BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

APPEAL NO. 05 OF 2014

IN THE MATTER OF:

M/s Ardent Steel Limited
Plot No. 208, New Colony,
Jamuhata, Keonjhar
Odisha – 758001

Having its registered office at:

M/s Ardent Steel Limited
A – 401, Lotus Corporate Park,
Jay Coach Signal Off.,
Western Express Highway, Goregaon (East),
Mumbai – 400063

..... Appellant

Versus

1. Ministry of Environment and Forests (MoEF),
Government of India
Through the Secretary,
Paryavaran Bhawan,
CGO Complex, Lodhi Road
New Delhi – 110003

2. State Pollution Control Board, Odisha
Through its Member Secretary,
A/118, Paribesh Bhawan,
Nilakantha Nagar, Unit-VIII,
Bhubaneshwar, Odisha – 751012

.....Respondents

Counsel for Appellant:

Mr. Pinaki Mishra, Sr. Advocate
Mr. Ratan K. Singh, Advocate
Ms. Shashi Bhushan, Advocate
Mr. Suraj Prakash, Advocate

Counsel for Respondents:

Mr. Vivek Chib, Advocate
Mr. Asif Ahmed, Advocate
Mr. Kushal Gupta, Advocate (for Respondent No. 1)
Mr. A.K. Panda, Senior Advocate
Mr. S. Panda, Advocate (for Respondent No. 2)

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi, Judicial Member
Hon'ble Dr. D.K. Agrawal, Expert Member
Hon'ble Mr. Bikram Singh Sajwan, Expert Member
Hon'ble Dr. R.C. Trivedi, Expert Member

Dated: May 27, 2014

JUSTICE SWATANTER KUMAR (CHAIRPERSON):

In the present Appeal, the following short but interesting questions of law and public importance have arisen for consideration of the Tribunal:

2. Whether on its true construction and scope, a pelletization plant would fall under Entry 3(a) (Metallurgical industries) (ferrous and non-ferrous) of the Schedule to the Environmental Clearance Regulations, 2006 (for short 'Regulations of 2006').

3. Eschew of unnecessary details, the precise facts giving rise to the present Appeal are that the Appellant is a company registered under the Companies Act, 1956 having its Office at

Lotus Corporate Park, Western Express Highway, Goregaon East, Mumbai. The company is involved in the business of manufacturing of pellets for the 'stand alone' iron ore pelletization plant in Orissa. The plant is of 0.6 MTPA capacity. The company had applied for 'Consent to Establish' the plant which was granted by the State Pollution Control Board, Orissa (for short 'the Board') on 17th November, 2008. Having established the plant and for making it operational, the company applied for 'Consent to Operate' under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. The Board issued 'Consent to Operate' to the company after which the company started its regular operation. According to the company, since the year 2010, the Board had been issuing 'Consent to Operate' every year under both the above said Acts. The consent was last issued on 10th, April, 2013 which was valid till March, 2014.

4. The company had plans of expanding its activity and enlarging the capacity of the plant from 0.6 MTPA to 2.1 MTPA and to establish one sponge iron unit, iron ore washery, steel melting shop and captive power plant. It is the own case of company that it required Environmental Clearance from the Ministry of Environment and Forest, New Delhi (for short 'the MoEF'). Resultantly, the company would require Environmental Clearance under the provisions of the

Regulations of 2006. It is the case of the company that this existing pelletization plant was a 'stand alone' plant for which the company was not required to take Environmental Clearance. However, in view of the proposed expansion, the company applied for obtaining Environmental Clearance on 2nd May, 2012 to the MoEF. The Application was placed before the Expert Appraisal Committee (for short 'the EAC') as constituted under the Regulations of 2006. While considering the application of the company, primarily founded on the expansion programme, the EAC in its meeting held on 10-11th, June, 2013 observed that even the 'stand alone' pelletization plant did not have Environmental Clearance under the Regulations of 2006 and therefore, deferred the consideration of the proposed expansion. The principal ground for such deferment was that the existing 0.6 MTPA iron ore pelletization plant is running without obtaining prior Environmental Clearance. In the minutes, it was also observed that the matter should be dealt with by MoEF in accordance with its Office Memorandum dated 12th December, 2012. These minutes of the EAC were put on the website of the MoEF from where the Applicant came to know about the meeting. Thereafter, the company made a detailed representation to the MoEF on 24th September, 2013, 7th October, 2013, 7th November, 2013 and 13th November, 2013. In all these representations the company put forward different grounds taking a clear stand that a 'stand alone' pelletization plant

would not be covered under the Regulations of 2006 and the company was not required to take the stated Environmental Clearance. In their representation dated 24th September, 2013, the company also referred to a decision of the MoEF in the meeting held on 19-20th December, 2013 which had taken a decision somewhat on similar lines. The relevant extract of the said minutes reads as under:

> 1) Ministry may send a communication to all the State Pollution Control Boards/ Pollution Control Committees stating that the iron ore pellet plants are falls under S. No. 3(a) [Primary Metallurgical Industries] under category 'A' of the Schedule 3 of EIA Notification, 2006 and requires Environmental Clearance (EC) from MoEF. The iron ore pellet plants which are operating within their jurisdiction without obtaining EC may be advised to regularize their statutory approvals by applying to MoEF for the grant of EC in accordance with the procedure stipulated in the EIA Notification 2006 within a time frame of six months.
>
> 2) Ministry may take a holistic view regarding applicability of EC for the iron ore pellet plants which are under operation with the valid consents as there is a conflict of opinion regarding applicability of EC for pellet plants between SPCBs and MoEF.
>
> 3) Further, action taken against M/s ASL in respect of their violation may be viewed by the Ministry as there is a conflict of opinion regarding applicability of EC for pellet plants between SPCBs and MoEF.

