

①

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI**

APPLICATION NO. 180 OF 2017 (SZ)

IN THE MATTER OF:-

S. K. VIJAYKUMAR AND ORS.

...APPLICANTS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**OBJECTIONS ON BEHALF OF THE APPLICANTS TO THE REPORT
DATED 24.11.2020 OF THE COMMITTEE CONSTITUTED BY THIS
HON'BLE TRIBUNAL**

MOST RESPECTFULLY SHOWETH:

1. That the above titled Application has been filed raising substantial questions relating to the environment arising out of the blatant violation of the conditions of the Environmental Clearance dated 28.03.2016 granted to the Karnataka Industrial Area Development Board ("KIADB") for the establishment of "Industrial Area" at Doddaballapura Industrial Area, 3rd Phase. The Application also raises the issue of violation of the Notification dated 18.11.2003 known as the Tippagondanahalli Reservoir Notification ("TGR Notification") issued by the State of Karnataka as well as the siting criteria guidelines issued by the Karnataka State Pollution Control Board as well as the EIA Notification of 2006.
2. That this Hon'ble Tribunal had considered the issue at length vide order dated 5.03.2020 and had passed the following order:

"28. There is no material before this Tribunal as to whether the allegations in the application have been substantiated or not. In order to ascertain as to whether the allegations in the applications are correct and whether there was any violation of conditions imposed either in the environment clearance or in the consent to establish issued in favour for the fifth respondent unit, **we feel it appropriate to appoint a Joint Committee** comprising of a Senior Officer from Regional Office, Ministry of Environment Forest and Climate and Change, Bangalore, Senior Officer from State Environment Impact Assessment Authority (SEIAA) of State of Karnataka and the Karnataka State Pollution Control Board to inspect the area in question and submit a factual and action taken report regarding the allegations made in the application including the siting criteria and also existence of any eco-sensitive areas within the prohibited distance of the unit as alleged by the petitioner as per Notification dated, 18.11.2003 of Government of Karnataka and if there is any violation, what is the action taken by them and submit a factual and action taken report to this Tribunal within a period of two months.

29. State Environment Impact Assessment Authority shall be the nodal agency for coordination and also for providing necessary logistics for the purpose."

(Emphasis Added)

3. That the Joint Committee inspected the site in question on 22.10.2020 and submitted its report to this Hon'ble Tribunal on 24.11.2020. At the outset, it is pertinent to point out that the Joint Committee has found that the project proponent, i.e. KIADB has not complied with several conditions of the Environmental Clearance dated 28.03.2016. In fact, the Committee has assessed the environmental compensation for the same as Rs. 1,53,98,438/-
4. That however, the Joint Committee has failed to consider several other violations as well as illegalities of the project proponent. Therefore, the Applicants herein are filing the present objections to the report of the Joint Committee. The Applicants would like to make the following submissions in this regard:-

With regard to the TGR Notification, 2003:

- i. That the entire Issue related to TGR Notification, 2003 has been completely neglected by the Joint Committee. The TGR Catchment area has been notified under the Environment (Protection) Act, 1986 by the State of Karnataka after recognising the ecological sensitivity and the need to conserve and protect the catchment area for the source of drinking water for the city of Bangalore. However, the Committee has completely glossed over the violations of the said Notification.
- ii. That the Joint Committee failed to consider the fact that the KIADB has concealed the fact deliberately that the Industrial Area falls within Zone-1 of TGR Notification in Form-I & PFR as well as the EIA Report submitted for appraisal of ToR/EC. This amounts to concealment of facts and therefore the Environmental Clearance dated 28.03.2016 as well as the amendment dated 24.01.2019 is liable to be withdrawn as per the provisions of Para 8 (vi) of the EIA Notification, 2006.
- iii. It is pertinent to note that the Joint Committee completely failed to consider the condition for Zone- 1 of the TGR Catchment Area as per the TGR Notification 2003, i.e., *Regulation and checking of over exploitation of ground water*. In this regard, it may be noted that a project like "industrial area" is water intensive project on its own and when the individual industries come up, the exploitation of ground water would increase much further.
- iv. That the Committee failed to give any findings with respect to the illegal ground water extraction. It may be noted that as on date, there is no supply of water by the Bangalore Water Supply and Sewerage Board to the Project Proponent for the project in question. The water for construction phase is being sourced through illegally sunken bore wells and water tankers. The water for construction phase and operation phase is being sourced through three illegally sunken bore

H

wells and water tankers along with nearby water bodies. Also, In one of the three bore wells, the pipe connection is provided directly to the adjoining industry for its industrial purpose. It is pertinent to note that this issue was brought to the notice of the Joint Committee by the Applicant No.1 during the inspection.

