

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI**  
**MEMORANDUM OF APPEAL**  
**(Under Section 18(1) read with Sections 16 (h) of National Green Tribunal Act**  
**2010)**

**Appeal No. 1 of 2018 (SZ)**

Between:

Voice of Nature ... Appellant

AND

Union of India & Ors ... Respondents

**NOTE FILED ON BEHALF OF THE APPELLANT**

It is respectfully submitted as follows :

1. The original file of the SEIAA was inspected to ascertain if any justification has been provided by the SEIAA for appraising the project , despite the project being located in an area declared as a critically polluted area.
2. The below table provides an index to the documents available in the SEIAA file that was presented for inspection.
3. The following submissions are relevant:
  - a. It is seen from the file from page 4 that the SEIAA noticed that point 3 and point 8 of the ToR issued by MoEF were contradictory and sought clarification from the project proponent vide the letter at page 9.
  - b. At page 31 - in the Form I filed by the PP, in response to question about the application of general conditions - an affirmative answer has been provided.
  - c. PP responds to SEIAA query raised on 08.02.2018 - in reply dated 14.02.2018, @Page No. 121- the following has been stated  
"Cuddalore industrial area has been notified by CPCB as critically polluted area and moratorium was imposed. However, due to various action plans implemented by SPCB, the moratorium in this area has been lifted based on the office memo vide letter number J-11012/5/2010-IA11 (I) dated 25.11.2016 by MoEF & CC based on recommendation of TOR obtained by Ministry the proposal is. Being submitted to SEIAA."
  - d. The OM dated 25.11.2016 does not remove Cuddalore from the list of critically polluted areas. It only lifts the moratorium imposed on consideration of proposals for clearance. The lifting of moratorium does

not mean that the area has been removed from the list of critically polluted areas.

- i. Certain areas were declared as critically polluted areas based on assessment of certain environmental parameters by CPCB. A moratorium was imposed in these areas – no new project or expansion could be considered when the moratorium was in place. During the moratorium neither MOEF or SEIAA could consider and grant any clearance.
  - ii. The EIA Notification stipulates that where the general condition is attracted, category B projects will be deemed to be category A and appraised at the central level. Areas classified as critically polluted areas attracted the general condition.
  - iii. Based on action plans submitted by the respective state pollution control boards – the moratorium on consideration of new projects or expansions were lifted. By virtue of the lifting of moratorium, projects could now be considered for clearance as stipulated in the general condition to the EIA Notification – ie. Category B projects are deemed to be category A projects and appraised by the MoEF.
  - iv. The lifting of moratorium for Cuddalore was ordered vide the OM dated 25.11.2016. Post this date, project proponents could apply for prior clearance but even category B projects will have to be dealt with by the MoEF by virtue of the general condition.
- e. The SEIAA, without application of mind, understanding of the OM and the general condition to the EIA Notification, considered the project illegally and granted clearance without jurisdiction. The PP has misled the SEIAA by citing the OM dated 25.11.2016. This OM cannot be cited as a justification for SEIAA exercising jurisdiction and granting clearance.
  - f. The TNPCB monitoring reports in 2018 filed by the MoEF are not part of the SEIAA file or its consideration.
  - g. TNPCB has no powers to declare an area as a critically polluted area or not.
  - h. The assessment of environmental parameters and the calculation of CEPI is the duty of the CPCB. The TNPCB has no role in this process. CPCB has not conducted assessments and concluded that CEPI score of Cuddalore has reduced.
  - i. The CPCB / MoEF have not issued any OM or order removing Cuddalore from the list of Critically polluted area.

- j. Until Cuddalore is removed from the list of critically polluted areas, SEIAA does not get any jurisdiction to consider projects for environmental clearance or issue clearances.