5. The company took a stand that it has been noticed by the Committee also that there is a conflict of opinion regarding applicability of the Regulations of 2006 on iron ore pellet plants between the State Board and the MoEF. It was also noticed that even the other State Boards like Chhattisgarh, Jharkhand etc. have been granting 'Consents to Establish'

and to 'Consent operate' to the 'stand alone' pelletization plants within their jurisdiction without requiring them to obtain Environmental Clearance under the Regulations of 2006. Such plants were running for years together. In the case of the company, it was asked to regularize the said statutory approvals and take Environmental Clearance in accordance with the Regulations of 2006 within a period of six months. The company received a letter dated 12th December, 2013 whereby the company was asked to make their representation before the 14th EAC to be held on 19th - 20th December, 2013 at New Delhi. The Company made a representation before the EAC of the MoEF. During the course of the meeting on 19th – 20th December, 2013, the representative of the company was informed that no adverse stand would be taken against the Appellant as the Committee was of the view that there was a conflict of the opinion regarding inclusion of 'stand alone' iron ore pellet plant under Entry 3(a) of Schedule to the Regulations of 2006. The company also received a letter dated 12th December, 2013 which according to the company was ante dated. Vide this letter, the company was asked to stop the production in its plant on the ground that the company had not obtained Environmental Clearance under the Regulations of 2006. However, this letter was dispatched on 26th December, 2013 and was received by the Appellant on 3rd January, 2014. According to the company, the letter dated 12th December, 2013 was in conflict with the assurance given

in the EAC meeting that the company would be granted six months time to take Environmental Clearance in terms of the Regulations of 2006. The impugned Order dated 12th December, 2013 reads as under:

> "Whereas M/s Ardent Steel Limited (ASL) had applied vide letter no. EC/13-14/002 dated 2nd May, 2013 to the Ministry of Environment and Forest (MoEF) for the grant of Terms of Reference (ToR) for the proposed expansion of Iron Ore Pelletizing Plant (0.6 MTPA to 2.1 MTPA) by addition of Iron Ore washery (3.0 MTPA), DRI Plant (1.2 MTPA), SMS (1.2 MTPA), Rolling Mill (1.2 MTPA) along with Power Plant (100 MW) at village Phulijhar, Block-Bansapal, Tehsil Telkoi, District Keonjhar, Odisha in accordance with the provisions of the Environmental Impact Assessment (EIA) Notification, 2006.
>
> Whereas MoEF vide letter of even no. dated 27th May, 2013 requested M/s. ASL to make a presentation in the 9th Meeting of the Reconstituted Expert Appraisal Committee (Industry) held during 10-11th June, 2013 for prescribing Terms of Reference (ToR) for preparation of EIA Report for the proposed expansion of Iron Ore Pelletizing Plant (0.6 MTPA to 2.1 MTPA) by addition of Iron Ore Washery (3.0 MTPA), DRI Plant (1.2 MTPA), SMS (1.2 MTPA) Rolling Mill (1.2 MTPA) along with Power Plant (100 MW) at village Phulijhar, Block-Bansapal, Tehsil Telkoi, District Keonjhar, Odisha.
>
> Whereas the proposal of expansion of Iron Ore Pelletizing Plant (0.6 MTPA to 2.1 MTPA) by addition of Iron Ore Washery (3.0 MTPA), DRI Plant (1.2 MTPA), SMS (1.2 MTPA), Rolling Mill (1.2 MTPA) along with Power Plant (100 MW) at village Phulijhar, Block-Bansapal, Tehsil Telkoi, District Keonjhar, Odisha was considered in the 9th Meeting of the Reconstituted Expert Appraisal Committee (Industry) held during 10-11th June, 2013 wherein, the Committee deferred the consideration of the proposal as the project proponent has already established and is operating 0.6 MTPA iron ore pelletization plant without obtaining prior environmental clearance from the Ministry and recommended that MoEF shall deal with the violation matter in accordance with its Office Memorandum No. J-11013/41/2006-IA.II(I) dated 12th December, 2012.

Whereas MoEF vide Office Memorandum No. J-11013/41/2006-IA.II(I) dated 27th June, 2013 decided that directions under Section 5 of the Environment (Protection) Act, 1986 shall be issued to the project proponent in respect of the violations committed by them inter-alia including production shall be stopped for the operation of an Unit without a valid Environmental Clearance as required under the provisions of the EIA Notification, 2006.

Now, therefore, in exercise of powers vested under Section 5 of Environment (Protection) Act, 1986, M/s. ASL is hereby directed to stop the production of 0.6 MTPA iron ore pelletization plant immediately till the required Environmental Clearance is obtained under the provisions of the EIA Notification, 2006. M/s. ASL is hereby directed to report the compliance of this direction to MoEF immediately."

6. The company thus, is aggrieved from the above Order dated 12th December, 2013, passed by the Respondents herein, as well as the decision of the EAC as contained in the minutes of the meeting dated 19th - 20th December, 2013 wherein the company had been called upon to take Environmental Clearance for the existing 'stand alone' pelletization plant and to stop its production and wherein the Application for Environmental Clearance with reference to the Expansion Plan of the company had been deferred.

7. While challenging the above stated proceedings and Orders, the Appellant company also stated that it is ready and willing to obtain Environmental Clearance under the Regulations of 2006 as it would be an integral part of the Expansion Plan that is required to be set up in furtherance to the proposal submitted by the company. However, the

company raised the question for consideration of the Tribunal that if the Expansion Plan is given up by the company and it continues with the 'stand alone' pelletization plant, whether the Environmental Clearance under terms of Regulations of 2006 is required or not.

8. The legality and correctness of the above Order dated 12th December, 2013 is challenged by the Company before the Tribunal, primarily on the ground that a 'stand alone' iron ore pelletization plant is not covered under Entry 3(a) of the Schedule to the Regulations of 2006. Further, that the process of pelletization does not amount to/cannot be construed as primary metallurgical activity in as much as it does not involve any metallurgical process. Furthermore, according to the appellant the process of pelletization is a green and clean process and is an excellent method of consuming iron fines which were either being exported, or being lost in emissions. The company calls the process of pelletization as merely an agglomeration of iron ore by using binding agents as there is no extraction of metals, no beneficiation and no change in chemical parameters. Thus, it was not obligatory on the part of the company to seek Environmental Clearance for their 'stand alone' pelletization plant and the impugned Order passed by the Respondents is not sustainable in law and is arbitrary.