- v. That the Joint Committee erred in noting that *"the TGR catchment area has been neither notified as an "Eco-Sensitive Area" nor a "Biosphere Reserve" and "The TGR Catchment area has not been declared as ESZ by the Competent Authority, the MoEF&CC"*. It is submitted that it would be completely erroneous to state that the TGR Catchment Area is not an ecologically sensitive area. It is to be noted that the TGR Notification flows from the powers vested in the State Government under the statutory provisions of section 3 and section 23 r/w section 5 of the Environment (Protection) Act, 1986. This has also been held by the Hon'ble High Court of Karnataka dated 06-01-2011 in the matter of ***Escon Gensets Private Limited v. The Director, Industries and Commerce Department & Ors.*** (W.P.38162/2009), wherein the Hon'ble High Court has upheld the TGR Catchment Area Notification which is notified by State Government under section 5 flows from section 3 and section 23 of the Environment (Protection) Act, 1986. The relevant portion of the judgment dated 06-01-2011 is reproduced hereunder:-

"13. We have taken into consideration the various provisions relied upon by the learned counsel for the petitioner, while advancing his last contention. In our considered view, none of the provisions relied upon by the learned counsel for the petitioner is applicable to the facts and circumstances of this case. The relevant provisions of the Environment (Protection) Act, 1986, which must be deemed to have been invoked for issuing the notification dated 18.11.2003 (Annexure-A/1) are Sections 3 and 23 of the Environment (Protection) Act, 1986. The aforesaid provisions are being reproduced hereunder:

3. Power of Central Government to take measures to protect and improve environment

(1) Subject to the provisions of this Act, xxxxxxxx

(2) In particular, and without prejudice xxxxxxxx

(3) The Central Government may, if it considers xxxxxxxx

23. Power to delegate

Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act, except the power to constitute an authority under sub-section (3) of section 3 and to make rules under section 25, as it may deem necessary or expedient, to any officer, State Government or other authority.

From a perusal of the aforesaid provisions, we are satisfied, that the notification issued by the State Government dated 18.11.2003 (Annexure-A1) flows from the powers vested in the State Government under the aforesaid provisions. It is therefore apparent, that the measures of the kind, which were taken by the State Government in its notification dated 18.11.2003 (Annexure-A/1), were permissible under Section 3, and as such, relevant directions in respect thereof could certainly have been issued under Section 5 of the Environment (Protection) Act, 1986. In view of the above, we are satisfied, that there was absolutely no infirmity in the notification issued by the State Government on 18.11.2003."

vi. The preamble of the TGR Notification, 2003 clearly reflects that the area was found to be ecologically sensitive by the State of Karnataka. The following issues become critical for the consideration of this Hon'ble Tribunal:

- a. That the Tippagondanahalli Reservoir (TGR), built at the confluence of Arkavathi and Kumudvathi Rivers, is an important source of drinking water to the city of Bangalore and the surrounding areas.
- b. That the State Government recognized that over the years, the inflow to TGR had been decreasing and quality of water supplied by this reservoir had also deteriorated. This was further fortified by the

observations and conclusions of the study conducted by the Indian Space Research Organization (ISRO) in association with Indian Resources Information and Management Technologies Pvt. Ltd. (IN-RIMIT), commissioned by the Bangalore Metropolitan Region Development Authority ("BMRDA") to ascertain the reasons for reduced inflow of water to TGR.

- c. That the study carried out by ISRO in association with IN-RIMIT revealed that unplanned development in the catchment area and increasing urbanization and industrialization were the main reasons for the deteriorating quality and reduced flow into the reservoir. Further, the increasing urbanization and industrialization had led to alteration in the drainage pattern of the TGR catchment area resulting in reduced inflow into the TGR. Moreover, there were number of industries in the catchment area, whose effluents along with underground leachate and sewage flow into the TGR thus affecting the quality of water.
- d. That in pursuance to this, the Karnataka State Pollution Control Board had taken the decision not to accord any consent for any industry, as this is bound to change the surface contours and affect the catchment's drainage pattern, vide meeting dated 24.7.2002. The KSPCB further recommended that the area identified by ISRO be declared as an Eco Sensitive Zone under the Environment (Protection) Act, 1986 and also suggested to constitute a separate Authority for the conservation of the TGR area.
- e. That further, vide meeting dated 08.7.2003, chaired by the Principal Secretary, Urban Development, it was resolved to protect this ecologically sensitive area keeping in mind that the quantity and quality of the TGR reservoir will have direct impact on the large population of the Bangalore. Therefore, the Government considered

- 7
- It necessary to protect the catchment area of the TGR to prevent any activity that would lead to contamination of the reservoir.
- f. That therefore, In view of these findings, the Government of Karnataka Issued the notification dated 18.11.2003, exercising the power conferred under Section 5 of the Environmental (Protection) Act, 1986, considered it in public interest to categorise the TGR catchment areas into four zones with a view to declare it as an Eco-Sensitive Zone with regulated and restricted activities permitted as given in the Schedule to the Notification.

