

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI

Appeal No. 11 of 2020

K.Saravanan

....Appellant

Vs.

The Tamilnadu Polymer Industries Park Ltd & Anr

...Respondents

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The Appellant submits as follows:

A. Introduction

1. The present appeal has been filed seeking to quash the environmental clearance (EC) issued to the 1st Respondent in Letter No. SEIAA-TN/F.6957/EC/8 (b)/683/ 2019 dated 11/12/2019 by the 2nd respondent for the establishment of a Polymer Industries park at S.F No. 143 and 187 of Puzhuthivakkam village and S.F. No. 2053B part of Voyalur village, Ponneri taluk, Thiruvallur District, Tamil Nadu

(See EC at annexure A1 @ p.17)

2. The impugned EC has been obtained by fraud and misrepresentation of the very nature of the project site. The EC has been issued by the 2nd Respondent in complete violation of the EIA Notification, 2006 and is liable to be quashed. The EIA report has been prepared by an unaccredited agency and is bereft of any "assessment." For example, it does not even contain a word about the anticipated impact of the project during operation phase. The SEAC has failed to even notice these aspects, abdicating its responsibilities, and reducing environment due diligence to a mere ritual. For the sake of convenience, the submissions are divided into the above issues (see table above) and relevant documents have also been referred to.

B. Form – I – Fraud and Misrepresentation

Importance of form – I

3. It is submitted that the application (Form-1) filed seeking environmental clearance under the EIA Notification, 2006 is of crucial importance in the clearance process. The Expert Appraisal Committee (EAC) appraises the application for Terms of Reference only on the basis of the information contained in Form-1. Only if true and correct information is presented in Form 1 can the EAC make an informed decision on the issuance of Terms of Reference for the conduct of EIA study.
4. Information pertaining to the nature of the site is fundamental to the appraisal of the project as the nature of the land where the project is to be set up has a bearing on the impact it will have on the environment and must guide the framing of TOR and the SEAC has to decide on the siting based on the nature of the land. This is all the more so where numerous High Court and Supreme Court judgements clearly forbid any conversion of wetlands and waterbodies.
5. If the EAC finds that the proposal cannot be permitted at a proposed site, it can reject the proposal at this stage itself. Clause 7 (II) (ii) of the EIA Notification states-

“(ii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself.”

6. Therefore, the suppression of facts pertaining to the nature of a project site and other crucial information regarding siting have to be viewed seriously. In the table below, the false information submitted by the 1st respondent in its form I have been tabulated.

False information submitted in form – I by the 1st respondent

7. It is submitted that the 1st respondent has submitted false information in form – I, as explained below : (please see File B @ p.214)

1.1 (Page 217)	Change in land use	The change in land use from a backwater that is part of a wetlands complex to an industrial estate has not been stated.
1.2 (Page 217)	Clearing of land and vegetation	Filling in of the waterbody and clearing of coastal flora and fauna have not been stated
1.11 (page 218)	Reclamation work	While it has been admitted that land will have to be levelled to raise its height above flood level, it has not been stated that such a work is nothing but reclamation of a low-lying wetland
1.17 & 1.18 (page 218)	New roads or expansion	This project’s viability hinges on the port access road on the northern side of this site entirely on CRZ wetlands. The

		need for a comprehensive impact assessment is essential and suppressions such as this downplays the impact of the project
1.21 - 1.24 (page 219)	Change in waterbodies or land surface affecting hydrology	Has not stated that the entire waterbody will be filled in and drainage pattern of the area will be changed with potential flooding implications in upgradient residential areas such as Urnambedu and Senganimedu.
1.29 and 1.30 (page 219)	Introduction of alien species	Filling in of a wetland involves bringing in soil and debris from outside and with it, the introduction of alien species and alteration of the landscape. This aspect has also been suppressed.
8.3 (page 223)	Natural disasters like flood etc	Has not stated that the entire site is located in wetlands, and its reclamation will have an impact on flooding in nearby upgradient areas.
9.3 (page 224)	precedent for later development	Has falsely stated "No." All other tidally influenced lands that were once used for salt manufacture that are currently part of the Ennore

		wetlands will be opened up for industrial development.
III (2) (page 224)	Sensitive areas for ecological reasons	The fact that this is a wetland and important wetland and migratory bird feeding ground has been suppressed.
III (3)	Areas used by protected important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, overwintering, migration	Has falsely stated "nil" – The fact that the project site was a haven for migratory birds (including flamingoes) has been suppressed.

8. It is submitted that the above information is fundamental to the appraisal of the project - as the nature of the land where the project is to be set up has an undeniable bearing of the impact it will have on the environment and must inform the decision of the SEAC and the SEIAA.
9. Had the 1st Respondent disclosed the fact that the project site was a waterbody, tidally influenced and that it was biologically active, the 2nd Respondent might have rejected the site as required by law – but due to the suppression of this vital fact, the proposal was further considered, and clearance was ultimately granted.
10. It is submitted that the EAC should conduct site inspections as provided under clause 7 (II) of the EIA Notification, 2006, which would at least help the authorities ascertain the nature of the project site and other attendant issues.

C. Project site is a water body

11. The above misrepresentation and suppression in the Form – 1 also continued in the Pre-feasibility report and the EIA report prepared by the 1st Respondent. The EC issued based on these reports has also been issued based on the same premise.

- a. It is seen from the impugned EC that the 1st Respondent has described the subject project site as "Patta dry land & Government Poromboke land". (please see File A @ p.19)
- b. In the pre-feasibility report the project site is described as " Almost plain terrain with no notified forest or water courses. The land is predominantly barren...". (please see File B @p. 252)

12. However, in reality, the project site is partly freshwater and partly tidal water body with standing water and aquatic flora and fauna (including fishes) evident to the naked eye. Such wetlands are protected from conversion to other uses as they fulfil important ecological functions such as groundwater recharge, flood mitigation and reservoirs of biodiversity. Conversion of this area has resulted in destruction of a biologically active wetland and its hydrology, exposing upgradient areas to flooding.