STATUTORY INTERPRETATION AND DISCUSSION ON MERITS

9. The acceptance or otherwise of the contentions raised on behalf of the company would entirely depend upon the interpretation and scope of Entry 3(a) of the Schedule to the Regulations of 2006. Thus, we must at the very outset refer to the Entry in question:

Project or Activity		**Category with threshold limit**		**Conditions if any**
		A	B	
3		Materials Production		
3(a)	Metallurgical industries (ferrous & non ferrous)	a)Primary metallurgical industry All projects b) Sponge iron manufacturing ≥ 200TPD c)Secondary metallurgical processing industry All toxic and heavy metal producing units ≥ 20,000 tonnes /annum	Sponge iron manufacturing <200TPD Secondary metallurgical processing industry i.)All toxic and heavy metal producing units <20,000 tonnes /annum ii.)All other non –toxic secondary metallurgical processing industries >5000 tonnes/annum	General Condition shall Apply. Note: (i) The recycling industrial units registered under the HSM Rules, are exempted. (ii) In case of Secondary metallurgical processing industrial units, those projects involving operation of furnaces only such as induction and electric arc furnace, submerged arc furnace, and cupola with capacity more than 30,000 tonnes per annum (TPA) would require environmental clearance. (iii) Plant/units other than power plants [Given against Entry No. 1(d) of the Schedule], based on municipal solid waste (non-hazardous) are exempted.]

10. From a perusal of the Object and Reasons of the Environmental Protection Act, 1986 (for short 'the Act of 1986'), it is clear that the legislature noticed that some major areas of environmental hazard were not covered, that there existed uncovered gaps in the areas of major environmental hazards and that there were inadequate linkages in handling the matters of industrial and environmental safety by the existing laws dealing directly or indirectly with environmental matters. It was also a matter of concern for the legislature that there was rapid decline in environmental quality. Thus, the legislature felt the need for a general legislation which led to the enactment of the Act of 1986. Section 3 of Act of 1986 empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. These measures could relate to any or all of the matters stated under Section 3(2) of the Act of 1986. Similarly, Section 5 of Act of 1986 which opens with a non-obstante clause but is subject to the provisions of the Act, empowers the Central Government to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The directions which could be issued are of very wide magnitude including closure, prohibition or regulation of any industry, operation or process. It has empowered the Central Government to issue

directions with regard to the stoppage or regulation of supply of electricity or water or any other service to the industry. Under Section 6 of the Act of 1986, the Central Government, by Notification in the Official Gazette can make rules in respect of all or any of the matters referred to in Section 3 of the Act. Such rules could provide standards of quality of air, water, soil, maximum allowable limits of concentration of various environmental pollutants including noise and also provide the procedure and safeguards for the handling of hazardous substances etc. Section 25 of the Act of 1986 vests the Central Government with the power to make rules to carry out the purpose of this Act. Such rules are to be laid before the Parliament in accordance with the procedure prescribed under Section 26 of the Act of 1986. In exercise of the powers conferred by Sections 6 and 25 of the Act of 1986, the Central Government framed rules, called the Environmental Protection Rules, 1986 (for short 'the Rules of 1986'). In terms of Rule 5 thereunder, the Central Government has to take into consideration the factors stated in Rule 5 (1), while prohibiting or restricting the locations of industry and carrying on of process and operation in different areas. In terms of Rules 5(2) and 5(3)(a), the Central Government is required to follow the procedure prescribed, before it could put prohibition or restriction on the location of the industry and carrying on of processes and operations in an area. It is expected to prepare a draft notice in that regard, invite objections and after

considering such objections, the Government could issue a final notice, unless following of such procedure is dispensed with by the Central Government in public interest as contemplated under Rule 5(4) of the Rules of 1986.

11. On 18th May, 2006, the Union Cabinet approved the National Environmental Policy and the procedure in accordance with which environmental clearances need to be granted. The Government prepared a draft Notification under Rule 5 (3) of the Rules of 1986, for imposing certain restrictions and prohibitions on new projects or activities or on the expansion or modernization of existing projects or activities, based on their potential environmental impact being undertaken in any part of India unless prior Environmental Clearance has been accorded in accordance with the Notification. Copies of this Notification were published and were made available in the public domain inviting objections from the public. The objections and suggestions were received and considered by Central Government whereupon it issued a final Notification as Regulations of 2006. Under this Notification, all the projects as specified in the Schedule were required to take Environmental Clearance. Application for Environmental Clearance had to be considered and dealt with in accordance with procedure prescribed in the Regulations of 2006.

12. As is evident from the very opening paras of the Regulations of 2006, they were framed primarily with the intention of preventing and controlling pollution, resulting from the industrial activity of the scheduled industries and projects. Potential environmental impacts from such projects and industries were of prime consideration while dealing with the applications filed for seeking Environmental Clearance. The Tribunal has to examine the cumulative impact of the object of the Act of 1986, the Rules of 1986 and the Regulations of 2006 while considering the ambit, scope and meaning of an Entry existing in the Schedule to the Regulations of 2006.

13. First and foremost, we must examine as to how an Entry in a social welfare legislation like the Act of 1986 should be interpreted and what principles of interpretation are to be applied while dealing with such an Entry. We may at this stage refer to a recent judgment of the Tribunal of *"Haat Supreme Wastech Pvt. Ltd. v State of Haryana, 2013 All (I) NGT Reporter (2) (DELHI) 140",* where the Bench of the Tribunal was concerned with interpreting another Entry of the same Schedule i.e. Entry 7(d) of the Schedule to the Regulations of 2006-"Common hazardous waste treatment, storage and disposal facility." It will be useful to notice the following discussion from the said judgment:

> "The Act of 1986 and the rules afore-referred, in particular Rules of 1998, are socio-welfare legislations

as they have triple objects: firstly, they are welfare legislations in as much as they mandate the State to provide clean and decent environment. Secondly, they provide for remedies which could be invoked by different stakeholders and even by any aggrieved person and thirdly, the consequences of violating the environmental provisions including punitive actions. Thus, while interpreting the relevant provisions, these concepts have to be appropriately considered by the Tribunal. The object of these provisions being wholesome environment, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied. While dealing with a social welfare legislation, the provisions and the words therein are to be given a liberal and expanded meaning. Of course, liberal construction does not mean that the words shall be forced out of their natural meaning but they should receive a fair and reasonable interpretation so as to attain the object for which the instrument is designed and the purpose for which it is applied. Both the object and purpose of an Act in relation to its application are thus, relevant considerations for interpretation. The Courts have also permitted departure from the rule of literal construction so as to avoid the statute becoming meaningless or futile. In the case of Surjit Singh v. Union of India (1991) 2 SCC 87 and Sarajul Sunni Board v. Union of India AIR 1959 SC 198, the Supreme Court has also held that it is not allowable to read words in a statute which are not there, but where the alternative allows, either by supplying words which appear to have been accidentally omitted or by adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words. It is also a settled cannon that in case of a social or beneficial legislation, the Courts or Tribunals are to adopt a liberal or purposive construction as opposed to the rule of literal construction.