Thus, it is clear, that a water intensive project such as an "industrial area" ought not to have been permitted in such an ecologically sensitive area. In this regard, the Applicants would like to place reliance of the order dated 5.10.2012 of the Hon'ble High Court of Karnataka in the matter of **G Eshwaraiah & Ors v. State of Karnataka & Ors.** (W.P. 20080-20082/2010), wherein the Hon'ble High Court has upheld the TGR Catchment Area notification and has held that an industrial area cannot be developed in Zone 1 as per the Notification, since it would invariably entail over exploitation of ground water. The relevant portion of the judgment is reproduced hereunder:-

"15. From the said notification, the learned counsel for the respondents would refer to the four Zones which have been demarcated and would contend that the restriction indicated therein would alone apply to each of the Zones. In that context, it is contended that the lands which are the subject matter of this petition are located in Zone-I and there is no prohibition for industrial activity.

*16. In the light of the said contention, a perusal of the restriction imposed in Zone-I would indicate the nature of activity indicated therein. That in my opinion does not mean that it will not restrict formation of industrial layout. One among the restrictions is the over exploitation of ground water resource, the reason being it is in the catchment area. Such restriction is based on the present status of the land wherein it could be regulated. **On the other hand, if***

an industrial layout is developed and if every industry needs water resource even with regulation there would be over exploitation. Further, the contention that condition would be imposed in the allotment letter and that it would be regulated thereafter on this aspect as well as complying with the requirement by the Pollution Control Board would not be acceptable, more particularly relating to an area regarding which the Pollution Control Board has already expressed serious concern as indicated in the emphasized portion of the Notification extracted above.

17. In fact in light of the notification dated 18.11.2003, these were all aspects which were required to be considered by the State Government before approving the layout and issuing the notification under Section 3(1) of the KIADB Act. As noticed, neither in the objection statement filed by respondents No. 2 and 3 any details of such consideration by the Government has been indicated nor has the first respondent filed objection statement or produced any records. The order dated 28.05.2009 which is produced is only an approval under the Karnataka Town and Country Planning Act which is not relevant for the said purpose. As noticed, the only document relied on this aspect is the presentation made to the Expert Appraisal Committee on 09.07.2012 much after the issue of the declaration of the area as industrial area and acquisition notification on 29.04.2008. The approval of the Government of Karnataka as stated in the presentation made for environment clearance is said to be the approval of 2009 which is under KTCP Act as noticed above. **Further, in the said presentation dated 09.07.2012, in the salient features of the site, it is depicted that there is no ecologically sensitive zone though the entire catchment area has been treated as an ecologically 'sensitive area' as evident from the emphasised portion of the notification dated 18.11.2003 (supra).** The project area indicated Zone wise in the said presentation would include lands in all the Zones except Zone-II. When it is evident that the entire area of the proposed Industrial Layout is within the catchment area of a drinking water source to the City of Bangalore, consideration was necessary to be made by the State Government as to what is so inevitable about the said lands for formation of industrial layout and why not a layout in an area which does not fall within the

9

catchment area. There is no consideration of these aspects before issue of the notification under Section 3(1) of the KIADB Act nor has any material been produced in that regard."

With respect to the violation of the siting criteria:

- vii. That in this regard, it is submitted that the Committee has completely erred in concluding that *"during the grant of EC, only EIA Notification was in force and not the siting criteria"*. This is blatantly misleading and wrong. It is submitted that Committee failed to notice that KSPCB Siting guidelines for Orange and Green industries vide notifications dated 21.06.2003 as well as 05.07.2005 were in place. Further, even before the siting guidelines of 2003, the KSPCB had siting guidelines dating back to 1980s. Thus, the Committee failed to consider the following violations that the Applicants had clearly stated at Para 13 of the Original Application and the same are not being repeated for the sake of brevity.
- viii. It is pertinent to note that Applicant shared the KSPCB Siting guidelines with KSPCB representative on the day of the inspection itself in the presence of MOEF representative which they themselves were not aware as well as SEIAA representative. It was also brought to the notice of the MOEF representative present that the said information which was available earlier in KSPCB website is now removed from their website except for Orange and Green category siting guidelines. However, the report is clearly bereft of any findings on the issue of violation of siting criteria, particularly w.r.t minimum 25kms distance to be maintained from different types of ESA.
- ix. That an important issue was completely glossed over by the SPCB that the Consent to Establish was granted by the SPCB much after the construction work had begun for the project, thus violating both Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention

