

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI
(filed under section 19 of the National Green Tribunal Act, 2010)**

**in
Original Application No 21/2021(SZ)**

IN THE MATTER OF

Dr. Anupkrishnan.V

Flat 7173, Tower 7, Prestige Bella Vista

Ayyappanthangal Village, Mount Poonamallee Road

Kanchipuram District, Chennai- 600056

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..... Applicant

Versus

1. Ministry of Environment, Forest and Climate Change

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3. CMDA

Represented by its Member Secretary

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4. M/s Prestige Estates Projects Ltd

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Represented by Head of Business Operations

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6. TAMIL NADU POLLUTION CONTROL BOARD

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7. Managing Committee of

Prestige Bella Vista Flat Owners Welfare Association

Represented by Mr. Balachander. B as Secretary

Flat No. 181210, Tower 18C, Prestige Bella Vista

Ayyappanthangal Village, Mount Poonamallee Road



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8. Managing Committee of

Prestige Bella Vista Flat Owners Welfare Association

Represented by Mr. Balakrishnan. SS as President

Flat No. 181012, Tower 18C, Prestige Bella Vista

Ayyappanthangal Village, Mount Poonamallee Road

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..... Respondents

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INDEX

S.NO	PARTICULARS	PAGE NO
1	INDEX	1
2	REJOINDER TO STATUS REPORT OF CMDA	1 – 21
3	ANNEXURE-1 CIC decision dated 11/01/2023	22 – 28
4	ANNEXURE-2 CAG report on Environment Clearance and post clearance monitoring Report No. 39/2016; para 7.1	29 – 36

REJOINDER FILED BY APPLICANT TO STATUS REPORT OF CMDA in I.A No.181/2021 in OA No. 21/2021 DATED 03-01-2023

MOST RESPECTFULLY SHOWETH THAT:-

- 1) The instant rejoinder is filed in response to the status report of CMDA in IA No. 181/2021 in OA. No. 21/2021 dated 03/01/2023. Applicant denies all the averments and allegations contained therein, except to the extent specifically admitted herein. Applicant



puts the 3rd Respondent to strict proof of all averments and allegations that are not expressly admitted herein.

- 2) The Applicant requests the Hon'ble Tribunal to read this rejoinder along with (i) The written statement filed by Applicant to Joint Committee dated 25-04-2021, (ii) Rejoinder to the Joint Committee Report filed by applicant on 28-08-2021, (iii) Rejoinder to the counter affidavit of R4 & R5 filed by applicant dated 19-10-2021, (iv) Rejoinder to the counter affidavit of 1st Respondent filed by applicant on 24-10-2021, (v) Rejoinder to TNPCB Report filed by Applicant on 15/09/2021, (vi) Objections filed by applicant to the further report of TNPCB on 10-02-2022, (vii) Objections filed by Applicant to the further report of Joint Committee on 21-03-2022, (viii) Interlocutory Application No. 11/2022(SZ) dated 08-01-2022, (ix) Rejoinder filed by Applicant to the Counter Affidavit of Respondents 4&5 in IA 11/2022 dated 01-05-2022 and (x) Rejoinder filed by Applicant to Counter Affidavit of CMDA dated 16-05-2022.
- 3) At the outset, Applicant submits that this is a classic case in which corrupt officials of CMDA, TNPCB, SEIAA and MOEF&CC RO Chennai helped 4&5th Respondents to violate building rules and environmental rules enacted by Union of India with impunity. The Project Proponent has maneuvered and manipulated officials and authorities. Instead of 20 blocks as stipulated in the EC, 34 blocks were constructed by 4&5th Respondents. CMDA violated section 2 and 7(ii) of EIA notification, 2006 and exempted project proponent from getting fresh EC and issued planning permit for construction of 33 blocks of building. TNPCB issued CTE and CTO overlooking EC conditions violations and non – compliance committed by 4&5th Respondents. In fact, TNPCB violated the Office Memorandum of MOEF&CC dated 02/11/2018 insisting **TNPCB not to issue CTO to projects where ground water is proposed as water source till the project proponent obtains NOC to draw ground water for project activities from competent authorities, and issued CTO for 25 blocks of buildings on 26/11/2018 (please see page 399 of Rejoinder to CA of 4&5th Respondents)**. Director of MOEF&CC RO Chennai failed to send reports regarding the violations committed by R4&5 to SEIAA or initiate any action against R4&5 for not sending six monthly monitoring reports (From June 2013 to June 2016). Instead, 1st Respondent helped