These well-known principles of interpretation have to be applied, but with caution. Construction favorable to achieve the purpose of enactment but without doing violence to the language is of paramount consideration. In the case of Shivaji Dayanu Patil & Anr. v. Vatschala Uttam More (1991) 3 SCR 26a, the Supreme Court while dealing with a beneficial provision of the Motor Vehicles Act, 1939 held as under:

“It is thus evident that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident

arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficient purpose underlying the enactment in preference to a construction which tends to defeat that purpose."

The doctrine of reasonable construction implies that the correct interpretation is the one that best harmonizes the words with the object of the statute. Lord Porter in *Bhagwan Baksh Singh (Raja) v Secretary of State, AIR 1940 Privy Council 82*, stated: "right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration." The Tribunals will also keep in mind that the application of a given legislation to new and unforeseen things and situations broadly falling within the statutory provisions is within the interpretative jurisdiction of the courts. In the case of *Charan Lal Sahu v Union of India, AIR 1990 SC 1480,* the Hon'ble Supreme Court while dealing with the provisions of the Bhopal Gas leak disaster and directing the government to give interim relief to the victims as a measure in articulate premise from the spirit of the Act, declared this approach to the interpretation of the Act as constructive intuition which in the opinion of the court was a permissible mode of viewing the acts of the Parliament.

Keeping in view the legislative intent, object of the Act and the Rules framed thereunder and the purpose sought to be achieved, recourse to any of the above doctrine would be appropriate. Certainly, it is the obligation of the respective governments to prevent and control pollution on one hand and provide clean environment to the public at large on the other. The industrial development cannot be permitted to ignore environmental interests and damage the ecology or ambient environmental quality irretrievably. The units of plants which violate the prescribed standards and cause serious pollution,

are to be dealt with strictly in accordance with the prescribed penal or other consequences which may even include the closure of a unit. The rules primarily provide a regulatory regime that is required to be adhered to for the purposes of permissive industrial activity. All these regulatory regimes whether relating to municipal waste, hazardous waste or bio-medical waste, owe their allegiance to the substantive provisions and object of the Act of 1986. Reasonable construction is intended to provide a balance between the industrial development and the environment. Principle of 'constructive intuition' would also have its application to the provisions of the Act, the Rules and particularly the Notification of 2006 in relation to dealing with the entries provided in the Schedule. The liberal construction rule would help in giving a purposeful meaning and interpretation to the provisions of the Act and the Rules for attainment of the basic object, i.e. cleaner environment.

From the above discussion, it is clear that to an Entry of the Schedule of a social welfare legislation, the principle of reasonable and/or liberal construction should be adopted to ensure that the object and purpose of the Act is undefeated by such interpretation. Most suitable interpretation would be one which would further the cause of the Act and ensure prevention and control of pollution rather than provide escape

route to the industry from taking anti-pollution measures and complying with the provisions of the Act.

14. As far as the Entry 3(a) of the Schedule to the Regulations of 2006 is concerned, another reason for the Tribunal to adopt a liberal or wider interpretation of it is that the process of pelletization is that of a low grade iron in our country, that is not set for great use. Large capacity for pelletization and beneficiation is aimed at utilizing the lower grade iron ore and are presently under way. The Standing Committee on Coal and Steel of the Lok Sabha vide its 38th Report vide primarily examined the review of export of iron ore policy and observed: "we seek pelletization as a necessary form of upgrading the existing low quality ore". This clearly shows that pelletization is a process adopted for upgradation of low quality iron ore to make it fit for use in the process of making steel finished products. It is thus only a stage of the composite and complete process of making final steel products from the iron extracted from the mines.

15. As noticed above, pelletization is a part of a larger process of manufacturing or making steel items for human consumption or otherwise and is a process which acts as the feeder to the further process for extraction of iron and steel from iron ore and no other purpose. It certainly causes serious pollution and thus requires to be checked and controlled at the very threshold. There is nexus between

carrying on the process of pelletization and causing pollution. Thus, it gives rise to environmental issues which must be dealt with in accordance with law. The vision of the Act of 1986 would come into place once such nexus is established and substantial questions in relation to environment arise. In the case of *Kehar Singh v State of Haryana, 2013(1) – All India (NGT) Reporter 556,* the Tribunal took a view that the cause of action must have nexus to such disputes which relates to the issue of environment / substantial question relating to environment or any such proceeding to trigger the prescribed period of limitation and held that cause of action must be read in conjunction with and should take colour from the expression 'such dispute'. 'Such dispute' must be one which is relatable to environment. In that case, the Tribunal concluded that publication of Section 14 Notification under the Land Acquisition Act would not trigger the limitations in terms of Section 14 of the NGT Act. Similarly in the present case, when direct nexus between the carrying on of the business and resultant pollution is established and the process in its entirety is covered under the Entry, then such Entry, i.e. Entry 3(a) of the Schedule to the Regulations of 2006 would receive a wider connotation and would take within it the process of pelletization as part of primary metallurgical activity. Of course the matter would be different and the Entry may not receive such interpretation if pelletization was not an integral part or was in no way relatable to the entire

process of making steel. Further, the process of pelletization results in consequential environmental impact as far as pollution is concerned but both these factors are conspicuous by their very absence in the technical and scientific material placed before us.

16. Process of pelletization is gaining momentum in the steel industry as it helps in refining the ore for removal of impurities. But it is a direct source of environmental pollution. The pellets are used only for extraction of metal either through blast furnace or reduction process. The process of pelletization enables iron ore fines into "Uniformed Sized Iron Ore Pellets" that are convenient to be charged. These pellets with their high uniform mechanical strength and high abrasive strength increase production of iron by 25 % to 30 % with same amount of fuel. The Tribunal is expected to examine the cumulative environmental impact of this activity on the environment which has to be environment-centric, being part of the entire metallurgical process than a mere stand alone activity. The purpose of subjecting such an industry to obtain Environmental Clearance is to ensure prevention of pollution and also that higher and prescribed standards of anti-pollution measures are maintained in the interest of the environment in general rather than being case specific.

17. The problems of environmental pollution in our country have attained serious dimensions and the Courts and

Tribunals need to adopt an approach which does not encourage industrial or other polluting units to avoid legal framework within which they ought to operate on the strength of mere technicalities. If on true and reasonable construction of an Entry, the industry or unit is covered under the Schedule then it is obligated to comply with the prescribed law. In this backdrop now, let's revert to Entry 3(a) Column 2 of the Schedule to the Regulations of 2006 which contains the expression 'metallurgical industries'. This expression *ex facie* contains two different concepts. One is 'metallurgical' and the other is 'industries'. Metallurgy is a process in itself which the industry is to adopt. In common parlance, metallurgy is a science that deals with procedures used in extracting metals from their ores, purifying and alloying metals and creating useful objects from metals.