Photographs and videos

13. The fact that the project site is not barren land, but a waterbody is clear from the following:
- a. Photographs of the project site prior to it being filled in with ash and destroyed (Please also see File A @ p.43- 47)
 - b. Photographs showing migratory birds prior to the site being filled in with ash. (Please also see colour photographs separately- @ p.4-6, 9)
 - c. Before and after photographs (Please also see colour photographs separately- please compare page 1 with page 2 and 3 (road and gas pipeline on the left). Please compare p.4,5,6 with p. 7 and 8)
 - d. Photographs and videos of the project site taken on 24, 27, 29th November, 2021 showing water stagnation and migratory birds at the site even in areas where ash was dumped. (Please see photos and videos provided in a pen-drive along with affidavit dated 01.12.2021)
 - e. Videos and photographs of the project site taken on 10.01.2022 showing further dumping and raising level of areas where water stagnation and birds was noticed even during (d) above. (Please see page 18-23 of I.A. 13 of 2022)

a. Photographs of the project site prior to it being filled in with ash and destroyed (Please also see File A @ p.43- 47)



b. Photographs showing migratory birds prior to the site being filled in with ash. (Please also see colour photographs separately- @ p.4-6, 9)



c. Before and after photographs (Please also see colour photographs separately- please compare page 1 with page 2 and 3 (road and gas pipeline on the left). Please compare p.4,5,6 with p. 7 and 8)





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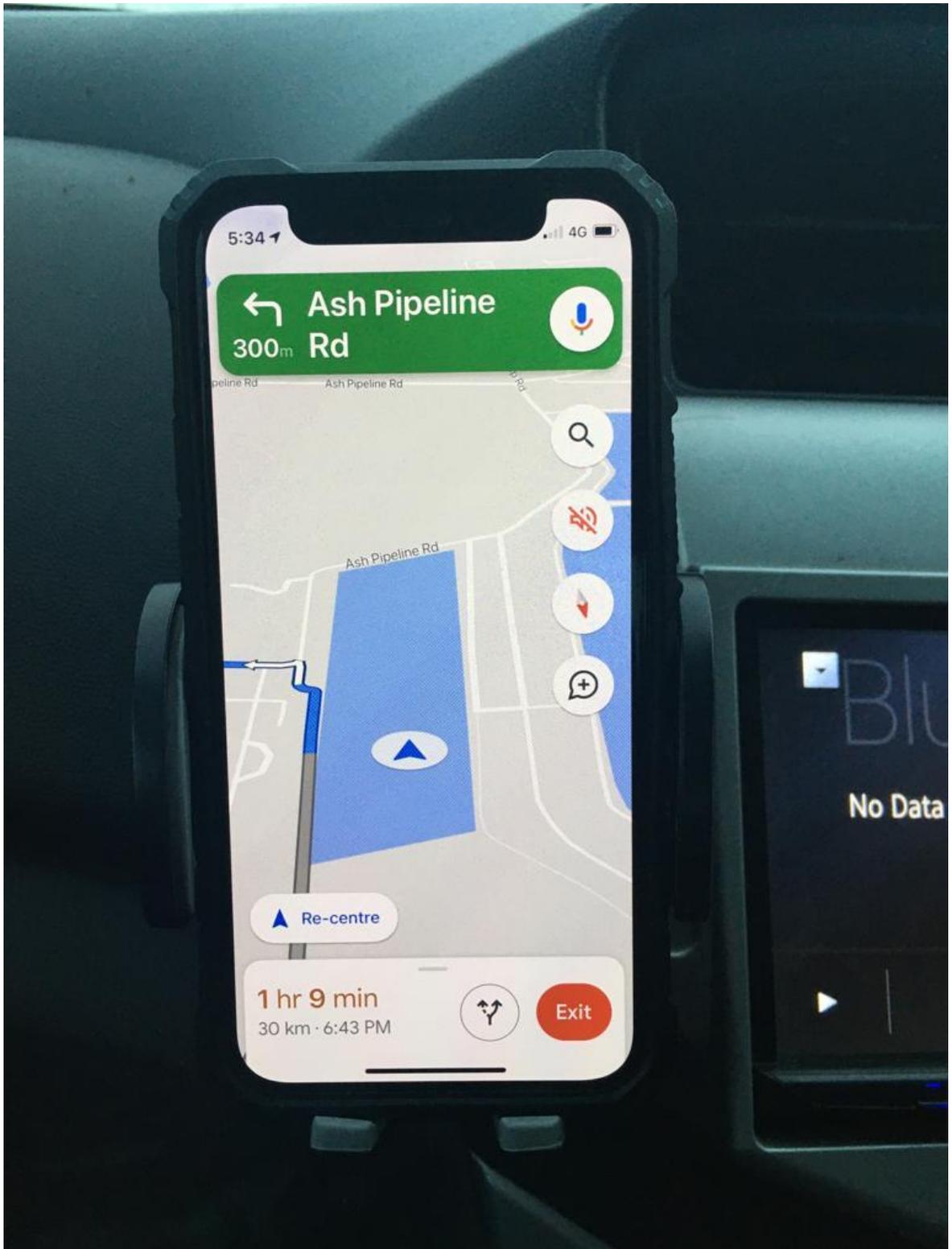
e. Videos and photographs of the project site taken on 10.01.2022 showing further dumping and raising level of areas where water stagnation and birds was noticed even during (d) above. (Please see page 18-23 of I.A. 13 of 2022)



14. The original depth and profile of the site, to some extent, can be seen from the video taken on 29.11.2021. In the said video the height to which the site has been raised and the depth of the area at the northern corner of the project site where ash has not been filled in fully can be seen. Screenshots of the same are pasted below for convenience.



15. In fact, when driving through the project site (after it has been filled), google maps shows as though the vehicle (indicated by the blue arrow) is driving through a water body- area shaded in light blue.



16. The **EIA report** at page 40 while discussing the current status of the project site clearly states :

"2.4.5 The project site is low lying in nature and is devoid of any noticeable vegetation. **The site gets inundated during high tide period and is prone to flooding during monsoon...."**

The site is therefore both a floodplains and a tidal wetland. The project proponent has violated its own mitigation measures to control flooding. In Section 4.3.3 "Mitigation for Erosion of Control Areas" the EIA states: "Non-structural measures mainly control the "vulnerability" component of flood risk, they include:

- Spatial planning policy with a presumption against development or encroachment of economic activities onto flood plains. . .

