consequent EIA study, not the second ToR, which was taken into consideration during its decision-making process. The UP SEIAA also concurred with the said decision and therefore, the EC dated 20.12.2023 ("hereinafter, the "**second EC**") was granted.

24. Further, on the same date i.e., on 20.12.2023, the UPPCB also granted the CTE (hereinafter, the "**second CTE**") to the appellant.

25. Aggrieved, on 16.01.2024, the appellant preferred an Appeal bearing Appeal No. 4 of 2024 under Sections 16(g) and (h) of the National Green Tribunal Act, 2010 ("**NGT Act**") before the Tribunal challenging the second EC and the second CTE respectively.

26. In the meantime, on 19.02.2024, a Consent to Operate ("**CTO**") was also granted to the appellant by the UPPCB.

27. *Vide* the impugned decision dated 05.07.2024, the Tribunal decided to set-aside the second EC and second CTE respectively for being illegal and held as under:

i. ***First***, that the RG, 2016 have been framed in exercise of statutory power and are mandatory, enforceable and binding in nature.

ii. ***Secondly***, Clause 7(b) of the RG, 2016 which allows a deviation from the one acre plot size requirement is anchored on the fulfilment of a crucial precondition i.e., the CBWTF must be established within municipal limits with population of more than 25 lakhs *or* be established in a rural area. Babrala does not fulfil either criteria and the authorities failed to look further into this aspect. Therefore, the UP SEAC, UP SEIAA, UPPCB and the CPCB respectively have acted in a very mechanical and unmindful manner insofar as applying Clause 7(b) to the instant project was concerned.

iii. ***Thirdly,*** that this Tribunal in ***Aniruda Panwar*** *(supra)* did not strictly lay down that the appellant's application for land relaxation must be allowed. It was clear that the process shall be undertaken in accordance with law and not in an illegal or arbitrary manner. Hence, it cannot be suggested that there was any direction in this regard made by the Tribunal in ***Aniruda Panwar*** *(supra).*

iv. ***Lastly***, that in granting such land relaxation, the UPPCB and CPCB respectively have paid undue weight to irrelevant factors like the investment made by the appellant and the GAP analysis report. Moreover, the UPPCB had either deliberately or unintentionally projected that the first EC and first CTE respectively were only declared null and void *and not illegal*. No heed was paid to the multivarious factors relevant to operational effectiveness of the plant in a smaller area. Therefore, when considerations which were either untrue or irrelevant had been relied upon by the authorities, it undoubtedly showed that there was no real application of mind and as a result, the entire exercise of grant of land relaxation was vitiated on account of malice in law.

The relevant observations made by the Tribunal in the impugned decision are reproduced thus:

> *"140. A perusal of para 7(a) shows that it requires setting up of CBWTF preferably on a plot size of not less than one acre in all the areas. However, CBWTF can be developed in adjacent plots to cover up requirement of the area but cannot be set up in two or more different plots located in different areas.*
>
> *141. Para 7(b) contemplates a deviation from the requirement of not less than one acre land and says that if there is a new CBWTF to be established in a municipal limit with population of more than 25 lakhs or rural areas, the land area requirement may be relaxed but not in any case less than 0.5 acres by SPCB/SPCC with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case to case basis, only in consultation with CPCB*
>
> *142 <u>One of the conditions for relaxation or deviation in the requirement of not less than one acre of land is that the municipal limit wherein a new CBWTF is proposed, should have a population of more than 25 lakhs or CBWTF is proposed to be established in a rural area. It is not disputed before us that Babrala is a Nagar Panchayat. It is thus, not a rural area.</u>*
>
> *143. A Nagar Panchayat is an urban local body i.e., Municipality. […]*
>
> *-xxx-*
>
> *145. Article 243Q refers to three kinds of municipalities i.e., (a) Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area, (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area.*

147 The population of Babrala Nagar Panchayat whether taking as per 2011 census or as per any subsequent estimation is not even one lakh, what to say of more than 25 lakhs. Para 7(b) of RG 2016, therefore, was outrightly inapplicable for exercising the power of relaxation in respect of the proposed CBWTF of respondent 7 It is really surprising and very astonishing that neither SEIAA UP nor CPCB have looked into this aspect of the matter at all and acted in a very mechanical and unmindful manner,

148. Suggestions has been made that since there was a direction by this Tribunal in Aniruda Panwar vs. Ministry of Environment, Forest and Climate Change & Others (supra) that application for grant of EC may be considered by exercising the power of relaxation in respect of requirement of area but authorities have totally misled themselves by ignoring that Tribunal clearly said that such consideration shall be in accordance with law and not in an arbitrary and illegal manner.

149. We also notice that the then Member Secretary, UPPCB by seeking clarification from CPCB regarding relaxation in land requirement for CBWTF vide letter dated 16.10.2023 has only stressed upon the fact that proponent has made investment of 132 lakhs which include cost of land, building, plant and machinery; as per Gap Analysis, there was requirement of CBWTF to be established and that respondent 7 was already granted CTE and EC but due to gap in certain procedure and formalities, earlier CTE and EC became null and void and not illegal. This is clear misreading and appears to be a deliberate attempt on the part of the then Member Secretary, UPPCB to suggest that earlier CTE and EC was only null and void and not illegal though judgment of Tribunal in Aniruda Panwar vs. Ministry of Environment, Forest and Climate Change & Others (supra) clearly declares that CTE and EC, not in conformity with the RG 2016 in respect of requirement of area is null, void and illegal and nullity for all purposes […]

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151. We further find that CPCB in its letter dated 17.11.2023, instead of applying mind on this aspect directing SEIAA UP to look into the question whether any relaxation is admissible or permissible in accordance with provisions of RG 2016 in the case in hand, has simply observed that the area criteria may be relaxed from one acre to 0.89 acres by adopting certain measures which relates to additional conditions necessary for prevention of pollution of air. <u>There is no reference to the question as to whether the area where CBWTF is proposed qualify the requirement of population for the purpose of attracting the provisions of para 7(b) or not.</u>

152 <u>In the ultimate order granting relaxation, again the same considerations, as are mentioned in the letter dated 16.10.2023, have been reiterated which in our view, were irrelevant since it is not investment made by respondent 7 which was relevant but the operational effectiveness of the plant in a smaller area ought to have been considered. There is no application of mind on this aspect. There is no consideration whether sufficient space for storage of BMW generated by health care facilities collected by CBWTF for processing and also for storage of inert/residual matter etc., and for other operational purposes was available.</u>

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154. We also do not find any hesitation in observing that the officer concerned who has issued EC and CTE to respondent 7 after judgment of Tribunal in Aniruda Panwar vs. Ministry of Environment, Forest and Climate Change & Others (supra) has acted for reasons other than bonafide and clearly it is malicious in law. There was/is no extraordinary urgency in proceeding to grant the requisite clearance to respondent 7 instead of considering the matter in the light of relevant provisions and by application of mind to the relevant factors. The entire exercise is clearly malicious in law. <u>It is well settled that even if there is no malice in fact but if there is something malicious m law, it is vitiated in law.</u>

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> *164. In brief the malice in law can be said <u>when a power is exercised for an unauthorized purpose or on a fact which is claimed to exist but in fact, is non-est or for the purpose for which it is not meant though apparently it is shown that the same is being exercised for the purpose the power is supposed to be exercised</u> […]*
>
> *-xxx-*
>
> *166. In view of the above discussion, we have no hesitation but to hold that EC and CTE granted in the case in hand, cannot be sustained. They are contrary to law, illegal and are liable to be set aside.*
>
> *167 The Appeal is accordingly allowed. Impugned EC dated 20.12 2023 and CTE dated 20 12.2023 are hereby set aside."*

(Emphasis supplied)

28. In such circumstances referred to above, the appellant has preferred the present appeal.

29. This Court *vide* its order dated 15.07.2024 directed that a report be furnished by the District Magistrate, Sambhal regarding the location of the CBWTF established by the appellant and the population of the Babrala Nagar Panchayat. The relevant portions of the said order of this Court is reproduced thus:

> *"4. According to the appellant, its CBWTF is situated in a rural area. However, this is contested by the respondent who contends that the Facility is not situated in a rural area, but is situated within the limits of Babrala Nagar Panchayat with a population much less than twenty-five lacs.*

5. We have heard Mr Shyam Divan, senior counsel appearing for the appellant and Mr Pinaki Misra, senior counsel for the respondent.

6. Certain documents have been produced by the appellants in the course of the hearing, in interlocutory applications, but it has been fairly accepted that these were not part of the record before the NGT. In order to obviate any controversy on the factual aspect so as to allow this Court to have a clear indication in regard to the location of the Bio-medical Waste Treatment Facility which has been conducted by the appellant, we are of the view that a report should be called for from the District Magistrate, Sambhal, Uttar Pradesh.

7. The CBWTF of the appellant is situated on plot No E-25/26, UPSIDC Industrial Area, Babrala – 243751, District Sambhal. <u>The District Magistrate, Sambhal shall submit a report to this Court on the following aspects:</u>
<u>(i). Whether the CBWTF of the appellant is situated within the limits of Babrala Nagar Panchayat;</u>
<u>(ii). In the event, that the answer to (i) above is in the affirmative, the population of the Babrala Nagar Panchayat; and</u>
<u>(iii). In the event, that the answer to (i) above is in the negative, whether the CBWTF is situated in a rural area.</u>

8 The report to be submitted by the District Magistrate shall be based on the official records as available. The report shall be submitted within a period of one week."