18. According to McGraw-Hill Encyclopedia of Science & Technology, 10th Edition - (Malestrom), "metallurgy" is a technology and science of metallic materials. Metallurgy as a branch of engineering is concerned with the production of metals and alloys, their adaptation to use, and their performance in service. As a science, metallurgy is concerned with the chemical reactions involved in the processes by which metals are produced. This is primary metallurgical process. The winning of metals would have been of little value without the ability to work them for different uses. Thus, the wined

metal has to be converted into different forms of metal for different uses. The process involved in converting raw metal into usable metallic form through changing its physical and chemical properties is called secondary metallurgical process.

Oxford Dictionary of English, Third Edition provides meaning of metallurgy as follows:

> *"The branch of science and technology concerned with the properties of metals and their production and purification"*

19. In the Encyclopedia of Metallurgical Terms by Tootleman, published by Longmans, London, the term 'metallurgy' is defined to embrace "the practice and science of extracting metals from their ores, the refining of crude metal, the production of alloys and the study of their constitution, structure and properties and relationship and physical and mechanical properties to thermal and mechanical treatment of metals and alloys."

In the case of *Tata Engineering and Locomotive v State of Bihar and Ors., AIR 1989 Pat 23,* the Court concluded while explaining metallurgical process as follows:

> "From all these definitions from the authoritative texts, referred to above, one thing appears to be clear that the scope and ambit of a metallurgical industry starts from extracting mineral ores, refining them by mechanical and chemical processes and finally producing steel in various forms. With this the function of the metallurgical industry ends."

20. Now, we may examine the meaning of industry in general and with specific reference to the case in hand. Section 2(j) of the Industrial Disputes Act, 1947, defines 'industry' as any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. This definition was amended and stood substituted by Act 46 of 1982 whereby 'industry' means any systematic activity carried on by co-operation between an employer and his workmen for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes, whether or not,-

(i) .....

(ii) such activity is carried on with a motive to make any gain or profit.

While dealing with the meaning and the scope of the word 'industry' and the wide connotation that the expression should receive, the Supreme Court in the case of *State of Bombay and others v Hospital Mazdoor Sabha and Others, [1960] 2 SCR 866*, held as under:

> "The decision of this question depends upon the interpretation of the definition of 'industry' prescribed by s. 2(j) of the Act. Let us first read the definition. Section 2(j) provides that ', 'industry' means any business, trade, undertaking, manufacture of calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. It would be noticed that the words used in the definition are very wide in their import and even so its latter part purports to provide an

inclusive definition. The word "undertaking" according to Webster means" anything undertaken; any business, work or project which one engages in or attempts, an enterprise ". Similarly, " trade " according to Halsbury, in its primary meaning, is " exchange of goods for goods or goods for money ", and in its secondary meaning it is " any business carried on with a view to profit whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture "; whereas " business " is a wider term not synonymous with trade and means practically " anything which is an occupation as distinguished from a pleasure The word “calling” again is very wide; it means`one's usual occupation, vocation, business or trade"; so is the word "service" very wide in its import. Prima facie, if the definition has deliberately used words of such wide import, it would be necessary to read those words in their wide denotation; and so read, Hospitals cannot be excluded from the definition.

It is, however, contended that, in construing the definition, we must adopt the rule of construction noscuntur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in " Words and Phrases " (Vol. XIV, P. 207): " Associated words take their meaning from one another under the doctrine of noscuntur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscuntur a sociis ". The argument is that certain essential features or attributes are invariably associated with the words " business and trade " as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrow significance is doubtful, or

otherwise not clear that the present rule of construction can be useful applied."

21. In relation to the expression 'industry' appearing in the Industrial Disputes Act, 1947 and Allied Acts, the Courts have taken a view that it should receive liberal construction as it falls in a socio welfare legislation and is intended to achieve the larger public interest relating to workmen.

22. Having examined the meaning of the expressions used in Column 2 of the Schedule to the Regulations of 2006, we may now examine column (3) of Entry 3(a) of the said Schedule. It describes that metallurgical industry could have two kinds of functions. One as a Primary Metallurgical industry and the other is as a secondary metallurgical industry. Thus, it is necessary to know what exactly both these expressions mean.

Primary Metallurgical Process

Primary metallurgical process refers to the production of metal from ore, which includes, ore extraction, ore beneficiation, pelletization or sintering and metal extraction.

Secondary Metallurgical process

Secondary metallurgical process refers to production of alloys from ingots and to recovery of metal from scrap and salvage. The process includes casting, molding, forging alloy making, re-rolling etc. It includes processes like melting, giving aimed shape to the final output, through forming, poring liquid metal and alloys to the mold cavity and forging.

23. The process of "primary metallurgy" involves the processing of iron ore to hot metal or sponge iron and the further treatment to crude steel. Regarding energy and emission-optimization in the steel industry, the exploratory focus concentrates on the issues of reduction and steel metallurgy. The results of the research activities are used for the enhancement of existing processes and for the implementation of new technologies. Further application areas are characterization and evaluation of raw materials and reducing agents for the various processes of iron making.

24. At this stage, we may also deal with the material on record or otherwise that throw some light as to whether or not pelletization forms part of primary or secondary metallurgy. The Ministry of Environment and Forest, Government of India has prepared Technical EIA Guidance Manual for Metallurgical Industry in August, 2010. This deals both with ferrous metal industries and non-ferrous metal industries. Upon the study of this manual it emerges:

> In order to have uniform procedure for environment impact assessment (EIA) and environment clearance, MoEF prepared Guidance Manual for 27 categories of developmental activities including metallurgical industry in 2010. The Manual designed by Expert Committee reviewed by PEER and CORE Committee constituted, category-wise. This manual under table 3.8 deals with iron metallurgical process and includes the following eight steps under that head:
>
> 1. Coke making – coke oven plant
> 2. Iron ore beneficiation plant
> 3. Pelletization – pellet plant
> 4. Sintering – Sinter plant

5. Iron making - Blast furnace/Sponge iron plant
6. Steel making - Basic oxygen furnace
7. Secondary refining - Ladle furnace RH degassing
8. Continuous casting - Slab caster

The first 5 steps can be included in primary metallurgical process, while the 6 to 8 are part of secondary metallurgical process.