17. Further, the site photographs forming part of Anna University's HTL demarcation report annexed with the EIA report (See page p. 240-242 of the compilation filed by the respondent along with the counter) show the site filled with water.

18. The fact that the project site is a low-lying waterbody is also clear from the portions of the EIA report pertaining to land filling. At page 40, 2.4.5, the report states that survey was commissioned to assess the current ground levels and to estimate the extent of filling required to raise the land above the max high water level, based on which a suitable site grading plan was devised. The fact that the site is below max high water level offers additional evidence that this tidally influenced floodplains is a wetland.

19. The EIA report at page 43 at 2.6.1 - site grading states thus,

*"The low lying nature of the site calls for large scale filling. Accordingly a grading plan is developed in such a way that it protects the site from being flooded and also provides an efficient drainage system for effectively draining the entire area. **It is found that for about 70 %***

of the entire area of site, average depth of fill required is 2.00 M and about 1.50 M for the remaining area.

Owing to proximity to NCTPS and the upcoming NTECL power plants and large requirement of fill material, it is proposed to use wet ash as fill material, which in turn is also cost effective. Since wet ash is proposed, it requires a top cover (granular material). Accordingly, the requirement of wet ash and granular material is estimated below.

Description	Cu M
Wet ash	1404276
Granular material	520102

20. It is submitted that 1 Cu M of ash will weigh more than 1 ton or 1000 kilograms.

The huge quantity of fly ash stated in the EIA report to fill in the project site and the depth profile of 2.0 M is clear proof that the project site is a low-lying wetland that has now been filled in and destroyed. The EIA report also at page 46 states that the budget for the "site grading" i.e filling in with ash – is 5451.57 lakhs (54.5 crore rupees). To spend public monies to destroy a wetland exacerbates the environmental crime of the 1st respondent. 1404276 Cu M is an extremely huge quantity of ash to be used for land filling and site grading – it is undeniable proof of the fact that a low lying waterbody was proposed to and was filled in during the pendency of this appeal.

21. The 1st Respondent has admittedly dumped several thousand tons of ash in the water body and has filled it in. Even assuming for the sake of argument that the site is not a water body, fly ash ought not to be used as filling material without any protective lining. The MoEF & CC even when permitting filling of mine void with ash, mandates necessary lining to prevent leachate. The 2019 guidelines of the CPCB regarding disposal of fly ash unambiguously states

“5.1.6 Restrictions : Reclamation of area by ash shall not be permitted in the following areas : i. Flood plain area/Ecologically Sensitive Areas. ”

It is thus clear that the 1st respondent ought not to have used ash to fill in the subject site. The ash dumped has to be removed and the wetland floodplains has to be restored to its original condition.

1996 CZMP

22. It is submitted that in addition to the above irrefutable proof that the project site is a tidally influenced waterbody forming part of the Kosasthaliyar backwater complex, the approved Coastal Zone Management Plans approved in 1996 provide further un-deniable proof.

23. The CZMP map demarcates the tidally influenced waterbody and then demarcates extent of CRZ area from the periphery of the waterbody. It is seen from the 1996 CZMP that this area has been marked as S.P (salt pans) inside the waterbody. It is also seen that CRZ area is marked from the boundary of this waterbody – meaning that the subject area marked as SP is inside the waterbody demarcated. In the Ennore region – tidally influenced backwater areas were used for salt harvesting by creating bunds to retain water and evaporate it to harvest salt.

(Please see colour maps at page 4 of the compilation filed along with the affidavit of the Appellant dated 01.12.2021)

24. In the MoEF&CC's letter dated 30.09.1997, approving certain modifications sought by the Tamilnadu Government very clearly permitted only the following:

- a. Reclassification of the area from CRZ - I to III was approved
- (b) Reduction of CRZ area to 100 meters from the backwater was approved

b. To adopt backwater area as demarcated by the Chief Hydrographer to the Government of India and to modify the earlier map that was based on IRS imagery data was approved.

c. Regrading exclusion of salt pan areas from CRZ,

(i) in case the salt pan area lies in the intertidal zone, it was made clear that it will form part of CRZ and under no condition this area can be excluded from CRZ

(ii) In case the Salt pan area fell outside the HTL of the backwater area, then 100 m width or the width of the backwater, whichever is less, of the salt pan area will have to be demarcated as CRZ.

(Please page 7 of the compilation filed along with the affidavit of the Appellant dated 01.12.2021

25. It is thus clear that only the salt pan areas falling beyond 100 m or width of the creek alone could have been excluded from the CRZ area. The subject area, which is inside the waterbody marked, could not have been excluded even under this letter. However, in 1997, an unapproved, illegal map was pressed into service by the Government. These issues were considered by this Hon'ble Tribunal in its judgment dated 23.02.2021 in Application No. 241 of 2017 wherein this Hon'ble Tribunal clearly held that the 1997 plans were not approved and recognised the validity of the approved 1996 CZMP. Any CRZ map for this area would need to defer to the approved 1996 CZMP map as the basis.

Salt pans

26. It is thus clear that the tidally influenced areas included in the 1996 CZMPs, were used for salt manufacture (harvesting). The 1st respondent in fact, accepts the fact that the subject site is classified as salt pan but attempts to only argue that the same is a man-made salt pan and hence excluded from the operation of the Wetland Rules, 2017. In the counter affidavit filed by the 1st respondent at para 4, it has been admitted that the area is classified as salt

pan but that the salt commissioner has transferred these lands stating that the same cannot be used for salt manufacture in light of the pollution caused by the thermal power plants. The transfer of these lands to TIDCO by the deputy salt commissioner does not mean that these lands are fit to be used for industrial purposes. Lands covered under CRZ and wetlands can only be used for permitted purposes irrespective of ownership. The revenue classification of the subject survey numbers is "salt pans". (Please see File A @ p. 49-50).