(Emphasis supplied)

II. <u>SUBMISSIONS OF THE PARTIES</u>

A. <u>Submissions on behalf of the Appellant</u>

30. Mr. Shyam Divan, the learned Senior Counsel appearing on behalf of the appellant canvassed the following submissions:

i. The CBWTF plant established by the appellant is located in a *rural* area, more specifically under Village Noorpur. The same is brought forth by the report dated 24.07.2024 furnished by the District Magistrate, Sambhal in compliance with the order of this Court dated 15.07.2024 as also the letter dated 10.07.2024 addressed by the Revenue Inspector, Sambhal respectively. The location of the appellant's facility does not fall within the limits of the Babrala Nagar Panchayat. In fact, the distance between the plant and the border of the Babrala Nagar Panchayat is about 2.6 km.

ii. It must be further noted that the Governor of the State of Uttar Pradesh, *vide* notification dated 05.09.2001, in exercise of the power under Section 2(d) of the Uttar Pradesh Industrial Area Development Act, 1976 ("**UP Industrial Area Act**") notified the Industrial Area, Babrala (at serial no.78 of the Gazette Notification) wherein, it has been categorically mentioned that it is situated in Village Noorpur.

iii. Therefore, the pre-condition under Clause 7(b) of the RG, 2016 as regards the relaxation of land requirement for a CBWTF stands fulfilled and the grant of such relaxation with additional control measures by the CPCB on 17.11.2023 cannot be faulted with. As a result, the impugned decision setting aside the second EC and second CTE respectively on this ground was completely erroneous.

iv. The first ToR granted to the appellant was never set-aside by the Tribunal *vide* its decision in ***Aniruda Panwar*** *(supra)*. Moreover, the Office Memorandums ("**O.M.**") dated 29.08.2017 and 08.06.2022 respectively issued by the MoEF&CC explicitly state that the validity of a ToR is for a period of four years. Therefore, there was no requirement for the appellant to obtain a fresh ToR.

v. The second ToR which was issued to the appellant on 10.08.2023 was subsequently withdrawn *vide* letter dated 21.11.2023. Therefore, it can neither be said that the appellant provided any false or misleading information to the authorities, nor can it be said that the authorities were wrong in considering the first ToR while issuing the second EC and second CTE respectively.

vi. The relevant authorities had duly applied their mind during the process of granting the second EC and second CTE respectively, and the same can be independently demonstrated by the chronology of events placed on record. As such, it cannot be stated that the decision(s) of the UP SEAC, UP SEIAA, UPPCB and the CPCB respectively lacked application of mind or was malicious in law.

B. Submissions on behalf of the Respondent No. 1

31. Mr. Pinaki Misra, the learned Senior Counsel appearing on behalf of the respondent no. 1 canvassed the following submissions:

i. The information furnished by the project proponent in Form 1/1A along with the proposed ToR form the basis and soul of the grant of EC for any project. Providing missing or misleading information in Form 1/1A significantly impedes the functioning of the authorities and the conduct of the EIA study. It is for this reason that Clause 8(vi) of the EIA, 2006 provides that "*Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis.*" In the present case, both the first and the second ToR were granted on deliberate concealment and/or the submission of false/misleading data. Reliance was placed on the decision of this Court in ***Hanuman Laxman Aroskar v. Union of India*** reported in **(2019) 15 SCC 401** to submit that such lapses must vitiate the whole process and the appellant must recommence from the Form 1 stage.

ii. The issue whether allocation or procurement of land is a condition precedent for filing an application for grant of EC and CTE respectively to a CBWTF was considered by the Tribunal in ***Aniruda Panwar*** *(supra)* and was answered in the affirmative in light of Clause 2 of the RG, 2016. In consonance with such a finding, the decision in ***Aniruda Panwar*** *(supra)* held the first ToR granted in favour of the appellant to be illegal and void. Naturally, the second EC and second CTE respectively which were granted on the basis of the defunct first ToR cannot have any validity under law. Therefore, the impugned decision rightly set-aside the second set of permissions.

iii. Even the second ToR granted in favour of the appellant would be hit by the decision of the Tribunal in ***Aniruda Panwar*** *(supra)* since it mentions plot E-27 without the appellant having actually procured the said plot from the UPSIDA.

iv. Moreover, the very issuance of the second ToR clearly evinces that the first ToR could no longer be put to use.

v. The relaxation in land requirement granted by the CPCB cannot be sustained for three reasons: *First*, the letter dated 16.10.2023 addressed by the Member Secretary, UPPCB to the CPCB had observed that the first EC and first CTE granted to the appellant were declared null and void 'but not illegal' by the Tribunal in ***Aniruda Panwar*** *(supra).* This false premise contributed to the decision granting relaxation and hence, such a decision is vitiated by malice in law. *Secondly,* relaxation cannot be given as a matter of right and must be reserved only for exceptional circumstances. Such an exception must seldom be used especially when the project in question is located in an industrial area and the same was emphasized by the Tribunal in ***Aniruda Panwar*** *(supra)*. *Lastly*, the UPPCB and CPCB respectively were preoccupied with irrelevant considerations like the investment made by the appellant and ignored the crucial question as regards the operational effectiveness of the CBWTF in a smaller area. Therefore, their decision suffers from due application of mind.

vi. The decisions of this Court in ***Indian Railway Construction Co. Ltd. v. Ajay Kumar*** reported in **(2003) 4 SCC 579** and ***State of NCT of Delhi v. Sanjeev*** reported in **(2005) 5 SCC 181** respectively lay down the criteria for judicial review of discretionary administrative action and the present case was a fit one for interference by the Tribunal.

III. ISSUES FOR CONSIDERATION

32. Having heard the learned counsel for the parties and having gone through the materials on record, the question which falls for our consideration is whether the NGT *vide* the impugned judgment and order dated 05.07.2024 was right in setting aside the second EC and second CTE respectively granted to the appellant by the UP SEIAA and UPPCB respectively.

33. In order to arrive at a finding on the aforesaid, the following legal issues need to be dealt with:

i. Whether the RG, 2016 is mandatory or directory in nature?

ii. Whether the grant of relaxation in land requirement in favour the appellant for the establishment of a CBWTF by the CPCB was permissible?

iii. On a combined reading of the EIA, 2006 and the RG, 2016 respectively, what is the status of land acquisition required for establishing a CBWTF at the time of making a Form 1 application, at the stage of Appraisal of the EC and at the time of making an application for the issuance of CTE respectively?

iv. Whether the UP SEAC and the UP SEIAA respectively could have proceeded with the grant of the second EC on the basis of the first ToR?

IV. ANALYSIS

A. Mandatory nature of the RG, 2016 and the decision of this Court in *Gulf Goans*

34. Before we proceed to the other issues raised in this appeal, it is imperative that we deal with the question pertaining to the mandatory nature of the RG, 2016. This is especially because there seems to be a repeated trend of submissions being made before the Tribunal that in light of the decision of this Court in ***Gulf Goans Hotels Company Limited and Another v. Union of India and Others*** reported in **(2014) 10 SCC 673,** the guidelines may not have the 'force of law'. The impugned decision has held that the RG, 2016 is binding, however, in doing so it has not made any specific reference to the ratio in ***Gulf Goans*** *(supra)* or the line of argument referenced hereinabove.

35. ***Gulf Goans*** *(supra)* was concerned with a set of guidelines pertaining to permissible construction activity in the coastal areas of Goa, more specifically the distance that has to be maintained from the high tide line. It is to be noted that these guidelines were issued before the enactment of the Environment (Protection) Act, 1986 ("**EP Act**") which penalized environmental violations through statutory power. In this background, it was held that such executive guidelines cannot be enforced to the prejudice of an individual unless shown to have acquired the force of law. To acquire such character, the guidelines were required to satisfy certain minimum elements i.e., they must *inter alia* have **(i)** a certain form possessed by other laws in force; **(ii)** encapsulate a clear mandate or explicit command which may be prescriptive, permissive or penal; **(iii)** disclose the achievement of a specific and identifiable purpose; **(iv)** have some authentication and **(v)** be notified or published either in the mode prescribed by the statute or in the Official Gazette. It was added that the first element itself i.e., the form, or the absence thereof will not be determinative. However, the second and third elements i.e., a clear mandate and purpose, were indispensable.

36. In effect, ***Gulf Goans*** *(supra)* held that the impugned guidelines/notifications therein had not acquired the force of law for several reasons including the lack of an expressed or clearly defined dicta which supported that they were not mere suggestions or expressions of opinion, the government failing to discharge the burden that the guidelines were authenticated in accordance with

Article 77 of the Constitution, and the failure to notify or publish them in the Official Gazette. The relevant observations are reproduced below:

> *"17. […]However, <u>we are unable to find in the said guidelines any expressed or clearly defined dicta.</u> In fact, having read and considered the guidelines, we are left with a reasonable doubt as to whether what has been spelt out therein are not mere suggestions or opinions expressed in the process of a continuing exploration to identify the correct parameters that would effectuate the purpose i.e. safeguarding and protecting the environment (sea beaches) from human exploitation and degradation.*
>
> *19. Article 77 of the Constitution provides the form in which the Executive must make and authenticate its orders and decisions. Clause (1) of Article 77 provides that all executive action of the Government must be expressed to be taken in the name of the President. The celebrated author H.M. Seervai in Constitutional Law of India, 4th Edn., Vol. 2, 1999 describes <u>the consequences of government orders or instructions not being in accordance with clauses (1) or (2) of Article 77 by opining that the same would deprive the orders of the immunity conferred by the aforesaid clauses and they may be open to challenge on the ground that they have not been made by or under the authority of the President in which case the burden would be on the Government to show that they were, in fact, so made. In the present case, the said burden has not been discharged in any manner whatsoever</u>. […]*
>
> *20. Clause (2) of Article 77 also provides for the authentication of orders and instruments in a manner as may be prescribed by the Rules. In this regard, vide S.O. No. 2297 dated 3-11-1958 published in the Gazette of India, the President has issued the Authentication (Orders and Other Instruments) Rules, 1958. The said Rules have been superseded subsequently in 2002. Admittedly, the provisions of the said 1958 Rules had not been*

followed in the present case insofar as the promulgation of the guidelines is concerned.

21. <u>In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion.</u>[…]

22. <u>It is also essential that what is claimed to be a law must be notified or made public in order to bind the citizen.</u> […]

24. It will not be necessary to notice the long line of decisions reiterating the aforesaid view. <u>So far as the mode of publication is concerned, it has been consistently held by this Court that such mode must be as prescribed by the statute. In the event the statute does not contain any prescription and even under the subordinate legislation there is silence in the matter, the legislation will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette (B.K. Srinivasan v. State of Karnataka) [(1987) 1 SCC 658] . Admittedly, the "guidelines" were not gazetted.</u>

25. If the guidelines relied upon by the Union of India in the present case fail to satisfy the essential and vital parameters/requirements of law as the trend of the above discussion would go to show, the same cannot be enforced to the prejudice of the appellants as has been done in the present case.[…]"

(Emphasis supplied)

i. *<u>The genesis, scope and nature of the RG, 2016</u>*

37. At this juncture, it would be appropriate for us to pause and look into how the RG, 2016 came into existence. Section 8 of the EP Act mandates that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed. Sections 6 and 25 of the EP Act respectively, grant powers to the Central Government to make rules in respect of the aforesaid and requires the publication of these rules in the Official Gazette. In exercise of the powers conferred under the aforementioned provisions of the EP Act, the Bio-Medical Waste Management Rules, 2016 ("**BMWM Rules**") came into existence through publication in the Official Gazette.