In the same manual, pellet plant is described as follows:

Pellet plant

Pellet plant, an alternative to sinter plant, will utilize iron ore fines to produce BF grade pellets to be used in blast furnace. The process involves drying of the ores (from 8-10% to less than 1% moisture), grinding to 45 micron size, feed preparation by adding binders and moisture, green pelletization and induration (heat hardening).

The Experts have also described process of pelletization and pollution thereof as follows:-

Prior to the formation of pellets, water is added to the fine iron ore, to adjust the moisture content to approximately 9%, and the ore is mixed with small amounts of binding agents such as bentonite (approximately 0.5%) and fluxes such as limestone, olivine and dolomite (1–5%). These agents give the pellets the prerequisite physical and metallurgical properties required for further processing. Mixing takes place in continuously operating drum. On an industrial scale, green pellets are formed either in pelletizing discs or drums. These pellets are then hardened. The pellets are then endured at 850 to 1000°C then cooled. The process of pelletization enables converting Iron Ore Fines into "Uniformed Sized Iron Ore Pellets" that is convenient to be charged. Pellets with their high, uniform mechanical strength and high abrasive strength increase production of sponge iron by 25% to 30% with same amount of fuel. The pellets so manufactured are used only for iron extraction and not for any other purpose and hence, it is a part of iron metallurgical process.

25. As an essential corollary to the above discussion, now, it has to be now examined if the 'stand alone' activity of

pelletization can be a source of pollution and cause substantial environmental hazards.

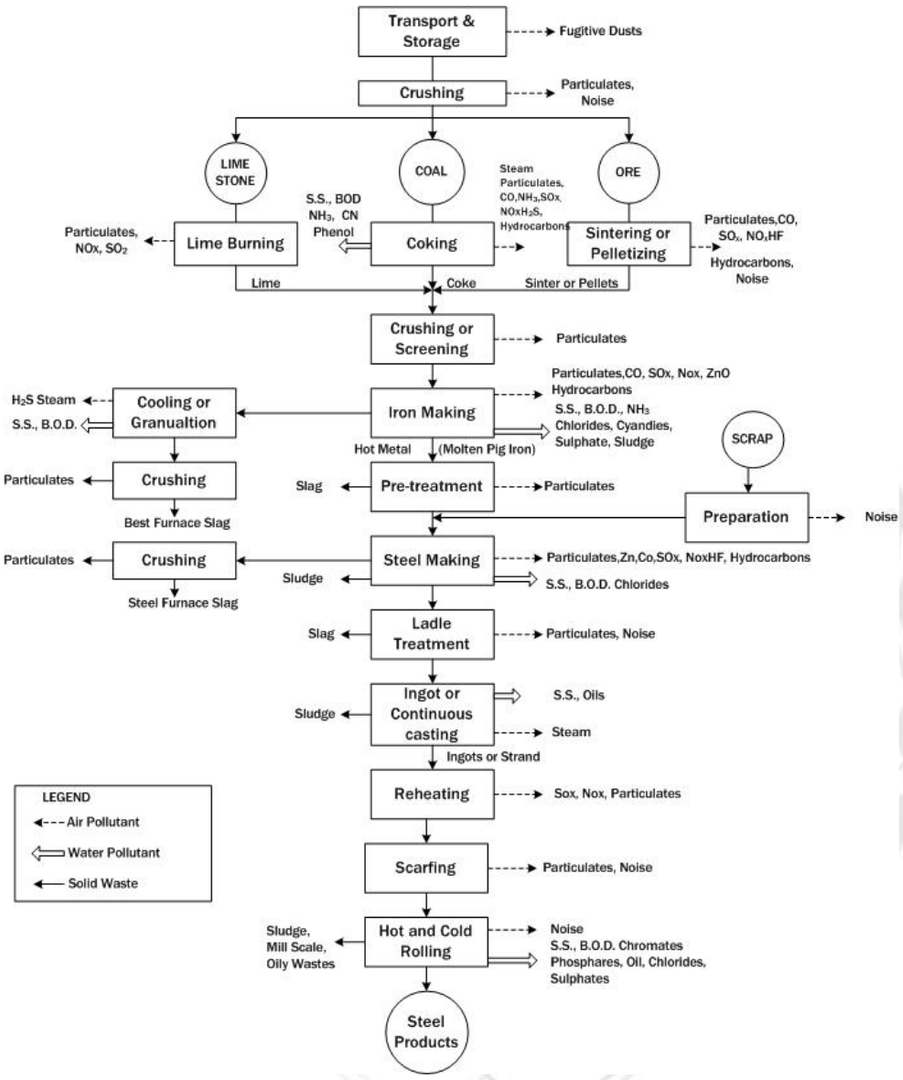
Pollution in Pelletization

The main pollution sources in pelletization plant are the handling of raw material, wind-box, exhaust emission, cooler and cold screen. The Cleaning of gases generated from pelletization plant is the most difficult task. The wind-box exhaust is a primary source of particulate matter mainly iron oxides, sulphur oxides, carbonaceous compounds, aliphatic hydrocarbons and chlorides. Generally, cyclone cleaner, electrostatic precipitator (ESP), wet scrubbers and bag filters are installed to control pollution. However, the ESP is not efficient to reduce hydrocarbons, which may include dioxin and furan gases. The treatment of scrubbed matter is also very essential. Thus, this part of iron metallurgical process is a polluting activity.