### Contents of SEIAA file

S.No	Page No.	Date	Content
1.	1	31.01.2018	Proposal to receive with One Lakh processing fee.
2.	3-8	07.02.2018	Note [Same document at Page Nos. 41 to 45] Page 4- Point No.3 & Point No.8 and notices that "both are conferring to each other"  Sr.No. 1 to Sr. No. 45- Details for 1 to 45 were sought for project proponent.
3.	9	08.02.2018	Letter from Project Proponent to SEIAA with respect to details sought in Note dated 07.02.2018  @ Page No. 9 - Letter dated 08.02.2018 from SEIAA to Project Proponent communicating details sought in the previous pages. Please see Point No.1  Point No.1 - "request clarification of application of general conditions"
4.	15	13.02.2018	Project Proponent authorises Opera Managements to obtain queries regarding EC.
5.	19	27.02.2018	SEIAA Note to SEAC decides to make spot inspection
6.	21-24	22.03.2018	Note
7.	25	16.04.2018	Note seeking to include forthcoming SEIAA Meeting.
8.	29-40	25.01.2018	Form-I  @Page No. 31- See Serial No.7  Are General Conditions applicable? The answer is yes
9.	41-45	___.02.2018 signed as 07.02.2018	Note as same Note in Sr. No.1

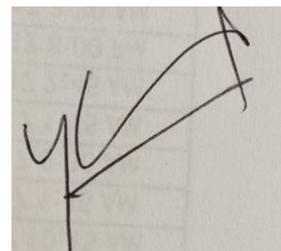
10.	47-50	27.02.2018	Letter from SEIAA to Project Proponent intimating inspection on 03.03.2018
11.	51-53	25.11.2016	Office Memorandum dated 25.11.2016 on critically polluted areas
12.	55-57	24.02.2018	Minutes of 103 <sup>rd</sup> SEAC Meeting  @Page No. 55- 2 <sup>nd</sup> and 3 <sup>rd</sup> para refers to TOR of MoEF directing submission of EIA Report to SEIAA.  EIA Report submitted on 25.01.2018
13.	59-89 (Pg 60 is missing)	14.02.2018	Letter from Project Proponent to SEIAA in response to Letter dated 08.02.2018  @Page No. 59 in response to SEIAA Letter dated 08.02.2018 -  No clarification with respect to Point No.1 mentioned in SEIAA's letter about contradiction in TOR has been furnished.
14.	91-94	22.03.2018	Letter from SEIAA to Project Proponent
15.	95-98	22.03.2018	Same as above
16.	99-118	12.03.2018	Report of Technical Team to SEAC
17.	118-263	14.02.2018	Letter from Project Proponent to SEIAA- response to SEIAA Letter dated 08.02.2018 (With Annexures)  @Page No. 121- "Cuddalore industrial area has been notified by CPCB as critically polluted area and moratorium was imposed. However, due to various action plans implemented by SPCB, the moratorium in this area has been lifted based on the office memo vide letter number J-11012/5/2010-IA11 (I) dated 25.11.2016 by MoEF & CC based on recommendation of TOR obtained by Ministry the proposal is. Being submitted to SEIAA."
18.	265-281		Affidavits submitted by Project Proponent
19.	283-293	14.02.2018	Proof of Dispatch of EIA documents to SEAC members
20.	295-296	19.03.2018	Letter from Project Proponent to SEIAA
21.	299-315	05.04.2018	Letter from Project Proponent to SEIAA in response to SEIAA Letter dated 23.02.2018 with agreement etc. (the said letter is missing in bundle)

22.	317-322	17.04.2018	Letter from SEIAA to Project Proponent requesting details mentioned in Sr. No. 1 to 2019
23.	323-359	20.04.2018	Letter from Project Proponent to SEIAA in response to SEIAA's Letter dated 17.04.2018 (with Annexures)
24.	361-376	16.04.2018	Agenda Item Note (SEAC's recommendation to SEIAA)  @Page No. 362- See Serial No.9 and 11 at Serial No.11-  "Cuddalore industrial area has been notified by CPCB as critically polluted area & moratorium was imposed. However, due to various action implemented by SPCB the moratorium in this area has been lifted based on OM vide Letter Number J-11013/5/2010-I-A11(I) dated 25.11.2016 by MoEF & CC."
25.	377- 397	24.04.2018	Same Note with corrections
26.	399	24.04.2018	EC granted  (Green colour document)

4. It is thus clear that SEIAA granted the impugned clearance without jurisdiction and is liable to be quashed.

It is therefore prayed that this Hon'ble Court be pleased to take these submissions on record and allow the appeal as prayed and thus render justice.

Dated this the 26<sup>th</sup> Day of November, 2021 at Chennai



Counsel for the Appellant