38. The BMWM Rules, in turn, under several provisions, refer to certain guidelines which are to be issued by the CPCB that would further regulate the standards and procedures to be followed by operators of CBWTFs i.e., the RG, 2016. As per Rule 3(c), the authorisation granted by the prescribed authority must itself be in accordance with the RG, 2016. Rule 5 relating to the duties of a CBWTF operator also relies on the RG, 2016 for prescribing detailed responsibilities. Rule 17, which is of some relevance to the broad issue canvassed under the present appeal, also states that site selection for setting up a CBWTF shall be made in accordance with the RG, 2016. For better context, the relevant provisions of the BMWM Rules are reproduced hereinbelow:

> "***3. Definitions -***
> *[…]*
> *(c) "authorisation" means permission granted by the prescribed authority for the generation, collection, reception, storage,*

transportation, treatment, processing, disposal or any other form of handling of bio-medical waste in accordance with these rules and guidelines issued by the Central Government or Central Pollution Control Board as the case may be;

(d) "authorised person" means an occupier or operator authorised by the prescribed authority to generate, collect, receive, store, transport, treat, process, dispose or handle bio-medical waste in accordance with these rules and the guidelines issued by the Central Government or the Central Pollution Control Board, as the case may be;

***5. Duties of the operator of a common bio-medical waste treatment and disposal facility**.-It shall be the duty of every operator to -*

(a) take all necessary steps to ensure that the bio-medical waste collected from the occupier is transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with these rules and guidelines issued by the Central Government or, as the case may be, the central pollution control board from time to time;

***14. Maintenance of records.-** (1) Every authorised person shall maintain records related to the generation, collection, reception, storage, transportation, treatment, disposal or any other form of handling of bio-medical waste, for a period of five years, in accordance with these rules and guidelines issued by the Central Government or the Central Pollution Control Board or the prescribed authority as the case may be.*

***17. Site for common bio-medical waste treatment and disposal facility.**-(1) Without prejudice to rule 5 of these rules, the department in the business allocation of land assignment shall be responsible for providing suitable site for setting up of common biomedical waste treatment and disposal facility in the State Government or Union territory Administration.*

> *(2) The selection of site for setting up of such facility shall be made in consultation with the prescribed authority, other stakeholders <u>and in accordance with guidelines published by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board</u>.*"
>
> (Emphasis supplied)

39. In addition to the above, Schedule III to the BMWM Rules which lists out every prescribed authority and the corresponding duties entrusted to them, require the CPCB to "*prepare Guidelines on bio-medical waste management*" and "*lay down criteria for establishing common bio-medical waste treatment facilities in the country*", amongst other things. Additionally, the Schedule also requires Municipalities or Corporations, Urban Local Bodies and Gram Panchayats to provide or allocate suitable land for development of common bio-medical waste treatment facilities in their respective jurisdictions "*as per the guidelines of the Central Pollution Control Board*".

40. What can be gathered from all these different provisions under the BMWM Rules is that the rules themselves require the RG, 2016 to be made and scrupulously followed for its effective implementation. This aspect could not have been conveyed with better clarity. In such circumstances, there must arise no doubt as regards the mandatory nature of the RG, 2016. To alleviate any residual uncertainty, the RG, 2016 itself in its introductory paragraph reads thus:

> "*Also, the Bio-medical Waste Management Rules, 2016 mandates that the operator of a CBWTF authorised by the prescribed authority is required to take all necessary steps to ensure that the bio-medical waste collected from the occupier is*

transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with the BMWM Rules and the guidelines issued by the Central Government or the Central Pollution Control Board (CPCB) from time to time. Therefore, these guidelines have been prepared with an aim to have uniformity in ensuring site selection, allowing and establishment of a state-of-the-art CBWTF, operation as well as verification of compliance to the BMWM Rules, 2016 throughout the country. However, any other aspects which are not been covered under these guidelines and needs attention, in such a case, the prescribed authority may take suitable action in the interest of protection of the environment in consultation with MoEF & CC/CPCB. Also, it is pertinent to mention here that these guidelines are mandatory henceforth under the Bio-medical Waste Management Rules, 2016."

(Emphasis supplied)

41. Moreover, observing alleged non-compliance to the BMWM Rules and the RG, 2016 in the State of Uttar Pradesh by the UP SEIAA and UP SEAC respectively in the process of grant of EC to CBWTFs, the MoEF&CC thought fit to issue an OM dated 01.04.2022, the relevant parts of which reads thus:

"*2. The communications highlights that the SEIAA abd SEAC of Uttar Pradesh is not taking into consideration the Biomedical Waste Management Rules, 2016 and Revised CPCB Guideline provisions while according Environmental Clearance for CBWTFs.*

3. In view of the above, it is requested to kindly examine the matter as per provisions stipulated under Biomedical Waste Management Rules, 2016 and respective CPCB Guidelines. It is to emphasize here that the provisions contained in guidelines may be strictly followed while giving clearance to new facilities through Gap-Analysis. Further, CPCB may ensure the

> *compliance through regular monitoring. An Action taken Report may also kindly be provided to the Ministry.*"
>
> (Emphasis supplied)

42. Therefore, the intention behind bringing in the RG, 2016 and making it a binding mandate on all the stakeholders is as clear as a noon day. However, it seems as though the ratio in ***Gulf Goans*** *(supra)* is still blindly being resorted to, as one final attempt, by project proponents and surprisingly, State SEIAAs/SEACs alike, to avoid compliance with RG, 2016. To thwart such devious attempts, we must take a closer look at necessary elements laid down in ***Gulf Goans*** *(supra)* and contextualise them with the RG, 2016. No doubt, the first three i.e., a form, a clear mandate and an identifiable purpose, don't require much debate insofar as the RG, 2016 is concerned.

ii. *The requirement of authentication under Article 77 of the Constitution*

43. As regards the question of authentication under Article 77 of the Constitution, this Court in ***Air India Cabin Crew Assn. v. Yeshaswinee Merchant and Others*** reported in **(2003) 6 SCC 277** held that the object and effect of Article 77 is to insulate the executive action of the government which is formally taken in the name of the President from challenge on the ground that it is not an order or instrument made or executed by the President. However, this cannot be read to mean that all other executive action which is not formally expressed to have been taken in the name of the President, *ipso facto* becomes invalid. In other words, any alleged non-compliance with Article 77 only precludes the drawing of an irrebuttable presumption that it is an order or instrument made in the name of the President and by no stretch of imagination, invalidates the order itself. It can always be established by evidence aliunde that the order was made by the competent authority of the Central Government in the name of the President [*See also,* ***Major E.G. Barsay v. State of Bombay*** reported in **1961 SCC OnLine SC 30**]. The relevant observations made in ***Air India Cabin Crew Assn*** *(supra)*are thus:

> "*72. In our opinion, reference to Article 77 is wholly inappropriate. <u>The exercise of statutory power under Section 34 by the Central Government, even though not expressed to have been taken in the name of President, does not render it invalid.</u> Clause (2) of Article 77 insulates an executive action of the Government formally taken in the name of President from challenge on the ground that it is not an order or instrument made or executed by President. <u>Even if an executive action of the Central Government is not formally expressed to have been taken in the name of President, Article 77 does not provide that it would, therefore, be rendered void or invalid.</u>*[…]"

(Emphasis supplied)

44. Keeping in mind the clarification made by ***Air India Cabin Crew Assn*** *(supra)*, it would be even more absurd to assert that executive guidelines issued in exercise of statutory power would be automatically invalid if not authenticated. We say so because, it cannot be disputed that the RG, 2016 has been, in fact, made by the appropriate authority i.e., the CPCB, in pursuance of a clear mandate outlined by the EP Act and the BMWM Rules respectively. Furthermore, what is of particular note is that ***Gulf Goans*** *(supra)* was concerned with guidelines which did not have statutory backing. As a matter of fact, ***Gulf Goans*** *(supra)* itself, while differentiating ***Air India Cabin Crew Assn*** *(supra)* recognised that when executive guidelines or directions are issued pursuant to a statute, it may not be necessary that the burden of proof of authentication under Article 77 be discharged and observed thus:

> *"19. […] The decision in Air India Cabin Crew Assn. v. Yeshaswinee Merchant [(2003) 6 SCC 277, p. 311, para 72 : 2003 SCC (L&S) 840] , taking a somewhat different view can, perhaps, be explained by the fact that in the said case the impugned directions contained in the government letter (not expressed in the name of the President) was in exercise of the statutory power under Section 34 of the Air Corporations Act, 1953. In the present case, the impugned guidelines have not been issued under any existing statute."*

45. As a result, the only element that now requires some explanation is that of publication, that too, whether it must be made in the Official Gazette.

iii. *Whether the non-publication of the RG, 2016 in the Official Gazette could be said to affect its mandatory nature*

46. While it would have been possible for us to differentiate ***Gulf Goans*** *(supra)* from the present case by stating that the RG, 2016 came to be issued in furtherance of several statutory provisions and thereby dispense with the requirement of publication in the Official Gazette, we are afraid that doing so may lead to an oversimplified and fallacious misinterpretation that all statutory guidelines need not be published in the Official Gazette. The answer is, rather, slightly more layered.

47. This Court in ***B.K. Srinivasan and Others v. State of Karnataka and Others*** reported in **(1987) 1 SCC 658** largely dealt with a similar issue wherein the consequences of a failure to publish the Outline Development Plan and the Regulations therein in the Official Gazette was being ascertained to see if the violations committed by the appellants deserved commensurate action. Holding that the non-publication in the Official Gazette was not detrimental, this Court observed that:

i. ***First,*** a law along with all the changes and/or additions made to it by various processes, whether permanent or subordinate, must be notified 'directly and reliably' to those from whom it seeks compliance. To put it simply, that law must be so made that it can be known.

ii. ***Secondly,*** the question whether non-publication of something in the Official Gazette is fatal must be viewed from three perspectives or angles: **(a)** the first angle wherein a specific mode is prescribed for its publication by the parent statute. In such cases, the said mode must be followed; **(b)** the second type wherein there is a silence in the parent statute but the subordinate legislation prescribes a mode for its publication. In such cases, the prescribed mode may be sufficient, *if reasonable*. **(c)** The third-type wherein both the parent and subordinate legislation are silent, or where the subordinate legislation prescribes a plainly unreasonable mode. In such cases, effect can be given only if it is published through the customarily recognised official channel i.e., the Official Gazette or "*some other reasonable mode*".

The relevant observations are thus:

> "*15. <u>There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes.</u> Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "unconscientious bad man" seeking to avoid the law, <u>law must be known, that is to say, it must be so made that it can be known.</u> […] <u>Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable.</u> <u>If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient</u> [Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77]*"
>
> (Emphasis supplied)

48. In ***B.K. Srinivasan*** *(supra),* it was not the parent statute but the rules which prescribed a mode by stating that "*The Outline Development Plan and the Regulations as approved by the State Government under sub-section (4) of Section 13 shall be published in the Official Gazette*".