26. From the above discussions, it is evidently clear that the expression 'metallurgical industry' has been used by the legislature as words of wide import and thus, it would be necessary to read those words in their wide denotations. It must be given a meaning which would enlarge its scope with the primary object of preventing and controlling pollution in terms of the prescribed law. The primary metallurgical industry would thus take within its ambit the activity of pelletization which is one of the stages in the entire process

from the point of extraction of iron ore till its conversion into the final product that is to be consumed by human beings and/or used for their benefit. It is also evident and in fact, can hardly be disputed that activity of pelletization is carried out only to ensure that the impurities in the metal ore are reduced and it is then used for extracting metal from the ore by the process that the industry may adopt. Except this, *per se*, the process of pelletization has no other object to achieve. Furthermore, undoubtedly, the process of pelletization is a source of serious pollution and is required to be stopped by anti-pollution devices under the law in force. The company has also raised a contention that though, pelletization (pellet plants) may be flowing broadly with the process steps which are to be taken for the process of steel making, since there is no refining and no change in chemical properties and it is only an iron ore agglomeration, it would fall under category B-2. This contention does not impress us. It is needless to note that even according to the company, pelletization is one of the processes of making steel. Iron and steel industry comprises the preparation of raw materials, agglomeration of fines in the sinter plant, feeding of burden to blast furnace, manufacturing of coke in coke ovens, conversion of pig iron to steel, making and shaping of steel, granulation of slag, recovery of chemicals in by-product plant etc. All the above mentioned processes add to air, water, solid waste and noise pollution. Experts

described flow chart of linkage pollutants and principle process as follows:-



From the above diagram, it is clear that pelletization is a definite source of pollution. It generates Particulates, CO, SO_2, NO_2, HF, Hydrocarbons and noise. All these pollutants have serious impacts on the environment. Thus, undoubtedly, it requires greater checks and restrictions to ensure prevention of pollution.

27. Lastly, it has been contended on behalf of the applicant that on one hand, there is divergence of views between the State Board and the MoEF while, on the other hand, MoEF

itself had earlier taken the stand that the stand-alone pelletization plant does not fall under the Entry 3(a) of the Schedule to Regulations of 2006. This argument is sought to be substantiated with reference to certain documents that have been placed by the applicant on record. Reliance is placed upon the letter dated 8th December, 2000 written up by the MoEF to the Member-Secretary of the Andhra Pradesh Pollution Control Board stating that the matter had been examined in the Ministry and it is to be informed that as an activity, pelletization will not fall under Schedule 1 of the EIA Notification of 1994 for grant of Environmental Clearance. The Expert Committee of the State Pollution Control Board, Odisha in its meeting dated 7th April, 2014 had also observed that the process of pelletization does not involve metal extraction or extensive chemical changes and should not be categorized as primary metallurgical process. Reliance is also placed upon the Office Memorandum dated 27th March, 2014 issued by the Ministry of Steel, Govt. of India, clarifying that pelletization is only a burden preparation process prior to actual metal extraction and therefore would not fall under the head 'primary metallurgical industry'. It needs to be noticed that a contrary view has been expressed in some of the other documents placed on record. The Reconstituted Expert Appraisal Committee (Industry) in its meeting 19th - 20th December, 2013, in relation to the appellant before the Tribunal had opined that the pelletization plant cannot be

permitted to operate without taking environmental clearance from the Ministry. In fact, after detailed deliberations, the Committee recommended that the Ministry should send a communication to all the State Pollution Control Boards/Committees, stating that the iron ore pellet plant falls under Entry 3(a) (Primary Metallurgical Industry) of the Schedule to the Regulations of 2006 and comes under category 'A' which requires Environment Clearance from the MoEF. It was also recommended that the Ministry may take a holistic view regarding the applicability of Environmental Clearance for the iron ore pellet plants which are under operation. The State Pollution Control Board, Orissa in its report dated 3rd May, 2014, while specifying elements of serious air pollution arising from the operation of pelletization plants, recommended for the inclusion of such item in the Schedule of 2006 separately. Relevant extract of the Resolution reads as under:

> i) Iron ore pelletization is the process of converting iron ore fines into iron ore pellets.
>
> ii) As per the Technical Guidance Manual of EIA prepared by MoEF, Govt. of India pelletization process has a potential to generate dust levels at 13 – 15 kg/Ton of pellet, about 6 kg. of SO_2, 14 kg. of CO and 0.8 kg of NO per ton of pellet produced. With this potential standalone pellet plants can be termed as highly air polluting industry.

28. The MoEF adverted itself to the prevalent conflict as afore-indicated and in particular to the above letter of Ministry of Steel dated 17th January, 2014 and finally took the

considered view that a 'stand alone' pelletization plant would require Environmental Clearance under the Regulations of 2006. The Ministry after consulting the expert bodies, even the experts of the Central Pollution Control Board, representative of CII, Director, Metallurgical Laboratory and Experts of the MoEF Appraisal Committee, issued a letter dated 11th April, 2014. The relevant extract of the said letter which has a direct bearing on the matter in issue before us, is as follows:

> "2. The comments of Ministry of Steel have been examined. The Ministry of Environment & Forests, has notified the Environment Impact Assessment (EIA) Notification, 2006 vide S.O. 1533 €, dated 14th September, 2006 under the Environment (Protection) Act, 1986. Following the introduction of this EIA Notification 2006, the MoEF, with a view to rationalizing the granting environmental clearances and for implementing the various provisions of the New EIA Notification 2006 by various stakeholders – regulators, project proponents, Expert Appraisal Committees at both Central State Level, SEIAAs, etc, had prepared Sector specific EIA Manuals. The EIA Manuals for various sectors listed to the Schedule of the Notification were got prepared through various sector specific Expert Committees. The various Sectoral Expert Committees examined the various Sectoral issues, including environmental issues, requirements of the sector concerned vis-à-vis the EIA Notification 2006. In regard to Metallurgy Sector also, the MoEF had constituted Core and peer Committees drawing experts from Central Pollution Control Board, Representative of CII, Director, National Metallurgical Laboratory and Expert Members of the MoEF's Expert Appraisal Committee (Industry) dealing with environmental clearances pertaining to Metallurgy Sector. The Final EIA Manual for the Metallurgy Sector states that the environmental impacts of Pellet plants whether they are 'stand alone' or part of an Integrated Steel Plant are severe in terms of air and water pollution and solid wastes generated etc. Details of this have been covered in various chapters of the EIA Manual, which is available on the Ministry website. Thus, the sector specific EIA manual on Metallurgical Industry indicated that pellet plants, whether they are stand alone or part of an Integrated Steel Plant fall

within the purview of the metallurgical industry requiring prior environmental clearance under the EIA Notification, 2006.

3. Further, the Ministry has constituted the Expert Appraisal Committee (Industry) comprising of subject matter experts under the EIA Notification, 2006 for the appraisal of the Industry sector projects for granting environmental clearances. The EAC (Industry) has always been of the view that the stand alone iron ore pellet plants fall under S. No. 3(a) in Primary Metallurgical Industries under category 'A' of the Schedule of EIA Notification, 2006 and requiring an Environmental Clearance (EC) from MoEF. Several ECs for such Stand-alone Iron Ore Pellet Plants have accordingly been apprised by the EAC(Industry) and on the basis of their recommendations, ECs have been accorded by MoEF in the past. In its recent meeting held on 19th-20th December 2013, the Expert Apprisal Committee (Industry) of the MoEF has reiterated its stand-Alone Pellet Plant require an EC under the EIA Notification 2006.

