

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
Original Application No. 165 of 2025**

IN THE MATTER OF:

M/s. KESPYA ENVIRONMENT MANAGEMENT PVT LTD.

...Applicant

-Versus-

The State of Assam & Ors.

...Respondents

WRITTEN NOTES OF ARGUMENTS ON BEHALF OF THE APPLICANT

I. CAUSE OF ACTION

1. The Applicant's cause of action arises from the discriminatory decision of SEAC, Assam dated 21.07.2025 whereby:
 - (a) The Applicant's CBMWTF proposal was placed in abeyance on extraneous grounds (Page 12, Para 9, OA);
 - (b) ToR was granted to Respondent No. 5 for a competing CBMWTF located merely 95m from Kundar High School, violating CPCB's 500m buffer norm (Pages 17-18, Paras 27-29, OA; Pages 439-503, Annexure A/8);
 - (c) Respondent No. 5 was erroneously exempted from mandatory Public Hearing (Page 4, Para 5, Supplementary Affidavit);
 - (d) Differential standards were applied—the Applicant was required to provide land classification NOCs, revenue NOCs, Gram Panchayat NOC, CGWA permission, and CTE justification, all matters falling outside SEAC's mandate per Office Memorandum dated 19.06.2013, while other proponents were granted EC expressly invoking this OM (Pages 8-10, Paras 8-12, SA; Pages 143-166, Annexure A/5, OA).
2. The Applicant submitted comprehensive documentation on 01.07.2025 (Pages 9-10, Para 3, OA), holds MoU with Govt. of Assam for Rs. 30 crores investment (Pages 130-131, Annexure A/3), obtained CTE from PCBA (Pages 132-142, Annexure A/4), filed CGWA application, and holds valid Trade License (Pages 167-168, Annexure A/6). Despite superior compliance, the Applicant

faced unequal treatment violating natural justice and Article 14 (Pages 12-16, Paras 9-23, OA).

II. MAINTAINABILITY

1. **Jurisdiction:**

This application is maintainable under Section 14 of the NGT Act, 2010 as it involves substantial environmental questions arising from implementation of the Environment (Protection) Act, 1986, EIA Notification 2006, BMW Rules 2016, and CPCB Guidelines (Page 8, Para 2, OA; Pages 16-66, Annexure P/10).

“...14. Tribunal to settle disputes.

(1)The **Tribunal** shall have the **jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment)**, is involved and such question arises out of the implementation of the enactments specified in Schedule I...”

2. **ToR is Determinative Decision:**

The ToR granted to Respondent No. 5 with Public Hearing exemption is tantamount to final EC as it forecloses the most critical safeguard—public consultation (Page 4, Para 5, Supplementary Affidavit; Pages 16-66, Annexure P/10).

Once exempted at ToR stage for Category B1 projects, proponents proceed directly to EC without public input, defeating environmental democracy.

Further, CPCB Guidelines mandate 75 km exclusion zone for CBMWTFs, creating irreversible monopoly once ToR is granted (Pages 20, 22, Paras 38, 50, OA).

This Hon’ble Tribunal has consistently held that EAC decisions at any stage are reviewable when raising substantial environmental questions.

3. **Substantial Environmental Questions:**

(a) Flagrant violation of CPCB buffer distances endangering 500+ school children (Pages 17-18, Paras 27-29, OA);

- (b) Discriminatory application of MoEF OM dated 19.06.2013 (Pages 67-68, Annexure P/11; Pages 6-13, Paras 6-15, SA);
- (c) Erroneous Public Hearing exemption for hazardous waste facility (Pages 4-6, Paras 5-7, SA);
- (d) Violation of S.O. 1533(E) dated 14.09.2006 as amended by S.O. 1142(E) dated 17.04.2015 categorizing CBMWTFs as Category B1 requiring EIA and Public Consultation (Pages 3-4, Para 3, SA).

III. DISCRIMINATORY APPLICATION OF OFFICE MEMORANDUM DATED 19.06.2013

1. OM Mandate:

The MoEF Office Memorandum No. 21-270/2008-IA.III dated 19.06.2013 (Pages 67-68, Annexure P/11) issued pursuant to Dr. K. Kasturirangan Committee recommendations expressly provides: "The SEIAA/SEAC need not focus on other issues which are normally looked after by the concerned local bodies / State Government Departments / SPCBs." (Page 67, Annexure P/11). The OM excludes land classification, revenue NOCs, Gram Panchayat NOCs, CGWA permissions, and CTE from SEAC's purview (Pages 8-10, Paras 8-12, SA).

2. Established Practice:

SEAC, Assam has consistently applied this OM to other proponents, granting EC with express observation: "Considering... Office Memorandum... dated 19.06.2013 which inter alia states that SEIAA/SEAC need not focus on other issues which are normally looked after by concerned local bodies / State Government Departments / SPCBs... the SEAC is convinced to recommend grant of EC..." (Pages 143-166, Annexure A/5; Page 6, Para 6, SA). This demonstrates SEAC's awareness and precedent of applying the OM (Page 7, Para 7, SA).

3. Discriminatory Treatment:

In stark contrast, the Applicant was placed in abeyance requiring:

- (a) land classification showing non-agricultural land;

- (b) NOCs from Circle Office/Revenue Office;
- (c) NOC from Gram Panchayat;
- (d) CGWA permission;
- (e) justification for obtaining CTE prior to EC (Pages 143-166, Annexure A/5; Pages 8-10, Paras 11-12, SA).

Each requirement falls squarely within matters “looked after by local bodies / State Government Departments / SPCBs” per the OM and should not have been imposed (Pages 8-12, Paras 8-14, SA).

4. **CTE-EC Sequence:**

The SEAC’s objection to CTE before EC demonstrates legal misconception. EC process (EIA Notification 2006) and Consent mechanism (Water/Air Acts) are independent parallel statutory regimes. No provision mandates EC before CTE. CTE validity is subject to obtaining EC, and operations cannot commence without both. The sequence of application does not vitiate either process (Pages 11-12, Para 13, SA).

5. **Legal Invalidity:** The differential treatment constitutes:

- (a) **Violation of Article 14**—arbitrary classification without rational nexus (*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248) (Pages 20-21, Paras 41-42, OA);
- (b) **Violation of natural justice**—applying different standards to similarly situated parties (*M.C. Mehta v. Union of India*, (1987) 1 SCC 395) (Pages 16, 21, Paras 23, 43, OA);
- (c) **Abuse of discretionary power**—selective application contrary to established principles (*Kasturi Lal Lakshmi Reddy v. State of J&K*, (1980) 4 SCC 1) (Page 12, Para 14, SA);
- (d) **Violation of legitimate expectation**—denying established practice without justification (*Punjab Communications Ltd. v. Union of India*, (1999) 4 SCC 727) (Pages 12-13, Para 15, SA). The decision contradicts precautionary and polluter pays principles (*Vellore Citizens Welfare Forum v. Union of India*,

(1996) 5 SCC 647) by permitting non-compliant facility while excluding compliant proposal (Pages 23-24, Paras 54-56, OA).

Filed by

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