Therefore, the factual circumstances fell under the second-type aforementioned. Hence, in an attempt to discover whether the mode prescribed by the rules was 'reasonable', this Court probed into what was, in essence, required as a consequence of the publication and attempted at a holistic reading of the entire scheme of the Act and rules thereunder. In doing so, it was held that the plan and the regulations themselves need not have been 'bodily published' or reproduced in the Official Gazette. For better clarity, we deem it necessary to reproduce the relevant observations:

> "*16. In the present case Section 13(4) has prescribed the mode of publication of the Outline Development Plan and the Regulations. It requires the Outline Development Plan and the Regulations to be published in the prescribed manner and the Plan and particulars to be permanently displayed in the offices of the Director and the Planning Authority and a copy to be kept available for the inspection of the public at the office of the Planning Authority. The particulars referred to, we presume, are the particulars mentioned in Section 12(2) of the Act consisting of various reports, including the Regulations. "The prescribed manner" is what is prescribed by Rule 33, that is, publication in the Official Gazette. If we now turn to Section 9(1) and 9(2), we find that there too the Outline Development Plan is required to be published in "the prescribed manner". The prescribed manner for the purposes of sub-sections (1) and (2) of Section 9 is that prescribed by Rule 32. Rule 32 we have seen prescribes making a copy of the Plan available for inspection, publishing a notice in Form II in the Official Gazette and in one or more newspapers and displaying a notice in Form II at the office of Planning Authority and at other specified places. It is true that Rule 33 speaks of publication of approved Outline Development Plan and Regulations in the Official Gazette, suggestive of a requirement that the Outline Development Plan*

<u>and Regulations should bodily be incorporated in the Official Gazette. But if the entire scheme of the Act and the rules is considered as an integral whole it becomes obvious that what Section 13(4) contemplates besides permanently displaying the Plan and the particulars in the offices of Director and Planning Authority and keeping available a copy for the inspection of the public at the office of Planning Authority is a public notice to the general public that the Plan and Regulations are permanently displayed and are available for inspection by the public. Such public notice is required to be given by a publication in the Official Gazette.</u> <u>This is how it was understood by the authorities and everyone else concerned and this is how it was done in the present case. This appears to be a reasonable and a rational interpretation on Section 13(4) and Rule 33 in the setting and the scheme. We are of the view that there was compliance with the requirements of Section 13(4) and Rule 33.</u> We have earlier mentioned that Section 13(1) requires the provisional Outline Development Plan and particulars to be published by notification in the Official Gazette, with a view to invite comments from the public. What was published in the present case under Section 13(1) was also a notice in Form II and not the whole of the Plan and particulars. Such publication evoked considerable public response. As many as 600 representations from individuals and institutions were received. That is why we said that everyone concerned, that is, the Government, the Director, the Planning Authority and the public, individual and institution alike, thought that publication of a notice in the Gazette inviting the attention of the public to the display and the availability for inspection of the Plan and particulars was all that was contemplated by the provisions providing for publication. We do not think that there is any reason or justification for us to adopt an interpretation which departs from common understanding of the Act and the Rules."

(Emphasis supplied)

49. There was also an omnibus curative clause in the parent Act in ***B.K. Srinivasan*** *(supra)* which protected a publication defect when sufficient knowledge of the requirements in the plan and regulation existed with the violating individual. While the presence of this clause added another layer of reasoning, it did not materially affect the conclusion already arrived at. What we are trying to convey is that even when the publication of something in the Official Gazette is required by the plain words of the subordinate legislation (rules), there is some scope, albeit narrow, for the interpretation that its non-publication in the Gazette was not detrimental to its legality or binding nature based on an examination of whether the prescribed mode *was reasonable or not*.

50. In the present litigation, we are concerned with a situation fitting within the third type i.e., when there is silence both in the parent statute and the rules as regards what mode of publication must be followed. As a general rule, even in such scenarios, publication must ideally be made in the Official Gazette. After all, it is the customarily recognised official channel of the government. But, of course, the natural corollary to any general rule is the possibility of it having one or more exceptions. ***B.K. Srinivasan*** *(supra)* too referred to such outliers when it clearly stated that "*some other reasonable mode of publication*" may also be acceptable apart from publication in the Official Gazette. It is tacit that to take benefit of this exception, the court must be satisfied that such an alternate mode or manner of publication was indeed reasonable.

51. At this juncture, we must point out that ***Gulf Goans*** *(supra)* itself laid down the requirement of publication in the Official Gazette as a pre-requisite by placing reliance upon ***B.K. Srinivasan*** *(supra).* However, in the larger background of the facts in ***Gulf Goans*** *(supra),* this Court did not find it necessary to delve further into whether the mode of publication undertaken was reasonable or not.

52. A handful of decisions of this Court have held that publication in the Official Gazette is required. However, on a closer examination, all of them can be differentiated. In ***Pankaj Jain Agencies v. Union of India and others*** reported in **(1994) 5 SCC 198**, ***I.T.C. Bhadrachalam Paperboards and Another v. Mandal Revenue Officer, A.P. and Others*** reported in **(1996) 6 SCC 634,** ***Union of India and Others v. Ganesh Das Bhojraj*** reported in **(2000) 9 SCC 461** and ***Nabha Power Limited and Another v. Punjab State Power Corporation and Another*** reported in **(2025) 5 SCC 353** respectively, the exemption order/notification was required to be published in the Official Gazette by the parent statute itself. Such was the case in ***Sammbhu Nath Jha v. Kedar Prasad Sinha and Others*** reported **(1972) 1 SCC 573** as well where the notification of appointment of the Commission of Inquiry needed to be published in the Official Gazette by the statute. In ***State of Kerala and Others v. P.J. Joseph*** reported in **(1957) 3 SCC 638,** the alleged statutory order varying an existing rule was, again, required to be published in the Official Gazette under the relevant provisions of the statute. The most recent decision in ***Viraj Impex Pvt. Ltd. v. Union of India and Another*** reported in **2026 SCC**

OnLine 101 also related to an order which was expressly required to be published in the Official Gazette by the statute and it was observed that "*The Legislature in its wisdom, has not left the mode of promulgation to executive discretion*". All the aforesaid are instances where this Court has given effect to a clear stipulation in the parent Act which prescribed a set mode of publication or in other words, cases which fell under the first type set out in ***B.K. Srinivasan*** *(supra)*.

53. *Harla v. State of Rajasthan* reported in **1951 SCC OnLine SC 54** was concerned with a situation wherein the Jaipur Opium Act, 1924 i.e., offence creating parent statute itself had not been promulgated and published appropriately. Similarly, in ***Rajendra Agricultural University v. Ashok Kumar Prasad and Others*** reported in **(2010) 1 SCC 730,** the issue was with regard to the non-publication of the statute in the Official Gazette. In ***Ramakrishna Vivekananda Mission v. State of W.B. and Others*** reported in **(2005) 9 SCC 53**, it was the special rules i.e., a subordinate legislation, which was required to be previously published according to the statute and in ascertaining the import of the words 'previously published', recourse was taken to the Bengal General Clauses Act, 1899 which mandated publication in the Official Gazette. These set of decisions deal with the Act or the Rules themselves not being published in the Official Gazette and therefore, again, have little to do with the specific question we are faced with.

54. Now, turning to our facts; neither the EP Act nor the BMWM Rules prescribe a strict mode of publication for the RG, 2016. Undeniably, we would fall under the third-type of scenario as per the decision in ***B.K. Srinivasan*** *(supra)*. Therefore, publication in the Official Gazette, although the general rule, cannot be said to be a *sine qua non*. We are of the view that publication of such technical guidelines i.e. the RG, 2016, on the official website of the CPCB was reasonably sufficient. Moreover, the RG, 2016 lays down crucial standards which form the foundation for the grant of EC and CTE/CTO respectively to a CBWTF. They are so deeply embedded in the authorisation mechanism and all project proponents are sufficiently made aware of its existence whilst commencing the process for obtaining different clearances. Therefore, it cannot be argued that they do not constitute enforceable standards for the grant as well as revocation of permissions. Consequently, falling back on the ratio in ***Gulf Goans*** *(supra)* would be of no help.

B. <u>Permissibility of the grant of relaxation in land requirement</u>

55. The RG, 2016 under Clause 7 provides for the "*Land Requirement*" of a CBWTF and reads thus:

> "***7) Land requirement***
>
> *Sufficient land shall be allocated to the CBWTF to provide all requisite systems which include dedicated space for storage of waste (both treated and untreated), waste treatment equipment, vehicle washing bay, vehicle parking space, ETP, incineration*

ash storage provision, administrative room, space for DG Set etc.,.

(a) Preferably, a CBWTF shall be set up on a plot size of not less than one acre in all the areas. However, a CBWTF can be developed in adjacent plots but cannot be set up in two or more different plots located in different areas. Separate plots can be permitted only for vehicle parking if located in the close vicinity of the proposed CBWTFs or the existing CBWTFs.

(b) In case of upcoming or new CBWTFs (both in municipal limits with population more than 25 lakhs or in rural areas), the land area requirement may be relaxed (but in any case not less than 0.5 acre) by the SPCB/PCC, with additional control measures such as zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures felt necessary by the prescribed authority on case-to-case basis, only in consultation with CPCB."

(Emphasis supplied)

56. Clause 7 begins with a short prelude explaining that *sufficient land* shall be allocated to the CBWTF so that all requisite systems will have adequate space. It goes on to state that a CBWTF shall preferably be set up on a plot size of not less than one acre in all areas. The use of the word "*preferably*" here must not be read to mean that the one acre standard is not compulsory. Instead, the word is used to signify that a single plot need not admeasure one acre and that multiple but adjacent plots can be combined to fulfil this requirement. While different plots which are separate cannot be used for the CBWTF as a general rule, a deviation from this may be allowed if the separate plot is in the close vicinity and is solely for the purpose of vehicle parking. That the one-acre requirement is a strict rule is further substantiated by the fact that land area relaxation may be allowed in certain cases i.e., for upcoming or new CBWTFs which are either in municipal limits with a population of more than 25 lakh *or* in rural areas. However, such relaxation cannot exceed 0.5 acre under any circumstance. The State Pollution Control Board ("**SPCB**") or the Union Territory Pollution Control Committee ("**PCC**") would be the authority which would decide whether relaxation could be granted or not. In all eligible cases, relaxation would be accompanied with additional control measures including *inter-alia* zero liquid discharge, increase in stack height, stringent emission norms, odour control measures or any other measures considered necessary and the matter shall be consulted with the CPCB.