R4&5 to fabricate compliance report from June 2014 to June 2016. 1st Respondent issued a certified copy of compliance report on EC conditions to R4&5 overlooking blatant EC violations and non compliance committed by the project proponent. 1st Respondent issued the certified copy of compliance report to R4&5 violating the OM No. 206 issued by MOEF&CC- IA division dated 02/11/2018 insisting the project proponent to apply for NOC to obtain permission for ground water drawl in the projects where ground water is proposed as water source. CMDA issued Final Completion Certificate on 08/12/2022 during the pendency of the OA No. 21/2021 violating EIA Notification, 2006, CMDA Developmental regulations and the Tamil Nadu Town and Country Planning Act, 1971 regarding minimum set back space between blocks.

4) Hon'ble Supreme Court in its judgment in **CIVIL APPEAL NO. 10854 OF 2016** in M/S Goel Ganga Developers India vs UOI through Secretary, MOEF and Ors stated that

1. *".....14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of*



materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006."

So, 4&5th Respondents are bound to comply with all EC conditions in its letter and spirit. Also, 3rd Respondent is not the competent authority to exempt any of the EC stipulations arbitrarily.

- 5) 4&5th Respondents and CMDA contended that the total built up area and the total number of the apartments in the EC and Planning Permit are the same in spite of increasing the number of blocks from 20 to 33 (**Please refer to para 11 of the status report of CMDA in I.A No. 181/2021 in OA No. 21/2021. Also refer to para 12 of status report of CMDA in I.A No. 11/2022 in OA No. 21/2021**). But common sense says that it is humanly not possible to increase the number of building blocks without increasing the number of apartments or total built-up area. Actually, 33 blocks were illegally amalgamated to 20 Towers (each of the towers comprise of amalgamation of 1 to a maximum of 3 blocks of buildings) in the Master Plan Layout of the Project in the application for prior EC, violating the minimum set back space between building blocks as insisted in the CMDA Developmental Regulations. The revised application for prior EC clearance with 20 Towers was re-submitted on 18/06/2012. But EAC did not did not allow this illegal amalgamation of 33 blocks into 20 Towers and issued EC to construct only 20 blocks of building on 16/10/2016. **At this juncture, Applicant entreat 1st Respondent to produce copies of the entire Form 1, Form 1A, EIA/EMP Reports**

submitted by 4&5th Respondents on 25/1/2011, 28/04/2012 and 18/06/2012 respectively, before Hon'ble NGT to expose one of the biggest building violation.

- 6) There cannot be relaxation of rules regarding the set back space, which are mandatory in nature and cannot be dispensed with, especially in the case of high rise building as per Supreme Court verdict in Civil Appeal No. 15581 of 1996 in V.M. Kurian vs State of Kerala and Ors dated 27/03/2001. In fact, CMDA regularized the unauthorized subdivision and amalgamation of 33 blocks to 20 Towers, comprising of amalgamation of one or more blocks to a maximum of 3 blocks aggregating to a total of 33 blocks violating rules regarding minimum set back spaces between those blocks by levying ₹25,10,000/- as regularization charges in 2012 **(please see para 7 of SC Judgment in Civil Appeal Nos. 5642-5643 of 2019 in CMDA vs Prestige Estates Projects Ltd)**. The number of persons residing therein is bound to increase with increase in number of building blocks. This will impact the amount of water requirements, the amount of parking space, amount of open spaces and the pollution load will be definitively increased. CMDA overlooked the DF&RS directive that “the entire set back area of 12 M available as per DR Regulations should be made permanent with concrete paving so as to withstand the capacity of 45 tons of weight of Aerial Ladder Platform Vehicle and also to move around the building blocks and to operate the vehicle,” while regularizing the unauthorized division and amalgamation of building blocks flouting minimum set back space between blocks to issue the planning permit.
- 7) Hon'ble Madras High Court has pronounced in its verdict in W.P. Nos.25811 and 25812 of 2017 that