10

and Control of Pollution) Act, 1974. However, no action was taken against the project proponent under the said enactments by the KSPCB.

With respect to violation of the conditions of the Environmental Clearance dated 28/03/2016:

- x. That it is submitted that the Committee has simply accepted the statements made by KIADB with respect to the status of compliance of the conditions. For instance with respect to the condition of developing 33% of the project area as green belt, the Committee has simply stated in the report that the KIADB has assured the Committee that it would be achieved in a phased manner. No fixed timelines have been imposed by the Committee. This becomes even more important in light of the fact that there are Orange as well as Red category industries within the industrial area (which in itself has been classified as a Red category industry). In this regard, it may be noted that it would be impossible for the KIADB to achieve 33% green belt development in any case, as the entire area has been allotted to various industries which includes certain areas marked for Civic Amenities, STP, Truck parking Area & KPTCL Sub-station without EC amendment in the scope of project and proper Layout Plan approval by competent Planning Authority, and there is no land where proper plantation can be actually undertaken.
- xi. That while the committee has noted the space allotted for Solid Waste Management Facility/STP which is yet to be established but failed to notice that the space is reduced with the creation of industrial Plot and also no space is allotted for CETP/Hazardous Waste and also that the STP/CETP needs to be established on MODULAR BASIS to cater to phase-wise development has simply accepted the submissions made by KIADB.
- xii. That the committee failed to notice that the objections raised during the first Public Hearing conducted on 11-11-2014 for grant of EC

11

wherein it was informed that the EIA Report is a copied Report from neighbouring Project with irrelevant details as well as the second Public Hearing conducted on 19-09-2018 for grant of EC amendment is not at all complied with but simply accepted the submissions made by KIADB in obtaining the same.

xiii. That the committee has simply accepted statements made by KIADB that Road No.2 and Road No.7 has 18m and 25m widened Road which is not available and minimum of 16m buffer is not provided.

xiv. That while the committee has noted that KIADB has provided only two compliance reports to Monitoring agencies, the report is silent on whether such reports were satisfactory.

xv. That it is pertinent to note that the Committee failed to notice that EC is granted for Orange and Green Category of industry alone which itself is against KSPCB Siting Guidelines. It was in 2019 that the Environmental Clearance was amended to permit Red category industry on survey Numbers 14/2, 14/3, 14/4, 15/1, 15/2, 15/3, 15/4, 15/5, 16, 17/1, 17/2, 17/3, 17/4 and 17/5 of plot 2D-1 (i.e., Stelis Biopharma) measuring 10 Acres only out of 696.45 acres, that too in Obadenahalli Village and not in Raghunathapura. However, the Committee report is totally misleading by stating that the amendment also allowed Red category industry M/s Keihin Fie (P) Ltd. in Raghunathapura. The Committee failed to notice that this industry is not situated in Raghunathapura Village but in Obadenahalli village, and was not permitted under the First EC and no amendment of EC is obtained for establishing the same. No material record is supported in the committee Report to that effect.

With respect to violation of the conditions of the Environmental Clearance amendment dated 24/01/2019:

- xvi. That the committee failed to notice the change in venue is not permitted after the advertisement of public hearing as prescribed under the EIA Notification 2006 without following the due procedures *as it is* but simply accepted the statements made by KIADB.
- xvii. That the committee failed to notice the earlier EC which shows the layout Map wherein PLOT-2 is shown as a SINGLE PLOT of 82 acres for which EC was obtained earlier but for EC amendment is mentioning only 10 acres allotted to M/s Stelis Biopharma at PLOT 2D-1 meaning there are several other industries which are already allotted at Plot 2A, 2B, 2C, 2D and so on where in many industries are established and are in operation without following the proper procedures in accordance with law are illegal and unauthorized including the Plot 2D-1.
- xviii. That the committee failed to notice the development in the said Plot 2 is without obtaining EC amendment in the scope of the project and layout approval from the competent Planning Authority.
- xix. That the committee failed to notice that the Obadenahalli Tank is mentioned in the earlier ToR for which earlier EC is granted but now denies the same under the pretext of Major/Minor Tanks.