57. It could, therefore, be said that the grant of relaxation has a pre-condition and is also subject to certain mandatory accompanying conditions. The pre-condition relates to the location of the proposed site(s) i.e., it must be within municipal limits having more than 25 lakh population or within rural limits. The accompanying conditions are that: **(i)** consultation with the CPCB is mandatory and, **(ii)** additional control measures must be imposed.

58. It is this issue pertaining to Clause 7 of the RG, 2016 which weighed heavily with the impugned decision and it reached the conclusion that the pre-condition was not fulfilled in the instant case. There was some confusion as regards whether the UPSIDC Industrial Area was situated within Nagar Panchayat limits or rural limits, and if it was situated in the former whether the population of the Nagar Panchayat was more than 25 lakh or not.

59. The impugned decision upon finding that the industrial area was located within the Babrala Nagar Panchayat, proceeded to observe that its population was not even one lakh as per the 2011 census. Therefore, it was sure that Clause 7 was outrightly inapplicable and the authorities including the CPCB and the UP SEIAA respectively, had misdirected themselves in exercising their powers for the grant of relaxation.

60. This Court *vide* order dated 15.07.2024 directed that a report be furnished by the District Magistrate, Sambhal regarding the location of the CBWTF established by the appellant and the population of the Babrala Nagar Panchayat. We have been apprised that the UPSIDC Industrial Area has been formed in village Noorpur, Pargana Asadpur, Tehsil Gunnaur, District Sambhal. It is not situated within the limits of the Babrala Nagar Panchayat but falls within the Noorpur Gram Panchayat. In fact, the distance of the said industrial area from the border of the Babrala Nagar Panchayat is about 2.6 km. Several other authorities including the Executive Officer of the Babrala Nagar Panchayat, the Tehsildar at Gunnaur and the Regional Manager, UPSIDA, all confirm that the plots fall within rural limits.

61. Moreover, in exercise of the powers under Section 2(d) of the UP Industrial Area Act, a Gazette notification was issued by the State of Uttar Pradesh declaring the areas mentioned in the Schedule annexed thereto as Industrial Development Areas. Sl. No. 78 of the Schedule pertains to the Industrial Area that we are concerned with and it is declared to be located at Village Noorpur. Therefore, it cannot be argued that plot nos. E-25 and E-26 respectively situated within the limits of a rural area did not fulfil the precondition under Clause 7(b) of the RG, 2016.

62. ***Aniruda Panwar*** *(supra)* emphasized that setting up a CBWTF on land admeasuring one acre was the rule and relaxation of this land requirement was the exception. Relaxation must not be granted as a matter of right and in a casual manner. On this, we are in agreement. However, in the present case, relaxation was granted after due consultation with the CPCB and the prescription of additional control measures which took into account the operational effectiveness of the appellant's plant in a smaller area. Therefore, the fact that the investment already made by the appellant was also a factor which was considered by the UPPCB and the CPCB respectively, would not be sufficient to indicate that there was malice in law. Similarly, while we agree that the representation made by the UPPCB *vide* letter dated 16.10.2023 to the CPCB was wrong in stating that the first EC and first CTE respectively were only null and void *and not illegal,* this does not seem to have affected the actual grant of relaxation by the CPCB in any manner. The mandate under Clause 7 of the RG, 2016 was strictly followed and the CPCB has not acted in ignorance of the law. It is not the respondent no. 1's case that the additional control measures which ultimately came to be imposed were not sufficient or adequate in some way.

63. In view of the aforesaid, on the issue of relaxation in land requirement, the second EC or the second CTE could not have been quashed by the impugned decision.

C. Status of land acquisition required from a project proponent seeking to establish a CBWTF at the time of making the Form 1 application, at the stage of appraisal of the EC and at the time of applying for a CTE respectively.

64. The answer to this issue hinges on a careful reading of Clause 6 of the EIA, 2006, Clause 2 of the RG, 2016, Section 25 of the Water Act and Section 21 of the Air Act respectively along with some O.M.'s/orders issued by the MoEF&CC.

i. Clause 6 of the EIA, 2006 read with the O.M. dated 07.10.2014

65. Clause 6 of the EIA, 2006 deals with the application to be made for obtaining a prior EC. It reads thus:

> "*An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary*

Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."

(Emphasis supplied)

66. Basically, it states that the application for prior EC must be made in the prescribed Form 1/supplementary Form 1A after the *identification of prospective site(s)* but before commencing any construction activity or preparing the land. It also indicates that such identification must be for the specific project or purpose for which the EC is sought and this is brought forth by the expression "*to which the application relates*". Therefore, land which is identified as a prospective site for a different purpose, cannot pass the muster of Clause 6 when the EC is being sought for establishing some other project/facility.

67. The submission of Mr. Divan is that the words "*identification of prospective site(s)*" clearly indicate that a successful allotment of land for the purpose of establishing of a CBWTF in the appellant's favour was not necessitated by the EIA, 2016. He would state that it may be sufficient if the project proponent has simply identified the land concerned. In our opinion, while his submission would be right for when the Form 1 application is made, the threshold would shift when the EC process progresses to the appraisal stage i.e., Stage 4.

68. The O.M. dated 07.10.2014 issued by the MoEF&CC would shed some further light. It states that an EC is always site-specific, meaning that if the project comes to be set-up in a land different than that for which EC was given, then such EC would automatically become invalid. The O.M. also adds that full acquisition of land may not be a pre-requisite for considering an EC application. However, there must be some credible document showing the status of land acquisition with respect to the project site when the case is brought before the concerned EAC/SEAC for appraisal. The relevant portions of the said O.M. are reproduced thus:

> *2. The matter has been examined in the Ministry. The EC granted for a project or activity under the EIA Notification 2006, as amended, is site specific. While full acquisition of land may not be a pre-requisite for the consideration of the case for EC, there should be some credible document to show the status of land acquisition w.r.t. project site when the case is brought before the concerned EAC/SEAC for appraisal. It has been accordingly decided that the following documents relating to acquisition of land w.r.t the project site may be considered as adequate by EACs/SEACs at the time of appraisal of the case for EC.*
>
> *[…]*
>
> *(ii) In case the land is being acquired through private negotiations with the land owners, credible document showing intent of the land owners to sell the land for the proposed project.*
>
> *3. It may, however, be noted that the EC granted for a project on the basis of aforesaid documents shall become invalid in case the actual land for the project site turns out to be different from the land considered at the time of appraisal of project and mentioned in the EC."*
>
> (Emphasis supplied)

69. If noticed closely, it states that some credible document showing the intent of the land owners to sell the land for the proposed project would be sufficient at the *appraisal* stage. The stages involved in the process of obtaining a prior EC are four: Screening, Scoping, Public Consultation and Appraisal respectively. According to the O.M., the need for such a credible document only arises at the fourth stage. So, although the application in Form 1 can be made by a project proponent before such a credible document is obtained, yet this document must be available for scrutiny when the SEAC and SEIAA respectively, 'finally appraise' the EC application.

70. This brings us to our first take-away i.e., land allotment for the particular purpose/project is not necessary before the application under Form 1 can be made, i.e., before the first stage of screening. Identification is enough. Such a view is further substantiated by two things: **(i)** when the EC is inherently site-specific there arises no reason for placing such a high burden at the Form 1 stage itself, and **(ii)** a reading of the prescribed Form 1 enclosed as Annexure-I to the EIA, 2006, under the head 'Basic Information', requires the applicant to provide details of the "*Location/site alternatives under consideration*", meaning thereby that the applicant is only to provide details of the site(s) in which he intends to setup the project/activity concerned.

71. How can a Form 1 applicant then satisfy that it has *identified* prospective site(s) or that some site is *under consideration* for the purpose for which EC is sought? While we are not inclined to lay down a general standard, we can say without doubt that, in the present case, the applications dated 06.07.2021 made to the UPSIDA seeking allotment of plots E-25 and E-26 respectively, for establishing a CBWTF, was sufficient to prove that the plots were identified or were being considered by the appellant.

72. The second take-away is that, when the stage of appraisal arrives, a credible document becomes crucial. What could be this credible document in the context of the present matter? Undoubtedly, it would either be a successful allotment in favour of the appellant or, if the allotment is not in vogue, then a provisional allotment/ acknowledgment issued by the UPSIDA.

73. Clause 6 of the EIA, 2006 and the O.M. dated 07.10.2014 respectively clarify that legal possession by way of a sale deed, lease deed etc., may not necessarily be obtained, both before making the Form 1 application and at the stage of appraisal, respectively.

74. Let us see if the RG, 2016 says anything different. The Tribunal in ***Aniruda Panwar*** *(supra)* was of the opinion that it did.

ii. *Clause 2 of the RG, 2016*

75. Clause 2 of the RG, 2016 lays down the criteria for the development of a new CBWTF. Amongst other things, it states thus:

> *"c) SPCB/PCC shall identify the coverage area, which require additional treatment facility and bring it to the notice of the concerned department in the business allocation of land assignment in the respective State Government or UT Administration. The department in the business allocation of land assignment shall be responsible for providing suitable site*

in the identified coverage area for setting up of a CBWTF, in consultation with the prescribed authority (i.e., SPCB/PCC), other stakeholders and in accordance with these guidelines issued by CPCB from time to time.

d) Alternately, a CBWTF may also be allowed to be established on a land procured by an entrepreneur in accordance with the location criteria suggested under these guidelines.

e) The SPCB/PCC or concerned department in the business allocation of land assignment in the respective State Government or UT Administration may seek expression of interest from the proponents for development of new CBWTF (s) in the identified coverage area. Upon allocation of site to the proponent, the proponent is required to take necessary approvals as required under the Environment (Protection) Act, 1986 for development of the new CBWTF in accordance with these guidelines."

76. According to the above, in the normal course of things, it would be the SPCB or the PCC which shall identify the requirement of new CBWTFs in each coverage area. The department entrusted with the business allocation of land assignment in the State/UT administration would then provide suitable sites. Thereafter, expressions of interest ("**EoIs**") may be sought for the establishment of a CBWTF. Upon allocation of the site to the successful project proponent, it would be upon such proponent to obtain the necessary approvals. Alternatively, an entrepreneur may also seek to establish a CBWTF on land procured by himself in accordance with the location criteria under the RG, 2016.

77. The use of the words "*land procured*" in the context of an entrepreneur in Clause 2(d) and "*upon allocation of site*" in the context of the

SPCB/PCC/administration's initiative in Clause 2(e), is of particular note. We are of the opinion that, fundamentally, these words do not convey a message different from that of the EIA, 2006. In other words, there is no conflict as such between the relevant provisions of the EIA, 2006 and the RG, 2016 respectively as highlighted in ***Aniruda Panwar*** *(supra)*.