27. It is submitted that the inclusion of the area as part of the tidally influenced waterbody in the 1996 CZMP itself is clear proof that the subject area is not a man-made salt pan - It is a tidally influenced waterbody that was used for salt manufacture by creation of bunds. It does not make the area a man-made salt pan. In some areas like Thoothukudi where salt water ingress into groundwater is extreme, salt water is bailed out from underground and salt is manufactured - these pans are structures specifically created for salt manufacture far away from tidally influenced areas. It is these structures that can be called man made salt pans.

28. The subject area, however, is a natural tidal wetland and not a structure specifically constructed for salt manufacture. Even the EIA report is testimony to this fact. The 1st Respondent's attempt to rely on a judgement of the Madras High Court dated 26.04.2007 in L. Subramania Reddy Vs. Deputy Salt Commissioner to contend that the subject area is a man-made salt pan is without merit. This judgement is in the context of a petition where compensation was sought by leaseholders. Firstly, the said judgement does not deal with the survey numbers in question and in any case the judgement does not hold that the salt pans in Ennore are man-made. In any case, creation of bunds to retain salt water in the flood plains - in order to evaporate and harvest salt does not render the natural flood plains a man-made salt pan. Therefore, the contention that the area is a man-made salt pan is liable to be rejected.

Wetland Rules, 2017

29. Rule 2 (1) (g) reads thus,

"wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, **but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes;** (emphasis supplied)

(Please see p.26 of the compilation filed by R-1 along with the counter)

30. It is thus clear that only man-made structures specifically constructed for salt production are excluded from the definition provided at Rule 2 (1) (g) and the present area is not a man-made structure constructed for salt production.

31. The MoEF has issued guidelines for implementation of the 2017 Rules and these guidelines also clearly state as follows,

"4. All wetlands, irrespective of their location, size, ownership, biodiversity, or ecosystem services values, can be notified under the Wetlands Rules, except:

a) River channels;

b) Paddy fields;

c) Human-made waterbodies specifically constructed for drinking water purposes;

d) Human-made waterbodies specifically constructed for aquaculture purposes;

e) **Human-made waterbodies specifically constructed for salt production purposes;**

(f)

6. Natural wetlands, partly or wholly used for purposes as mentioned at 4c) – 4g), attract the provisions of the Wetlands Rules.”

(Please see File C p. 27 @ p.30)

32. Thus there is no doubt that the subject tidally influenced waterbody is not excluded from the definition of wetland under the 2017 Rules as contended by the 1st respondent. ONLY HUMAN MADE WATERBODIES SPECIFICALLY CONSTRUCTED FOR SALT PRODUCTION PURPOSES IS EXCLUDED. Clause 6 above obviates all doubt by stating that natural wetlands used for the purposes such as salt production attract the provisions of the wetland rules 2017 and are protected under it.

Suppressions in form I renders the EC liable to be quashed

33. It is submitted that Courts have time and again reiterated the importance of furnishing true and correct information in Form – I and that the failure to declare material facts is fatal to the clearance process.

34. In **Hanuman Laxman Aroskar vs Union of India & Ors** (2019 SCC Online 441), the Hon'ble Supreme court has held thus,

"62. Under the 2006 notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Crucial information regarding the particulars of the proposed project is sought to enable the EAC or the SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

....

63. Under the 2006 Notification, the 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:

(i) The EAC or the 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 the ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment;

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

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

(iv) 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 1A as applicable; and

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

64. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable concerned persons to provide comments and representations at the public consultation stage. 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

of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

"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. 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."

(Page 100 - 101 of caselaw compilation filed by the appellant)

86. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC inspite of the fact that there has been a patent failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of the ToR by the EAC. The EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating the ToR and between the ambit of the EIA report required by the ToR and the final EIA report. The ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of the EAC in the preparation of the ToR and in consequence, leads to preparation of a deficient EIA report.

87. The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of the ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as

a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of the EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it "strictly with reference to the ToR" and communicate to the EAC and SEAC any discrepancies between the EIA report and the ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

88. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law. There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law."

(Page 106 of caselaw compilation filed by the appellant)

35. This Hon'ble Tribunal in **K.P Sriranganathan vs Union of India & Ors** (Aranmula case, judgment dated 28.05.2013) examines in detail the suppression in Form – 1 submitted by the project proponent in that case and

held that the Form 1 was invalid in light of the suppressions and inadequacy therein.

"154. Hence, it is held that the Form 1 in the application filed by the 3rd respondent/project proponent before the 1st respondent/MoEF for the Aranmula airport project was inchoate and invalid for false and suppression of materials and for inadequacy."

(Please see page 41 of the caselaw compilation filed by the appellant)

36. It is submitted that the fact that this site is a tidal wetland/waterbody is clear from the project proponent's own EIA report, photographs filed, the approved 1996 CZMP etc . The 1st respondent has filed false information in the Form – 1 and has misled the authorities into issuing the impugned clearance. A waterbody/wetland cannot be diverted for any purpose – much less for the establishment of an industrial estate. The EC is liable to be quashed for this very reason.

D. EIA Report ought to be rejected

EIA report prepared by unaccredited consultant

37. It is submitted that the EIA report has been prepared by consultants who are not accredited to undertake EIA studies for the prescribed category of projects under the EIA Notification, 2006 i.e. a project under Entry 8 (b). As per the disclosure of consultants available in the EIA Report, the proponent has engaged Centre for Environment Health and Safety, Annamalai University and Hubert Enviro Care System Pvt Ltd and ITCOT Chennai.

38. Though 3 consultants have been mentioned in the EIA report , only one consultant (CEHS) has prepared the report. This is clear from the statement in in chapter 11 of the EIA report : " CEHS has conducted the due diligence study on the project location **and prepared the environmental impact assessment report and environmental management plan** as per the requirements of the approved TOR from SEIAA and guidance document of MoEF & CC"

(See p. 217 of the compilation filed by R-1 with counter (p.185 of EIA report)).

CEHS- Annamalai University

39. The EIA report has thus been prepared by CEHS – if CEHS is not accredited for the subject category i.e 8 (b), then the SEIAA ought to have rejected the EIA report. It is submitted that the accreditation status of CEHS dated 18.04.2019 clearly demonstrates that they have not been accredited to undertake studies for category 8 (b) and thus could not have undertaken the present study. Even the accreditation certificate dated 02.07.2020 extending the validity of the earlier accreditation does not include category 8(b) (See page 78 of the additional typed set filed by the 1st Respondent).