"6. We also find there are set back violations in the building, apart from floor violations. The set back violations are not capable of being cured as per the Master Plan, as observed by us in a series of orders."..... "This Court has categorically held that CMDA, Corporation of Chennai, Housing and Urban Development Department or such other authority cannot and shall not permit the regularisation of set back violations. If there are any set back regularisations, the same will have to be recalled. If any set back regularisation is made, the officials responsible for the same has to be taken to task, and, they



should not be allowed to continue in their respective posts, apart from initiating departmental action."

- 8) Hon'ble Supreme Court in Civil Appeal No. 15581 of 1996 in V.M. Kurian vs State of Kerala and Ors dated 27/03/2001 pronounced that violation of rules regarding set back spaces, projections into and constructions on open spaces, floor area ratio, maximum prescribed height, aerodrome vicinity height restrictions, parking spaces, minimum width of stair cases and fire protection which are mandatory in nature and are required to be complied with for the construction of a high rise building, are contrary to the public safety and convenience.**

"As stated above, the area of land owned by the 5th respondent was only 9.5 cents (384.4 sq. mtrs.). As per the impugned order, the 5th respondent was allowed to construct an eight storied building with floor area of 27306.55 sq. ft. and 83.15 ft. height to accommodate 28 residential apartments, office and godowns etc. etc. The exemption granted by the State Government has enabled the 5th respondent to construct the building in violation of Rules regarding - (1) minimum open spaces required to be kept in the front, rear and sides, (2) front, rear and side yards, (3) projections into and constructions on open spaces, (4) floor area ratio, (5) maximum prescribed height, (6) aerodrome vicinity height restrictions, (7) parking spaces, (8) minimum width of stair cases and (9) fire protection.

Under the Rules, there is restriction with regard to the maximum height of the building. The building should not be constructed exceeding 1.5 times width of the street abutting plus 1.5 times the front yard. Before the High Court, the 5th respondent gave an affidavit that he would convert the ground floor of the building for purposes of car parking. The said affidavit could not have been entertained as the ground floor had already been constructed and let out. Most surprising is that the requirement of having provision towards protection from fire hazards was also dispensed with. The minimum width of the staircase as required under Rule 21(11) (b), also got dispensed with. This shows that the Rules, which are mandatory in nature and are required to be complied with for construction of a high rise building, were allowed to be dispensed with. Observance and compliance of Rules



is for public safety and convenience. There cannot be relaxation of Rules, which are mandatory in nature and cannot be dispensed with especially in the case of high rise building. The position may be different in the case of one or two storied building where there are minor deviations from the Rules, which do not effect the public safety and convenience. In the present case, we find that the deviations are of high magnitude, which are contrary to the public safety and convenience. We are, therefore, of the view that the order passed by the State Government exempting the provisions of the Rules for constructing an eight storied building was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law."

- 9) Increase in building blocks from 20 to 33 is a serious environmental violation as per MOEF&CC Notification S.O. 804(E) dated 14/03/3017. In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance as per section 13(ii) of MOEF&CC Notification S.O. 804(E). Exemption to obtain fresh Environmental Clearance for unauthorized expansion or any change in product-mix, change in quantities within products or number of products in the same category for which environmental clearance has been granted is applicable only if there is no change in the total capacity sanctioned in prior environmental clearance granted earlier under this notification and there is no increase in pollution load. The Project Proponent shall apply to the State Pollution Control Board along with their last Consent to Operate certificate and **Certificate of No Increase in the Pollution Load** as per MOEF&CC Notification S.O. 3518(E) dated 23rd November 2016. Installation and implementation of Online Continuous Monitoring System (OCMS) with at least 95% uptime, connected to the servers of the Central Pollution Control Board and State Pollution Control Board or Union Territory Pollution Control Committee concerned to report the quantity and quality, of emission and discharges, was added as an additional criteria as per MOEF&CC Notification S.O 980(E) dated 2nd

A handwritten signature in blue ink, appearing to be 'Anupam', is written over a horizontal line.