78. According to the RG, 2016, there are two ways through which the process of establishing a CBWTF can be commenced: *One,* by the SPCB/PCC/administration *via* Clauses 2(c) and 2(e) respectively, and *two,* by the entrepreneur *via* Clause 2(d).

79. Clause 2(d) only states broadly that land must be procured by the entrepreneur before establishing a CBWTF. It does not lay down specifically that **(i)** allotment must be complete before the Form 1 application can be made under the EIA, 2006, or **(ii)** mere identification is insufficient before the Form 1 application is made under the EIA, 2006, or **(iii)** legal possession must be obtained prior to the appraisal stage under the EIA, 2006.

80. Moving on, Clause 2(e) admittedly states that the project proponent must proceed with obtaining approvals under the EP Act after the site is allocated in its favour by the SPCB/PCC/administration. But this aspect must be interpreted in the context of the entire process that is envisaged under Clause 2 and not as laying down a rigid rule that allocation is a pre-condition for seeking other approval(s). When EoIs are sought from multiple persons for establishing a CBWTF, the

RG, 2016 places a duty only upon the successful allocatee to commence the necessary approval process, and not everyone who responded to the EOIs. It is for this simple reason that the words "*upon allocation*" is used. Moreover, what is plainly clarified is that despite the land being allocated by the SPCB/PCC/administration, such allocatees must independently obtain the necessary approvals as per the EP Act and that this over-arching obligation cannot be dispensed with. This intent behind the Clause 2(e) must not be morphed or misconstrued as laying down a standard which requires successful allotment before an application under Form 1 is made for the EC.

81. We must not favour a hyper technical view of the words "*land procured*" in Clause 2(d) and "*upon allocation of site"* in Clause 2(e) of the RG, 2016 respectively, in a manner which is contrary to the meaning evinced by the EIA, 2006. Clause 6 of the EIA, 2006 and the O.M. dated 07.10.2014 communicate what is required from any project proponent while making the Form 1 application and at the appraisal stage, without any ambiguity. We do not see any reason, either in law or by way of technical necessity, why a stricter condition must be placed for a proponent seeking to establish CBWTF in comparison to proponents undertaking other activities/projects.

iii. *<u>Applying for a CTE under the Water Act and Air Act respectively.</u>*

82. A project proponent seeking to set-up a CBWTF has to obtain previous consent(s) from the SPCB/PCC by virtue of Section 25 of the Water Act and Section 21 of the Air Act respectively. These previous consents are two in number i.e., the CTE and CTO respectively.

83. Section 25 of the Water Act lays down restrictions on new outlets and new discharges by stating that no person shall, without the *previous consent* of the SPCB, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. Section 26 covers those persons who were already operating an industry, operation or process discharging any sewage or trade effluent and brings them within the ambit of Section 25.

84. Section 21 of the Air Act states that no person shall establish or operate any industrial plant in an air pollution control area unless the *previous consent* of the SPCB has been obtained.

85. A cursory reading of the aforesaid provisions do not explicitly and separately mention the CTE and CTO respectively. Nevertheless, a two-stage regulatory process is followed by the CPCB/SPCB and PCC. The two stages at which the consents are to be obtained signify two distinct operational milestones *vis-à-vis* the project and require separate applications as well as verifications. Broadly, a CTE is required before the project/plant is built or set-up so that the layout, location, proposed air pollution and water pollution control systems etc., can be evaluated before the project takes further shape. A CTO, on the other hand, is required once construction is done and before the commercial operations begin. Its object is to verify that the actual infrastructure including the installed machinery, pollution control mechanisms etc., abide by what was previously approved.

86. Therefore, as the CTE is concerned, what we can gauge is that the project proponent must apply for it *before* establishing or taking steps to establish or setting up such industry/operation. What actions could potentially fall both within and outside the ambit of the expressions "*establish*" or "*take any steps to establish*" or "*setting up*" is difficult to conjure with certainty. But, undeniably, these expressions are of wide import because they can include actions ranging from finalising land, materials, infrastructure labour, obtaining parallel approvals etc. Therefore, when both Sections 25 of the Water Act and 21 of the Air Act mandate that a CTE has to be obtained *before* establishment or taking steps for such establishment, one cannot say, that only the act of procurement of land must predate the application for a CTE while the other acts which otherwise broadly constitute 'establishment' can be undertaken subsequent to the CTE being applied for and/or obtained. There is no *contrary indicia* supporting the view that land procurement or land allotment alone must occur prior to the CTE application. We have already held that Clause 2 of the RG, 2016 does not say otherwise. Meaning thereby that, successful land allotment cannot strictly be a pre-condition to obtaining a CTE.

87. This can further be substantiated through the order dated 20.09.2021 issued by the MoEF&CC which reads thus:

> *"Whereas, prior Environmental Clearance is a statutory requirement for project/activities covered in the schedule of the EIA Notification 2006, issued under section 3 of the Environment (Protection) Act, 1986.*
>
> *2. And whereas, obtaining the consents under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981 is mandatory for all industrial units in Red, Orange and Green categories.*
>
> *3. And <u>whereas, the grant of EC and Consents are requirements under different statutes and are not inter-dependent and can be carried out as a parallel process.</u>*
>
> *4. And whereas, many a times it has been observed that while industrial units are in possession of valid 'Consent to Establish' (CTE)/ 'Consent to Operate' (CTO) issued by State Pollution Control Boards (SPCBs)/ UT Pollution Control Committees (UTPCC), however, they have not obtained the Environmental Clearance (EC), even though it was required as per provisions of EIA Notification 2006.*
>
> *5. And whereas, it has been observed that this situation is arising because majority of the SPCBs/ UTPCCs are issuing CTE/CTO to projects without ascertaining the applicability of prior EC to projects/ activities, resulting in an avoidable situation of closure for even those industries also who seek to carry out their activities following due procedure.*
>
> *6. Now therefore, in exercise of powers conferred by section 5 of the Environment (Protection) Act, 1986(29 of 1986), the Central Government, hereby directs that all SPCB/UTPCC shall:*
>
> > *i. <u>Ascertain the applicability of EIA Notification at the time of grant/renewal of CTE and stipulate appropriate condition for obtaining Environmental Clearance (EC), if applicable, before construction/commencement of project/activity.</u>*

> *ii. <u>Ensure that the project proponent possesses a valid Prior EC in terms of the extant EIA Notification, if applicable, at the time of grant/renewal of CTO and no CTO shall be granted or renewed unless EC, if applicable, has been obtained</u>*
>
> *7. This is issued with the approval of the Competent Authority.*"
>
> (Emphasis supplied)

88. The aforesaid order was made to address those situations wherein CTEs/CTOs were being issued to projects without ascertaining the applicability of the EIA, 2006 owing to the fact that the EC and the CTE/CTO process can be undertaken parallelly. As a direct consequence, several projects did not apply for EC and were being subjected to closure. Therefore, it was directed that the applicability of the EIA, 2006 be ascertained by the SPCB at the time of grant of CTE itself and that no CTO be granted unless prior EC was already obtained.

89. When the order dated 20.09.2021 is read holistically with what we have held in the previous sub-section i.e., that proof of land allotment only needs to be furnished during appraisal of the EC, what becomes clear is that although land allotment may be a precondition for obtaining the CTO (because prior EC has to be mandatorily obtained before the CTO), yet such a requirement may not restrict the making of an application for CTE or even the grant of CTE for that matter.

90. In view of all the aforesaid, we are afraid that we are in disagreement with the decision in ***Aniruda Panwar*** *(supra)* on the reasoning that, owing to Clause 2 of the RG, 2016, a project proponent seeking to establish a CBWTF must have successfully procured or gotten land allocated in his favour even before commencing the process of obtaining prior EC and/or CTE.

91. Whilst we differ in the interpretation it afforded, we must nevertheless clarify that the conclusion reached in ***Aniruda Panwar*** *(supra)* cannot be assailed for being wrong. As discussed above, identification of the prospective site(s) for the specific project/activity is the threshold for when an application for EC is made. Obtaining a credible document showing the status of land acquisition is the pre-requisite for when the EC is being appraised by the SEAC and SEIAA respectively. Prior to applying in Form 1, the appellant had approached the UPSIDA *vide* application dated 06.07.2021 for land allotment to establish a CBWTF and had therefore, identified prospective site(s) for the purpose for which the EC was being sought. So, up until this point, there was no issue. However, it failed to fulfil what was expected from it at the appraisal stage. In other words, at the time when the UP SEAC and UP SEIAA respectively, were appraising the appellant's EC application for the grant of the first EC, i.e., on 16.06.2022 and 05.07.2022 respectively, the UPSIDA had rejected the appellant's request for land allotment for setting up a CBWTF. Thereafter, it only re-issued an allotment letter in favour of the appellant for a different type of industry/facility. Meaning thereby that, there was no credible document indicating that a CBWTF could be established in the said land when the UP SEAC and the UP SEIAA appraised the EC application. Only after the first EC was granted did the appellant apply and obtain permission for change in land use. This could not have retrospectively legalised the grant of the first EC.

92. As far as the first CTE is concerned, although it could not have been faulted with for non-allotment of land prior to the date on which the CTE was applied for i.e. prior to 27.09.2021, yet the UPPCB was under an obligation to check whether the specifications of the land provided by the appellant in its application for CTE fulfilled the land requirements prescribed under Clause 7 of the RG, 2016. Since the land identified by the appellant was of a size less than one acre, the UPPCB must have directed the appellant to either identify additional prospective plots or apply for a relaxation in land requirement before granting the first CTE. Hence, for this reason, the first CTE was illegal and void.

93. Now, we must look into whether the second EC or second CTE could be said to have become vulnerable for any reason/ground discussed hereinabove. Considering that the appellant was not required to apply through a fresh Form 1 after the first EC and first CTE were set-aside by ***Aniruda Panwar*** *(supra)* (an aspect which will be dealt with in detail in the next sub-section), we only need to see whether land acquisition requirements were met at the appraisal stage. When the UP SEAC and UP SEIAA sat for appraisal on 20.11.2023 and 20.12.2023 respectively, the appellant obtained allotment of plots E-25 and E-26 respectively for establishing a CBWTF from the UPSIDA on 19.09.2022, and relaxation in land requirement of 1 acre was also allowed by the CPCB on 17.11.2023. The second CTE was also granted by the UPPCB on 20.12.2023 after land relaxation was already allowed by the CPCB. Therefore, the second EC and CTE stood the test of the land acquisition requirements at each stage of the process.