ITCOT Consultants

40. It is submitted that there are no details regarding the accreditation status of ITCOT and ITCOT is not an accredited EIA consultant. Further, SIPCOT is a shareholder in ITCOT and the present project being a special purpose vehicle of SIPCOT and TIDCO, ITCOT consultancy ought not to have been engaged or involved in any part of the EIA studies for the project since the same amounts to a conflict of interest situation. The list of shareholders of ITCOT is produced as Annexure A-17 @ p. 32 of File C. The said fact is not denied by the project proponent and instead, it is sought to be justified as acceptable since “the project consultant and the project proponent both are state owned corporations and there is no private interest in both undertakings....and there is no individual personal interest in both the corporations and there is no scope for conflict of interest while considering the welfare of the state”. It is submitted that this justification is completely untenable, bereft of logic and is liable to be rejected.

Hubert Envirocare

41. It is submitted that the fact that Hubert Envirocare alone has a valid accreditation is of no relevance since the disclosure makes it clear that the report was prepared by CEHS Annamalai University. The law does not permit

a situation where unaccredited consultants prepare an EIA report/work on the preparation of an EIA report along with another consultant with requisite accreditation and all of them produce an EIA report. Permitting such a modus operandi will defeat the very purpose of accreditation where unaccredited consultants will prepare reports, conduct studies etc and finally label the report with the name of an accredited consultant.

42. The issue regarding the requirement of the EIA report to be prepared by an accredited consultant was considered by this Hon'ble Tribunal in **Sreeranganathan K.P vs. Union of India vide judgement dated 28.05.2014** where the issue regarding the validity of an EIA report prepared by an unaccredited consultant was considered and the Hon'ble Tribunal held that the consultant who did not hold a valid accreditation of the category of projects sought to be evaluated could not have prepared the EIA report and appeared before the EAC in respect of the said project.

(para 152 @ p. 27 of the case law compilation).

Data collected during the monsoon period

43. It is submitted that it is seen from the EIA report that primary baseline data has been collected during the months July - September 2019 (Please see page 79 of EIA report for example). It is submitted that it is trite that data collection should be during non-monsoon period. The MoEF's sector specific manual for EIA studies clearly states that baseline data collection should be during non-monsoon period. Extracts from the Sector specific manual are available at File C @ p.37.

44. The CPCB in its report on mixing heights also clearly states that during monsoon pollution levels will be lower due to washout effect. It is a simple phenomenon where due to rainfall and increased moisture in the air, pollution levels will be much lower as pollutants will be washed down by the rains, leaving the air cleaner than usual. Similarly, ground and surface water

will get diluted during the monsoon period due to rain and the pollutants in water will also be lower than normal due to dilution. This is why baseline data collection should be done during non-monsoon period. Extracts from CPCB report is available at File C @ p.41.

45. It is a matter of record that during the months of June - September, during the south-west monsoon period, substantial rainfall is received by areas in the State of Tamilnadu. In fact, Thiruvallur district where the project is located, receives around 40 % of its rainfall during these months. Copy of IMD report is available at File C @p.49.

46. It is submitted that these areas receive substantial rainfall during both the southwest and northeast monsoons and hence data collection during this period will not present a true picture and this is why the law demands that data be collected during non-monsoon period. The present EIA report is liable to be rejected on this very ground as any assessment based on faulty baseline data is useless and cannot form the basis of any informed environmental decision making.

Failure to consider alternative sites

47. It is submitted that alternate sites have not been properly assessed by the PP and the exercise conducted by them in this regard seems fraudulent. A perusal of the topo sheet filed where three alternate sites considered by them are marked as Annexure A-9 shows that the layout (shape) of the present site has been pasted in two other locations. It is submitted that the size and shape of a site determines the design and layout of the activity in the site and the PP has made a mockery by simply pasting the same shape in three places and claiming that alternative sites have been assessed / considered. The analysis of alternative sites at page 183 of compilation filed

along with R1 counter (page 151 of EIA report)_ makes it very clear that no such assessment was carried out.

No assessment of anticipated impact

48. It is submitted that the entire purpose of conducting an EIA study is to forecast the anticipated impacts of an activity on the receiving environment so that decision can be taken on whether the activity can be permitted or not. In the present EIA chapter 4 deals with anticipated impacts. Though chapter 4 is 22 pages long starting at page 121, even a cursory assessment of anticipated impacts is absent. The portion on impact during operation phase starts at page 141. Under air environment, the EIA report says "not applicable" and the entire assessment is over when one turns to page 142. The report is bereft of any information or assessment.

49. At page 141, under 4.4 "Impact in Mitigation Measures During Operation Phase", the EIA Report merely makes general submissions under air, noise, water and land, biological, socio-economic environment and the relevant portions are extracted below.

(This space below is deliberately left blank)

such effects, proper drinking water, sanitation and first aid facility will be provided at the construction site, with trained shift supervisors, which will ensure minimum adverse occupational health impacts on the construction workers.

4.4 Impact and Mitigation Measures during Operation Phase

Both positive and negative impacts may be expected in the surrounding environment due to its various activities associated with the operations of the proposed projects.

On the basis of activities involved during the production of final product it may have impacts on various environmental attributed as detailed below

- Air Quality
- Noise quality
- Water Resources and Water Quality
- Soil Quality, landscape and land use
- Ecology/Biodiversity
- Socio-economics

4.4.1 Air Quality

Not Applicable. TPIPL will not install any DG sets for providing the power supply. However TPIPL will be insist individual industries to maintain their Stack emission and control measures as per CPCB Norms

4.4.2 Noise Environment

Noise pollution is caused due to the various activities which involves the vehicular movement, D.G sets etc.

4.4.3 Water Environment

During the operation phase water requirement will be met from TWAD. Hence there will not be any abstraction of ground water in the project site. Disposal of domestic wastewater generated may also affect the quality of groundwater in the project site. Impacts due to effluent generation from the proposed industries will also affect the water quality.