4. In view of above, it is to inform that this Ministry is of the view that the stand-alone iron ore pellet plants fall under S.No. 3(a) in Primary Metallurgical Industries under Category 'A' of the Schedule of EIA Notification, 2006 and therefore require prior Environmental Clearance (EC) from MoEF."

29. As is evident from the very language of the letter dated 11th April, 2014, the Ministry has taken a considered view in regard to the various aspects of the matter in issue with definite emphasis on the environmental impact of pelletization plants. We have already noticed various technical literatures placed by the parties before us or otherwise, that clearly show that the process of pelletization is a serious air pollutant. There is a definite and increasing trend in this process to purify the iron ore and to convert it into fine iron ore pellets which are to be then used for the purposes of manufacturing/

making of varied steel items. The Regulations of 2006 is a Notification of wide spectrum to make it mandatory for the specified project and industries to seek Environmental Clearance in the interest of the environment. The said Notification having been issued under the provisions of the Act of 1986 has to be read and construed with reference to the provisions of the said Act, its objects and purposes. Compliance to the provisions of the Regulations of 2006 is independent of compliance to other environmental laws in force. The legislature in its wisdom has placed this additional obligation upon the project/industry/unit which are seriously polluting industries, to ensure environmental protection. As per the law stated in the case of *Kehar Singh* (supra), precept to provide interpretation is to examine true nexus between the environmental pollution and the prevention and control thereof, in terms of the statutory provisions. We may examine Entry 3(a) of the Schedule to the Regulations of 2006 even with the aid of 'Doctrine of Purposive Construction'. The law has been enacted with the object of prevention and control of pollution. The intent of Entry 3(a) is to cover the entire process of metallurgical industry and to prevent and control the pollution of various kinds that arises from such process. This was the mischief that was sought to be checked. There should be higher standards of checking environmental pollution by the industries involved in primary or secondary metallurgical processes.

30. The MoEF has been vested with the powers to issue directions, specify measures and even frame regulations for carrying out the object and purposes of the Act of 1986. In a sense, it is the Ministry that is required to perform expert functions under the provisions of the said Act. After considering various aspects and consulting various experts in and outside the Ministry, it has come to the conclusion that Entry 3(a) would cover pelletization plants and they would be required to take Environmental Clearance. Besides the fact that it is the declared interpretation by the body vested with such powers, even we as a Tribunal consisting of Expert Members would have no hesitation in accepting the said view for the reasons afore-stated. The Learned Counsel appearing for the Applicant while relying upon the Judgment of the Supreme Court in the case of *Ram Chandra Mawa Lal and others v State of Uttar Pradesh and others, 1984 [Supp] SCC 28* contended that the conflict between the laws i.e. the State Board opinion and MoEF should be resolved by giving precedence to the State Board opinion being the State subject. We do not think this contention has any merit. Firstly, there is no conflict between the Central and the State law and as such the case of *Ram Chandra Mawa Lal (*supra) has no application what so ever to the facts of the present case. Here we are concerned with the opinion expressed by State Boards and the final view taken by the MoEF. Having considered various

aspects we are unable to find any inconformity in the final view taken by the MoEF holding that Entry 3(a) takes in its ambit pelletization plants as well.

We may usefully refer to the Judgment of the Bombay High Court in the case of *Shankar Raghunath Jog v Talaulicar and Sons Pvt. Ltd, 2011 (5) All Maharashtra Law Reporter 803,* where the Court took the view that "it is settled law that for the purposes of interpretation of the statute, the entire statute has to be read in its entirety. The purpose and the object of the Act must be given its full effect. Furthermore, in the case of the present nature involving environmental issues, the principles of purposive construction must come into force. Considering the said aspects, Para III of the said EIA Notification, 1994 would have to be construed with reference to the context vis-à-vis the other paras of the said Notification of 1994 so as to make it consistent with the purpose and object of the said Act of 1986." It may be noted here that the Notification of 1994 was substituted by the Regulations of 2006.

31. In light of the above discussion, this Tribunal has no hesitation in holding that pelletization is a process which squarely falls under the head "primary metallurgical industry". As such the industries carrying on the process of pelletization, even as a stand alone project, would be required to seek Environmental Clearance in terms of the Regulations of 2006. Having returned this finding, we cannot set aside or quash the

Order dated 12th December, 2013 and the proceedings of the EIA Committee taking that view. However, we would direct and grant liberty to the Appellant before the Tribunal to seek Environmental Clearance even for the 'stand alone' pelletization plant under the Regulations of 2006 as a 'stand alone' or part of the comprehensive expansion plan of the Appellant. Such application should be filed within one month from today and shall be disposed of by the MoEF as far as the 'stand alone' pelletization plant is concerned, within three months thereafter. Upon grant of such clearance, the unit would operate in accordance with law.

32. In view of the findings afore recorded, it is necessary for the Tribunal to issue a direction to MoEF and all the State Pollution Control Boards to take steps immediately, requiring the stand alone pelletization plants to obtain environmental clearance from the concerned authorities. Let copy of this judgment be circulated by the registry to the Secretary, MoEF and Member Secretaries of all the State Pollution Control Boards and Pollution Control Committees.

33. For the fact that MoEF has now taken the view that stand alone pelletization plants would also require environmental clearances, which has been accepted by this Tribunal, it will be open to the MoEF/ State Pollution Control Boards to examine the possibility, whether such units should be permitted to operate during the *interregnum* of applying for

environmental clearance and grant/refusal of the same by the competent authorities in accordance with law.

34. Needless to notice that such requests to operate during *interregnum* should only be considered if the units are found otherwise complying with the terms and conditions imposed by the concerned Board / Committees for establishment / operation of such unit.

35. Resultantly, we find no merit in this appeal. The same is dismissed, however, with the above directions and while leaving the parties to bear their own costs.

Hon'ble Mr. Justice Swatanter Kumar
Chairperson

Hon'ble Mr. Justice U.D. Salvi
Judicial Member

Hon'ble Dr. D.K. Agrawal
Expert Member

Hon'ble Mr. Bikram Singh Sajwan
Expert Member

Hon'ble Dr. R.C. Trivedi
Expert Member

Dated: May 27, 2014