D. The grant of the second EC on the basis of the first ToR

94. Mr. Misra would argue that when the first EC and first CTE was set-aside by ***Aniruda Panwar*** *(supra)* for the reasons stated therein, the first ToR was also implicitly set-aside. Therefore, the second EC and second CTE granted on the basis of such a defunct ToR cannot be said to be valid under law. On the other hand, Mr. Divan would state that the setting aside of the first EC and first CTE had no effect on the first ToR. Moreover, the ToR was also valid for a period of four years.

i. Whether the decision in Aniruda Panwar could be said to have set-aside the first ToR

95. It cannot always as a mechanical rule be said that when the EC is set-aside, the ToR is also automatically rendered null and void for a project proponent who is desirous of obtaining a fresh EC. The answer depends on the grounds due to which the EC is vitiated and what was found to be illegal or defective in the four stage EC process. It also depends on how far back into the process the defect had crept in. *For example,* if the illegality arose from the appraisal stage alone i.e., due to non-application of mind by the SEAC/SEIAA, then there would be no use in relegating the project proponent back to the absolute beginning. But, *say,* the illegality arose from an incomplete or shoddy EIA report which did not abide by the prescribed ToR, then the project proponent would have to prepare a fresh EIA report. Here again, there wouldn't be any need to disturb the ToR itself. However, *say,* the ToR itself was improperly issued because necessary details in the Form 1 application were false, incomplete or misleading, then the whole process would have to be recommenced afresh. As a matter of practice, the stage at which the process must be restarted is indicated with sufficient clarity in the order setting aside the EC. However, admittedly, the decision in ***Aniruda Panwar*** *(supra)* is not intelligible on this aspect.

96. Mr. Misra would submit that, once the first EC was set-aside, the entire process was required to be started afresh because the appellant had falsely claimed that plots E-25 and E-26 respectively, had been procured in their Form 1 application. According to him, this would amount to deliberate concealment and/or submission of misleading and false information material to the screening, scoping and appraisal stages under Clause 8(vi) of the EIA,2006, which tainted the whole process. He would also place reliance on the decision of this Court in ***Hanuman Laxman Aroskar*** *(supra)* to substantiate this argument.

97. In ***Hanuman Laxman Aroskar*** *(supra),* the EC granted for development of the greenfield airport project in Goa was called into question for several flaws in the EIA process including the failure of the project proponent to disclose the name and identity of forests within an aerial distance of 15km of the project despite the fact that the Form 1 mandatorily required a clear disclosure of "*areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests*". Deprecating such practice, this Court observed that non-disclosure of vital information and suppression of material facts in Form 1 has a cascading effect on the entire EC process: **(i)** It would impair the ability of the EAC/SEAC to recommend a rejection of the application for EC at the threshold under Clause 7 II.Stage(2)–Scoping(iii), **(ii)** affect the functioning of the EAC/SEAC in the preparation of the ToR, **(ii)** lead to a deficient EIA report, and **(iii)** influence the EAC/SEAC's appraisal of the EC application, amongst others. Since Form 1 is the base upon which the whole process rests, it was cautioned that the depth and accuracy of information provided in Form 1 must not be compromised and the project proponent must be held to the highest duty of transparency and rectitude. If the project proponent did not abide by the same, then an EC already granted could also be cancelled on the basis of Clause 8(vi) of the EIA,2006. The relevant observations are thus:

> *"61. Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:*

61.1. EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

61.2. At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to ToR" and communicates any inadequacy to EAC or SEAC.

61.3. Category B2 projects, which do not require scoping, are evaluated by SEAC on the basis of the information furnished by the applicant in Form 1 alone.

61.4. The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1-A as applicable.

61.5. An application for extension of the validity of EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

62. <u>The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests.</u> An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. <u>The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis</u>

<u>of a defective Form 1 is liable to be rejected immediately.</u> Clause (vi) of Para 8 of the notification provides thus[…]

70.1. <u>Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 km. Item 2 under the heading of "Environmental Sensitivity" requires a clear disclosure of "areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests</u>".

72. […] <u>The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1</u>.

73. There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 Notification. Hence, clause (vi) of Para 8 of the 2006 Notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

80. […] <u>There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating ToR and between the ambit of the EIA report required by ToR and the final EIA report. ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report</u>."

(Emphasis supplied)

98. Coming back to the facts of our case, our finding on the previous issue has already made clear that procurement or allotment of land was not a pre-requisite for making an application under Form 1.

Therefore, there arises no question of deliberate concealment or non-disclosure which vitiated the first ToR. The respondent no. 1 has not pointed any other aspect which, in their opinion, was false or defective in the Form 1 application made on 11.08.2021 and which may have made the ToR itself invalid/void/insufficient in any manner.

99. Rather, what the appellant was actually guilty of in terms of Clause 8(vi) of the EIA,2006 was concealing the fact that UPSIDA had thereafter allotted the plot for a difference purpose i.e., for fabrication of industrial equipment. But this was a *material concealment* in connection with the *appraisal* stage of the EC process and had nothing to do with Form 1. The same comes across very clearly on a bare reading of the following observations in ***Aniruda Panwar*** *(supra)*:

> *"68. […] In the absence of such evidence Respondent No 7 must be held to have suppressed material facts from UPPCB and UPSEIAA UPPCB and UPSEIAA must also be held to have ignored material facts in this regard that as on 26.04.2022 when CTE was granted by UPPCB and on 13.07.2022 when EC was granted by UPSEIAA to Respondent No.7 for establishment of CBWTF, establishment of CBWTF was not permissible in plots No. E-25 and E-26 situated in Babrala Industrial Area which had been allotted by Respondent no. 6 UPSIDA to Respondent No 7 for setting up Industrial Fabrication Equipment (ETP/STP/WTP/C).*
>
> *69. Concealment of material information by Respondent No 7 and impermissibility of land use for establishment of CBWTF at the time of grant of CTE and EC cannot be casually brushed aside […]"*

100. It was observed that "*concealment of material information…<u>at the time of grant of EC</u>…cannot usually be brushed aside*". Therefore, while the appellant's actions were hit by Clause 8(vi) of the EIA, 2006 and affected the appraisal of the EC, such concealment did not render the first ToR invalid.

101. Moreover, a careful reading of ***Hanuman Laxman Aroskar*** *(supra)* also reveals that due attention must be paid to the *nature* of the non-disclosure or concealment in Form 1 as well. We say so because ***Hanuman Laxman Aroskar*** *(supra)* linked the significance of an accurate and complete Form 1 with its potential to enable the EAC/SEAC to reject the application at the threshold *and/or*, affect the preparation of the ToR *and/or*, affect the ambit of the EIA report *and/or*, influence the appraisal of the application by the EAC/SEAC. Therefore, the information which is withheld or concealed in Form 1 must be such that it will push the fresh EC process off course, into error or astray, in some manner, small or big, unless the entire exercise is started from scratch. In other words, there must be some impact that such a false disclosure or non-disclosure in Form 1 would cause to the entirety of the EC process in order to direct the applicant to go back to the starting line. This is also precisely why Clause 8(vi) of the EIA, 2006 uses the words "*information or data which is <u>material</u> to*" the screening, scoping, appraisal or decision on the application, in the context of rejecting any application or cancelling the EC already granted. For ease of reference, Clause 8(vi) is reproduced thus:

> *"<u>Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis</u>. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."*
>
> (Emphasis supplied)

102. When such *material* information has either been concealed or falsified, then both reason and logic demands that the same be remedied in the fresh EC which may be re-issued. Materiality has nothing to do with whether the lapse or error was minor or not. In matters concerning the environment, nothing must be casually deemed minor. However, all we wish to convey is that, before relegating the applicant way back to Form 1, there must be some benefit that accrues from remand to a specific stage. Some cogent reason must exist. Hence, along with assessing whether there was deliberate concealment and/or submission of false/misleading information or data, the material nature of the data/information and an assessment of which all stages could be said to have been affected must also be looked into, especially for deciding where the applicant has to resume from after its EC is set-aside. Whether the ToR could have become null/void directly depends on the stage from which this restart has to occur.

103. Considering that the appellant had successfully obtained a relaxation in the land requirement for a CBWTF from the CPCB instead of further pursuing the procurement of additional land from UPSIDA, it would be pointless to direct the appellant to re-apply through a fresh Form 1 application and obtain a fresh standard ToR. In opting to proceed with the land relaxation, even if demoted back to the Form 1 stage, the appellant would have to provide the exact same details on the Form 1 application, the fresh standard ToR would be identical and the fresh EIA report prepared in pursuance of it would also be no different. Hence, when the EC is set-aside in such cases, the applicant must not be required to mechanically restart the process, particularly when going to the starting line virtually adds nothing to the procedure and is purely redundant. We must be alive to the costs and delay that would accompany such a pointless restart.

104. On the contrary, if the appellant had been unsuccessful on the relaxation front and proceeded to procure plot E-27, then it would have had to apply through a fresh Form 1 application and a new ToR would have been indispensable. This is because, as we had indicated above, the EC process is site-specific and if the project or even a part of the project comes to be established on different land, then the EC would be invalidated. It naturally follows that if plot E-27 was sought to be included in the project site, then the first ToR which only mentioned plots E-25 and E-26 respectively would have created a mis-match. A fresh Form 1 application, followed by a fresh ToR and a EIA report which accounted for the additional land, would have been necessary. Anticipating this precise problem, the appellant rightly obtained a second ToR through a fresh Form 1 application which included plot E-27. However, once plot E-27 was out of the picture, the appellant applied to cancel the second ToR and proceeded with the first ToR whose validity was not affected by the decision in ***Aniruda Panwar*** *(supra).*

ii. *Validity period of the ToR*

105. Responding to the submission that the first ToR was rendered invalid, Mr. Divan also submitted that the first ToR remained valid for a period of four years from the date of its issuance. To substantiate the same, he would rely on two O.M's issued by the MoEF&CC dated 29.08.2017 and 08.06.2022 respectively, which read thus:

O.M dated 29.08.2017

> "***Subject: Terms of Reference for EIA/EMP studies for the projects/activities requiring Environmental Clearance under the ElA Notification, 2006 - Extension of validity period - regarding.***
> *In order to streamline the process and provide greater clarity in issuing Terms of Reference (ToRs) for undertaking EIA/EMP studies for the projects/activities requiring Environmental Clearance under the EIA Notification, 2006, the following decisions have been taken with immediate effect:*
> *(i) The validity of ToRs for projects/activities (except for River Valley and HEP Projects), for submission of EIA/EMP reports shall be three years.*
> *(ii) The validity of ToRs for River Valley and HEP Projects, for submission of EIA/EMP report shall be four years.*

(iii) <u>The above validity period can be extended by the concerned Regulatory Authority for a maximum period of one year without referring the proposal to the EAC/SEAC concerned, provided an application is made by the applicant before expiry of the validity period, together with an updated Form-1 and proper justification and there is no change in terms and conditions of the ToRs. After the lapse of validity, such extension will need EAC/SEAC consideration.</u>

(iv) <u>Thus, an outer limit of validity of ToRs shall be 4 years for all the projects/activities and 5 years for River Valley and HEP Projects.</u>

(v) The ToRs will specifically mention the date of expiry of validity.