4.4.4 Land Environment

Dumping of municipal solid waste & industrial waste on the land will affect the soil quality. Poor garbage management would lead to unsanitary conditions including vermin and fly

infestation and odors as well as unsightly conditions. Spillage of waste oil from the D.G set may also have an impact on soil quality.

4.4.5 Biological Environment

The impact on terrestrial ecology will be due to emission of gaseous pollutants like NOX, SO2 and Hydrocarbons. The gaseous pollutants at a very low dose act as atmospheric fertilizer for the vegetation. However, at higher doses, they are injurious to vegetation. The release of effluent and sewage, dumping of solid and hazardous waste will also affect the ecology of the region.

4.4.6 Socio Economic Environment

The proposed project would provide employment opportunities and improved working conditions for the workers employed at the facility both during construction and operation phase. The project will increase the economic activities around the area. The proposed project would enhance the existing infrastructure in the area by providing a cleaner and greener environment.

The negative effects due to the proposed project are given below

- During the operation stage of the project the healthcare workers may come in contact with the infected and contaminated instruments and needles.
- Community Health Risk to Improper waste management.

4.4.7 Traffic Impact Assessment

Approach road to the site is Ash pipeline road. Existing traffic on the road is given in Table 4-3.

Table 4-3 Existing vehicles for the project along Ash pipeline Road

S.No.	Type of Vehicle	Existing/ hr
1	Tankers	1-2
2	Trucks	10-15
3	Tractors	2-3
4	Bus	10-15
5	Cars	20-30
6	2 Wheelers	50-60
7	3 wheeler (auto)	10-15

50. A mere reading of the above clearly indicates that neither the EIA consultant nor the project proponent have any idea about the impact of industries that will be located in the proposed industrial estate. The purpose of conducting impact assessment studies for industrial estates is to ensure that the anticipated impact of the several industries proposed to be located in the industrial estate are assessed before establishment of the estate, so that the cumulative impact of these industrial establishments can be assessed, appraised, and an informed decision can be taken by the authorities. The present EIA does not even make an attempt to mention the likely emissions, discharges from the proposed industries much less quantify and assess its impact. This EIA makes a mockery of the purpose of prior impact assessment. The fact that the SEAC and SEIAA have not even noticed these aspects is demonstrative of the diligence exercised by them.

51. The anticipated impact of the project is not even quantified / modelled and hence there is no question of calculating incremental impact of the project. The entire chapter on mitigation measures is generic and non-specific and is irrelevant to consideration of the environmental impact of the project.

52. This ought not to have been accepted by the EAC as such generic statements and complete failure to assess the anticipated impacts renders the entire exercise futile. The SEAC has miserably failed in its duty as an expert body. Approval and acceptance of such reports would render a death knell to the process of prior impact assessment and clearances, rendering them otiose.

Biodiversity assessment not conducted

53. It is submitted that TOR No. 9 issued to the 1st respondent requires the preparation of a detailed biodiversity assessment report. The TOR is extracted below for convenience

“Detailed bio-diversity study has to be carried out by the consultant engaging the services of reputed institutions”

(Please see page 54 of the typed set filed along with R-1 counter (p. 22 of EIA report))

54. It is a matter of record that no such biodiversity assessment report was prepared and submitted in the clearance process. This Hon'ble Court repeatedly asked the project proponent for copy of the same during the course of submissions. In the statement on compliance to ToR, the 1st respondent merely states "Details are given in Chapter-3, Section 3-10 of the EIA report" (Please see page 54 of the typed set filed along with R-1 counter (p. 22 of EIA report))

55. A perusal of chapter 3 in the EIA report shows that there is absolutely no discussion of biodiversity whatsoever.
(Please see page 80-156 of the typed set filed along with R-1 counter (p. 48-124 of EIA report))

56. It is submitted that the appellant filed an affidavit dated 01.12.2021 along with videos showing migratory birds including flamingos at the site. The 1st respondent has not denied the fact that migratory birds were found at the site – in fact, the 1st respondent goes on to argue that because of the proximity to Pulicat, birds are found in these areas. This argument goes to buttress the contention of the appellant that the area attracts migratory birds and that the waterbody needs to be restored. The function of these wetlands as foraging grounds for wetland birds, including threatened and migratory birds, only elevates the status of the area as a place of conservation significance. (Please see para 6 of affidavit dated 10.12.2021 filed by the 1st respondent)

57. It is submitted that that migratory birds visit the same waterbody every year and the fact that 33 flamingos and other birds were found in the site is proof that this area was previously used by them as feeding grounds / roosting areas.

58. Had a proper biodiversity assessment over a one year period been conducted before the site was filled in and destroyed, a reasonably accurate picture of the floral and faunal diversity of the area would have been reported. However, if such a study is done today, the results would not be accurate. It is necessary to restore the waterbody to its original condition, so that it can serve its ecological services.
59. It is thus submitted that the entire EIA report ought to be rejected since the same has been prepared by unaccredited consultants, baseline data collection has been contrary to law, no biodiversity assessment was done as mandated in the ToR and the basis of the report is based on false and incorrect information submitted by the project proponent and its consultants have been accepted by the 2nd respondent without application of mind and in abdication of the duty cast on them under law.

E. Non application of mind by SEAC and SEIAA

60. It is submitted that all the above issues ought to have been properly raised and evaluated by the appraisal authorities. The SEAC and SEIAA have a solemn duty in law to examine a proposal in detail and recommend the proposal/grant clearance only when the environment impact of the project has been assessed and appraised in detail and found within the parameters of sustainable development. However, sequence of events and minutes of the meetings of these expert bodies demonstrate that no reasons are recorded and there has been no application of mind while granting the clearance thereby rendering the entire process otiose.

Evaluation at the stage of grant of terms of reference

61. SEAC's 133rd meeting dated 24.08.2019

It is submitted that the complete lack of application of mind is evident from the categorization of the project in the introduction as under "mining". The further discussion reveals that no substantial issues relating to the project were evaluated before recommending the issuance of ToR. The false

information in the Form – 1 were not noticed – exercise of due diligence at this stage would have resulted in rejection of the application at the threshold itself, as required under clause 8 (vi) of the EIA Notification, 2006

(See File C @ p.151 @ 162)

62. SIEAA's 358th meeting dated 31.10.2019

It is submitted that thereafter SIEAA considered the same and a perusal of the minutes at item 10 will once again indicate the complete lack of any kind of discussion before the issuance of ToR.