With respect to Environment Compensation assessed:

- xx. That the Committee has assessed the environmental compensation as Rs.1,53,98,438/- which itself is not in commensurate with the violations.
- xxi. That the committee failed to notice, in the first place, that the land acquisition is not permissible without the grant of proper EC from competent authority and CFE for the establishment of Industrial Area by KIADB which is against the Order of the Hon'ble Apex Court.

- xxii. That the committee failed to notice that the development works started without grant of EC and CFE is for the establishment of Industrial Area which is a RED Category industry as per CPCB categorization.
- xxiii. That the committee failed to notice that the other development works like SWD, Street lights, power lines, plot demarcation are all started without the grant of EC and CFE but considered only the Roads.
- xxiv. That the committee failed to notice that the development and establishment of certain industries have started under the guise of CFE, if any, without the grant of proper EC from competent authority as well as the CFE for the Industrial Area.

No discussion on the issues raised by the Joint Committee in its interim report dated 29.10.2020:

5. That it is submitted that the Joint Committee had filed an interim report before this Hon'ble Tribunal on 29.10.2020 wherein the Committee had noted as follows:-

"The Joint Committee after site inspection had detailed discussion with KIADB officials and Sri. S K Vijaya Kumar (Applicant). After discussion the Joint Committee sought the following additional information from the KIADB to deliberate on the given TORs and submit the report.

- 1. Copy of Toposheet showing the water bodies in the site along with buffer details.*
- 2. A sample copy of allotment letter to the individual industry.*
- 3. Details of rainwater harvesting*
- 4. Permission letter from Central/State Ground Water Authority.*
- 5. Details of water drawl from the borewells along with meter reading register.*
- 6. Details of energy conservation measures along with percentage of energy saving.*
- 7. Copy of advertisement of the issue of Environmental Clearance*
- 8. Copy of the layout superimposed on the toposheet*

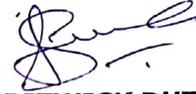
The Information sought from the KIADB is yet to be received for finalization of the report. "

- 14
6. That the report dated 24.11.2020 is however silent on these issues especially with respect to the huge discrepancies with the information in the Form-1, PFR and the EIA Reports and the toposheets and layout plan which were submitted by the KIADB to the Karnataka SEAC and SEIAA. Thus, the Joint Committee failed to consider the fact that Sy.Nos.33/3, 35/2, etc., of Raghunathapura village is not at all shown in the Layout Map submitted in the EIA Report for grant of Environmental Clearance amendment. In fact the said survey numbers have not even been acquired for the present project which are situated outside the Layout Map which is submitted in the EIA Report. On the other hand the said Sy.Nos.33/3, 35/2, etc., of Obadenahalli Village which is adjacent to M/s Kiehin Fie (P) Ltd is ear-marked for KPTCL Sub-station but in reality M/s Ajax Industries is established and in operation without EC amendment in the scope of project and proper Layout Plan approval by competent Planning Authority.
 7. That the Joint Committee has clearly found certain violations of the Environmental Clearance dated 28.03.2016, and has assessed the amount of environmental compensation to be paid. However, no action has been taken for the violation of the provisions of the Environment (Protection) Act, 1986 under Section 19 by the SEIAA r/w provisions of Para 8 (vi) of the EIA Notification, 2006. Further, it is important that the Committee conducts a proper assessment of compliance of each condition under the Environmental Clearance dated 28.03.2016 and 24.01.2019.
 8. Thus, it is submitted that this Hon'ble Tribunal may be pleased to direct the Joint Committee to conduct a proper audit of the compliance status of the conditions of the Environmental Clearance dated 28.03.2016. Further, in light of the clear violations of the TGR Notification, 2003 direct the Joint Committee to undertake a groundwater assessment of the area and submit a report regarding the same to this Hon'ble Tribunal. Further, in light of

15

the clear violations of the Environmental Clearance dated 28.02.2016, this Hon'ble Tribunal may be pleased to allow the above titled Original Application and grant the prayers made therein.

Dated at Chennai on this 11th day of January, 2021



RITWICK DUTTA
RAHUL CHOUDHARY
MEERA GOPAL
STANLY HEBZON SINGH
ADVOCATES
COUNSEL FOR THE APPLICANTS
N-71, LOWER GROUND FLOOR
GREATER KAILASH-1
NEW DELHI-110048