(vi) Extension of validity of ToRs beyond the outer limit of four years for all projects/activities, and five years for River Valley and HEP projects, shall not be allowed/considered by the Regulatory Authority.

[…]

(ix) <u>In case the proposal for Environmental Clearance along with EIA/EMP reports based on the ToRs prescribed, is not submitted within the validity period of ToRs, and/or not complying with the above conditions, the process shall be started de novo.</u> The already collected baseline data may be re-used, provided it is not more than 3 years old and duly recommended by EAC/SEAC in their due diligence.

(x) In case, any proposal for ToR is delisted for want of additional information within the time period, as stipulated by the Ministry, the same can be listed again after the requisite information is submitted."

(Emphasis supplied)

<u>O.M. dated 08.06.2022</u>

"Subject: Standardizing the validity of baseline data and public consultation reports for submission of proposal within the validity period of Terms of Reference (ToR)

under the provisions of EIA Notification, 2006 – regarding.

As per the provisions of EIA Notification, 2006, Terms of References (ToR) are being accorded to the various developmental projects listed in the schedule to the EIA Notification, 2006 except schedule 8(a) for undertaking EIA/EMP study. In this regard, Ministry issued Office Memorandum No. J-11013/41/2006-IA-II (I) (Part) dated 29th August 2017 stating that the validity period of ToR as three years for all the projects/activities and four years for River Valley and HEP Projects. This validity period could be further extended by a maximum period of one year, thereby making the outer limit for validity of ToR as four years for all projects/activities and five years for River Valley and HEP projects.
[…]
6. The aforesaid matter has been examined in the Ministry. In order to address this issue in a practical manner and to bring uniformity in handling such proposals, the following standard procedures shall be followed with immediate effect:
[…]
(v). <u>In case the proposal for EC along with EIA/EMP reports based on the ToRs prescribed is not submitted within the validity period of ToRs, and/or not complying with the above-mentioned criteria, the concerned Member Secretary shall not accept the proposal and process shall be initiated de novo by the PP.</u>"

(Emphasis supplied)

106. The aforesaid spell out that the validity of a ToR issued for a CBWTF would be 3+1 years. In the event the project proponent does not place its proposal for EC along with the EIA report and other necessary particulars, if any, before the SEIAA within the validity period of the prescribed ToR, only then the process would have to be started *de* *novo.* Here, *de novo* would mean right from the making of a Form 1 application for issuance of a fresh ToR.

107. The rationale behind tethering the ToR to a set time-limit was elucidated upon in the decision of this Court in ***Bengaluru Development Authority v. Sudhakar Hegde and Others*** reported in **(2020) 15 SCC 63**. It was stated that every ToR relies upon information furnished in the Form 1 application which, in turn, comprises of data on an "*as is*" basis. However, the environment is in a constant state of flux and therefore, after a point, the data forming the basis of the ToR would become outdated and the EIA study would pale into insignificance. For this reason, the MoEF&CC did not want to indefinitely continue the validity of a ToR. It was to account for such environmental dynamism that an outer limit was laid down. The relevant observations are thus:

> *"48. Significantly, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Information submitted in Form 1 relies on data and information on an "as is" basis at the relevant time of submitting information. Material information regarding the particulars of the proposed project as well as the potential impact on the environment is sought to enable the EAC or the SEAC to prepare a comprehensive TOR on which basis the applicant proceeds to prepare the EIA report.[…]*
>
> *49. <u>MoEFCC stated that it was clearly undesirable to indefinitely continue a TOR. The environment is, by its very nature, dynamic. Soil quality, air characteristics and surrounding flora and fauna are among the characteristics of the environment which are constantly in a state of flux. A</u>*

> *robust framework of environmental governance accounts for the dynamic nature of the environment. It is for this reason that project proponents are also required to ensure the submission of an Environmental Management Plan and compliance with the monitoring procedures envisaged under the 2006 Notification. An indefinite TOR defeats the very purpose which underlies the 2006 Notification for it may lead to situations where the state of the environment has changed drastically, yet the EIA process is carried out on the basis of outdated information.[…]*".
>
> (Emphasis supplied)

108. In light of all the aforesaid, the first ToR could not be said to have been invalidated when the first EC was set-aside by ***Aniruda Panwar*** *(supra),* especially when it remained unimpacted by the reasons due to which the first EC was quashed. It would be irrational for a ToR to be allowed the full extent of its validity period solely when the EC process is ongoing i.e., when the project proponent is yet to complete the EIA study *or* the public consultation *or* submit his EC proposal before the SEIAA. It is not the case of the respondent no. 1 that the baseline data was outdated or faulty. Therefore, viewed from all angles, the first ToR was still valid and the second EC could have been granted on the basis of the first ToR.

109. It also cannot be said that the very factum of issuance of the second ToR indicated that the first ToR could no longer be put to use. We have explained why the second ToR may have been necessary if an additional plot was sought to be acquired by the appellant. Based on subsequent factual developments, the appellant ensured that the same was duly withdrawn on 21.11.2023.

V. <u>CONCLUSION</u>

110. A conspectus of the aforesaid discussion is as follows:

i. The RG, 2016 is mandatory in nature. It must be scrupulously followed by the relevant authorities and the project proponents alike during the process of obtaining/grant of permissions for the establishment of a CBWTF. Its non-publication in the Official Gazette could not be said to have affected its mandatory nature. The decision of this Court in ***B.K. Srinivasan*** *(supra)* had clarified that when a strict mode of publication has not been prescribed, either by the parent statute or the subordinate legislation, *a reasonable mode* of publication may be sufficient. Neither the EP Act nor the BMWM Rules prescribe a strict mode of publication for the RG, 2016. Therefore, publication in the Official Gazette, although the general rule, cannot be said to be a *sine qua non*. The publication of such technical guidelines on the official website of the CPCB was reasonably sufficient.

ii. Moreover, the RG, 2016 lays down crucial standards which form the foundation for the grant of EC and CTE/CTO respectively to a CBWTF and are so deeply embedded in the existing authorisation mechanism. All project proponents are sufficiently made aware of its existence whilst commencing the process for obtaining different clearances. Therefore, it cannot be argued that they do not constitute enforceable standards for the grant as well as revocation of permissions. Any reliance on the ratio in ***Gulf Goans*** *(supra)* would, therefore, be misplaced.

iii. As per Clause 7 of the RG, 2016, the land requirement of one acre prescribed for setting up a CBWTF may be relaxed upon the fulfilment of one of the two pre-conditions i.e., the land must be situated either within municipal limits with a population of more than 25 lakh *or* within a rural area. Additionally, consultation with the CPCB and the imposition of additional control measures is mandatory. The appellant's CBWTF is located within Village Noorpur and is therefore, in a rural area. Relaxation was granted only after due consultation with the CPCB and the imposition of additional control measures which took into account the operational effectiveness of the CBWTF in a smaller area. Therefore, the grant of relaxation cannot be faulted.

iv. Clause 6 of the EIA, 2006 states that an application in Form 1 can be made *after the identification of prospective site(s)*. Therefore, land allotment cannot be said to be a pre-condition for the making of an application under Form 1.

v. The O.M. dated 07.10.2014 issued by the MoEF&CC clarifies that, at the stage of appraisal of the EC i.e., at Stage IV, some credible document showing the intent of the land owner(s) to sell the land for the proposed project must be obtained in case the land is being acquired through private negotiations. In the context of the present case, such a credible document would either be a successful allotment in favour of the appellant for the establishment of a CBWTF or, if the allotment is not in vogue, then a provisional allotment/acknowledgment issued by the UPSIDA for the establishment of a CBWTF.

vi. A perusal of the order dated 20.09.2021 issued by the MoEF&CC as well as Section 25 of the Water Act and Section 21 of the Air Act respectively, indicate that **(a)** the applicability of the EIA, 2006 and the necessity of obtaining prior EC must simply be ascertained/identified by the SPCB/PCC at the time of grant of CTE and, **(b)** prior EC must be obtained before a CTO can be granted by the SPCB/PCC. Therefore, when the chronology is rightly understood, a CTE can be issued before the issuance of a prior EC upon a mere assessment of the *applicability* of the EIA, 2006. In that case, when the *identification of prospective site(s)* is the land acquisition requirement for making a Form 1 application under the EIA, 2006, then successful land allotment for the CBWTF cannot be made a condition precedent, both for the making of an application for CTE and the grant of CTE respectively. Having said so, relaxation in land requirement, if any, in accordance with Clause 7 of the RG, 2016 must be granted by the SPCB/PCC in consultation with the CPCB before they can issue a CTE for land admeasuring less than one acre.

vii. Clause 2 of the RG, 2016 does not make land procurement or land allocation a strict pre-requisite for initiating the process of obtaining both the EC and CTE respectively.

viii. The second EC and second CTE were both granted in favour of the appellant on 20.12.2023 after land was allotted to it by the UPSIDA on 19.09.2022 and after relaxation was granted by the CPCB on 17.11.2023. Therefore, as far as the fulfilment of land acquisition conditions are concerned, the second EC and second CTE was not vitiated.

ix. The setting aside of the first EC by the decision of the Tribunal in ***Aniruda Panwar*** *(supra)* did not have the consequence of rendering the first ToR invalid. There was no deliberate concealment or non-disclosure of material information which affected the Form 1 application or the issuance of the first ToR. Therefore, the first ToR was intact. Considering that the first ToR was also valid for a period of four years, the grant of the second EC on the basis of the first ToR could not be said to be wrong.

111. In view of all the aforesaid, we have reached the conclusion that the NGT committed an egregious error in passing the impugned judgment quashing the second EC and second CTE respectively.

112. As a result, this appeal succeeds and is hereby, allowed. The impugned judgment and order passed by the NGT, Principal Bench, is hereby set-aside.

113. Pending applications, if any, shall also stand disposed of.

114. Registry shall forward one copy of this judgment to the National Green Tribunal, Principal Bench, New Delhi and the Principal Bench thereafter shall circulate the judgment to all the circuit benches of the Tribunal

…................................ J.

(J.B. PARDIWALA)

…................................ J.

(MANOJ MISRA)

New Delhi.
7th September, 2026.