(See File C @ p.165 @ 179)

Appraisal after EIA report is submitted

63. The following timeline is relevant.

- a. Issuance of Terms of reference- 31.10.2019
- b. EIA report submitted by PP on 20.11.2019 (within 20 days of grant of ToR)
- c. SEAC considers the project in its 139th meeting on 23.11.2019 (within 3 days of submission of EIA report as "table agenda") and recommends grant of clearance
- d. SIEAA considers the project in its 362nd meeting on 27.11.2019 (within 4 days of SEAC meeting)
- e. SIEAA in its 363rd meeting on 11.12.2019 issued the impugned clearance.

64. SEAC - 139th meeting on 23.11.2019

The Appellant had raised a ground in this regard that a perusal of the minutes of the 139th meeting of the SEAC had no mention or discussion of

the present project. The agenda for the said meeting also did not contain any mention of the PP's proposal.

(See File C @ p.147)

65. The 2nd Respondent in their counter affidavit at para 7 merely stated that "the project proposal was placed in the 139th SEAC meeting held on 23.11.2019 after detail deliberations, the SEAC recommended the proposal for grant of environmental clearance". No further details were provided.

66. It is submitted that when the issue was raised during the course of oral arguments by Counsels, this Hon'ble Tribunal directed the 2nd Respondent to produce the original file relating to the project and it was only on examination of the said file, it came to light that the subject project was placed as a "**table agenda**" during the meeting on 23.11.2019 and considered the very same day and recommended for clearance. Thus, the members of the SEAC would have had no advance notice to peruse the EIA report and were compelled to consider it as a table agenda item being placed **on the day** of the meeting. It is to be noted that the EIA report itself was submitted only 3 days prior to the date of this meeting and the documents were admittedly not circulated in advance. This is a clear case of a state corporation using its influence to pervert due process and force a statutory body to rubber-stamp its approval.

67. It is submitted that a total of **25 other agenda items** seem to have been discussed on the said date and had the project also been appraised at the said meeting, the same would have been done within a span of **13 minutes**. Further, only 4 out of the 12 members of the SEAC have signed the minutes. (See File A @ p.52-177).

68. No reasons have been stated by the EAC for its decision to recommend the project for clearance. There is a complete lack of discussion of or even mention of the contents of the EIA report.

SEIAA in its 362nd meeting on 27.11.2019

69. It is further submitted that the 362nd meeting of the SEIAA also has no discussion on the project and the minutes of the 363rd meeting of the SEIAA also merely mentions that a "detailed discussion" took place with no elaboration on the contents of the discussion.

(See File A @ p.178 @ p.180)

70. The complete lack of reasoning for the recommendation of the project vitiates the entire process and the law in this regard has been well-settled in several decisions of this Hon'ble Tribunal.

Revised EIA could not have been submitted to SEIAA bypassing SEAC

71. It is submitted that it is also seen from the impugned EC that a "revised" EIA was submitted by the project proponent to the SEIAA on 09.12.2019 and thereafter the SEIAA granted clearance on 11.12.2019 after its meeting.

72. It is submitted that under the EIA Notification, 2006, the duty of the SEIAA and the SEAC are well defined. The revised EIA report should have been sent back to the SEAC for consideration and based on their recommendations, the SEIAA should have applied its mind and decided on the grant of clearance. In the instant case, this process was defeated and the SEIAA appears to have usurped the powers of the SEAC and has granted clearance after a revised EIA was submitted to the SEIAA on 09.12.2019. This also vitiates the process.

73. It is submitted that the role of the EAC was considered by the Hon'ble High Court of Delhi in the case of **Utkarsh Mandal vs. Union of India (Writ petition Civil 9340 of 2009) dated 26.11.2009.**

- The Court observed that the EAC was performing a public law function and is a delegate of the MoEF and is expected to adhere to the very same standards which the law requires the MoEF to adhere to (para 36 at p.140 of compilation).
- The Court further observed that the whole purpose of outsourcing the task to an EAC comprised of experts was to have a proper evaluation based on objective criteria. The EAC is also tasked with considering the objections raised at the public hearing and the response thereto of the project proponent and the failure to give reasons would render the decision vulnerable to attack on the ground of non-application of mind. (para 40 @ p. p.142 of compilation)
- On the question of consideration by the EAC of a large number of projects in a single day, the court observed that "the unseemly rush to grant environmental clearances for several mining projects in a single day should not be at the cost of the environment itself. The spirit of the EAC has to be respected. We do not see how more than five applications for EIA clearance can be taken up for consideration at a single meeting of the EAC." (para 45 @ p. 143 of compilation)

74. This Hon'ble Tribunal while deciding the case of **Sreeranganathan K.P vs. Union of India vide judgement dated 28.05.2014** also observed regarding the role of the EAC in para 182 and para 183 as follows:

"182.....The EAC is constituted consisting of a Chairman and number of members who are experts from different fields only with the sole objective of national interest in order to ensure establishment of new projects or expansion of already existing activity without affecting the ecological and environmental conditions. Thus, a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal and Principle of

Sustainable Development and Principle of Precaution while screening, scoping and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner even without taking note of the implication and importance of environmental issues. On the same day the EAC took for appraisal not only the airport project in question, but also other projects which would be indicative of the haste and speedy exercise of its function of appraisal of the project. It casts a doubt that whether the EAC would have accepted the response made by the Project Proponent in respect of the objections and concerns raised at the time of public hearing as a Gospel Truth. Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

183. The EAC is a High Level Committee entrusted with the task of evaluating the projects, which exercise it has to do with its wisdom, experience and expertise of the members. Needless to say, while doing that exercise for such evaluation, the Committee should keep wider interest of the nation as paramount in its mind. A duty is cast upon the EAC to strike a balance between the development on one side and ecology and environment on the other, thereby ensuring larger interest of the society of the State. While such vital and indispensable task is entrusted with the fervent hope and expectation, shirking of responsibility in a hasty or evasive manner would not only be against the objective of its constitution, but also defeats the purpose for which the Committee is functioning....”

75. The Hon'ble Supreme Court of India, more recently in the case of **Hanuman Laxman Aroskar Vs. Union of India (2019 Scc Online SC 441)** has held that

- the process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and all other documents including the EIA report (para 126 @ p. 116 of compilation).
- The EAC is an expert body and "the reasons which are furnished by the EAC constitute a live-link between the processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated" (para 136 @ p. 118 of compilation).
- "the recommendations of the EAC furnish a guide to the MoEF&CC. Indeed the 2006 notification stipulates that the recommendations of the EAC would normally be accepted. Consequently, a failure of due process before the EAC as in the present case must lead to the invalidation of the EC" (para 138 @ p. 119 of compilation).

76. Thus, it is abundantly clear that the expert bodies in the present case did not apply their mind to the project, the anticipated environmental impacts etc. and the entire process suffers from non-application of mind. No reasons have been stated. The various decisions relied on above clearly demonstrate that in such a case, the appraisal process has been completely vitiated and the environmental clearance has to be set aside.

F. Contentions of the 1st Respondent Project proponent

77. The 1st Respondent surprisingly without dealing with the contentions raised in the appeal has attempted to justify the impugned environmental clearance dated 11.12.2019 by relying on a judgement of the Madras High Court in **Ramgopal Estates Pvt Ltd Vs. State of Tamil Nadu** dated 02.03.2007. The Respondent in its written arguments dated 18.09.2021 and 06.12.2021 has placed extensive reliance on this judgement. The Respondent's attempt

appears to be to state that the petrochemical industrial park proposed to be set up in 1998 on about 7150 acres of land encompassed the subject 239.82 acres on which the subject project is to be located and hence no challenge to the clearance could be maintained and that the present application is barred by the principle of res judicata.

78. This contention of the 1st Respondent is utterly without merit for the following reasons :

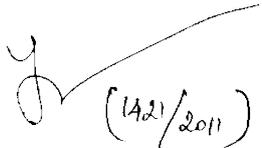
- a.** The proposal to set up a petrochemical industrial park in 1998 is in no way connected to the present industrial estate proposed to be set up by the 1st Respondent for which clearance was obtained in 2019.
- b.** The impugned EC and its merits were obviously not the subject matter of the proceedings in 2007.
- c.** The 1st Respondent has failed to inform this Tribunal that the Hon'ble Madras High Court in the above judgement while considering the challenge to the land acquisition proceedings, directed that the setting up of the petrochemical park shall be subject to the environmental clearance to be issued under the Environment Protection Act (See page 57 of the Typed set of R-1 dated 18.09.2021)
- d.** It is a matter of fact that the proposed petrochemical park was never established and the project never obtained environmental clearance
- e.** The reliance on NEERI's EIA report for the said petrochemical park in 1998 is also irrelevant. The EIA report in 1998 for a different project has no bearing on the issues plaguing the impugned EC. The NEERI EIA is admittedly not specifically for this site.
- f.** The 1st Respondent appears to forget that an EIA report prepared by NEERI in 1998 is not the answer to the 1st respondent's blatant suppression and misrepresentations. That EIA report was for a different project and not specifically for the lands in question – the nature of the subject survey numbers was not in issue and the said proposal never received EC and was never established. The thrust on the NEERI report in 1998 is misplaced and irrelevant. The 1st respondent appears to be

ignorant of the process of EC under the EIA Notification, 2006 and has failed to consider the statements in its own EIA report.

79. The 1st Respondent also attempted to state that the subject area was a man-made salt pan and not a natural wetland / waterbody. This contention has been addressed in detail in para 25-31 to above.
80. The 1st Respondent appears to be ignorant of the fact that the burden of proof in environmental matters is reversed and the onus is on the project proponent to show that the law has been complied with and his activities are environmentally benign. Please see para 11 (iii) of Vellore citizens Welfare Forum vs. Union of India and Others (1996) 5 SCC 647 wherein it was held that "the onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign". The respondent project proponent miserably failed to do so.
81. It is relevant to note that the landfilling was continued during the pendency of the present appeal. In the 1st Respondent's counter affidavit dated 21.07.2020 in I.A. 40 of 2020 seeking condonation of delay filed by the Appellant, at paragraph 7, the 1st Respondent commenced filling up earth by the contractor.
82. On 19.12.2020, the TNPCB instructed the 1st Respondent "not to carry out establishment activity without obtaining CTE from the Board". This fact was informed to the Appellant herein by the TNPCB vide its reply dated 10.02.2021 (Please see File C @ p. 186).
83. Consent to establish was obtained by the 1st Respondent only on 22.03.2021 (please see 1-4 of the typed set filed by R-1 dated 16.01.2022). Land-filling thus commenced without even a valid consent to establish under the Water Act and the Air Act and in violation of stop work instructions issued by the TNPCB.

84. On 01.12.2021, this Hon'ble Tribunal directed the 1st Respondent to maintain status quo and this was extended. However the 1st Respondent continued with land-filling and construction work at the project site and videos of the same were produced along with I.A No: 13 of 2022 filed by the Appellant.
85. The 1st Respondent began land-filling illegally and destroyed the subject site. No equities lie in favour of the 1st Respondent.
86. This is a classic case of a project proponent mis-leading the authorities and obtaining environmental clearance by suppressing facts and playing a fraud on the process. The destruction caused by the 1st Respondent and the need to restore the site to its original condition have to be viewed in the context of the Ennore wetland complex- large tracts of which have already illegally been reclaimed, destroyed and converted for industrial purposes. Remaining areas such as the subject project site assume greater significance in maintaining the ecological balance of the area. It has been demonstrated beyond any doubt that the project site is a water body, is tidally influenced and serves as a foraging ground for migratory birds.
87. This is a fit case where the environmental clearance obtained in violation of the law ought to be quashed and subject area (water body) be restored to its original state. Only this course of action would aid in preserving environmental rule of law and would ensure that the project site continues to serve its ecological functions as a tidally influenced backwater area, playing host to migratory birds and other flora and fauna.

Dated at Chennai on this the 26th day of February, 2022


(142/2011)
Counsel for Appellant