March 2021. **CMDA is not the competent authority to grant exemption from obtaining fresh EC.**

10) The builder accused the applicant of “initiating the instant proceedings on totally false and vexatious grounds after a lapse of 5 years from taking possession of the unit intending to cause harm to the 4&5th Respondent’s reputation and to unjustly enrich himself.” They further stated in their affidavit that all 2613 residents in the apartment complex are living happily with an enhanced quality of life except the applicant. The members of the Joint Committee constituted by the Hon’ble Tribunal also shared the same sentiments and conveyed it to the Applicant during the Joint Committee inspection conducted on 20/04/2021. Applicant draws parallel between the case of **Kerala SCZMA vs Maradu Municipality and Ors. in C.A. No. 004784 – 004785 / 2019 in SC** and the present case. The whole proceedings against Maradu Flats were initiated based on the complaint of a whistle blower to THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY and the subsequent letter of KCZMA to Maradu Municipality to take action against the violation of the CRZ notification dated 17/06/2006. All the residents of 4 apartment complexes at Maradu Municipality supported the builder in CRZ violations and lived happily condoning the environmental violations for 8 to 10 years till Supreme Court ordered demolition. Supreme Court came down heavily on the Flat owners that they were well aware of the show cause notices issued by the authorities, and even then, they proceeded to invest in the property and reside therein. Hon’ble Supreme Court held the view that the flat-owners were not entitled for any interest on the amounts paid by them to the builders.

11) Hon’ble Supreme Court and NGT have have time and again proclaimed in various judgments “that Environmental safety is non negotiable and there should be economic development while taking due care and ensuring the protection of environment.” So, Applicant has actually ensured that a similar fate will not happen to residents of Prestige Bella Vista Project by filing this case against 4&5th Respondents for committing building violations and environmental violations. Now, the onus is on the Builder to complete the project as per building plan and conditions of Environmental Clearance issued to them.

12) Hon'ble Supreme Court has criticized the officials of MOEF & CC for helping the project proponents to flout the law and harm the environment in its judgment in **CIVIL APPEAL NO. 10854 OF 2016** in M/S Goel Ganga Developers India vs UOI through Secretary, MOEF.

*".....20. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forest and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in **Common Cause vs. Union of India**. We expect the officials of the Ministry of Environment, Forest and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment."*

Applicant enumerates the entire environmental violations committed by the 4&5th Respondents, CMDA, MOEF&CC and TNPCB by elaborating the sequence of events happened since the application for the prior Environmental Clearance of this project by 4&5th Repondents.

13) 4&5th Respondents started the project construction in January 2012 itself violating EIA notification 2006, before obtaining planning permit and prior EC. This fact is clearly mentioned in the 'Data Sheet' of Certified Copy of Compliance Report issued to PBV Project on 05/02/2019 (**please refer para 7 in page 7 of Rejoinder statement filed by Applicant to CA of R4&5**). More over, the Annual Report of Prestige Estates Projects Pvt Ltd for FY 2011-2012 clearly mentioned that Respondents started the Prestige Bella Vista Project before March 31st, 2012 (**please refer pages 266-273 of Rejoinder to CA of 4&5th Respondents**). So, construction of Prestige Bella

Vista project was started way before obtaining Environmental Clearance and it is considered as a case of environmental violation as per section 13 of MOEF&CC Notification S.O. 804(E) dated 14/03/2017.

14) 4&5th Respondents submitted the application in Form 1, Form 1A and EIA/EMP reports for prior Environmental Clearance to the Director (IA-III), MOEF, New Delhi on 25/01/2011. It was presented in the 110th EAC meeting held on 5th – 7th March 2012. 4&5th Respondents proposed construction of a residential complex “Prestige Bella Vista” at Ayyappanthangal, Sriperumbudhur Taluk, Kanchipuram District with the following scope of the project,

a) Total land area of the Project was 1,00,199 sq.m b) Total built up area was 4,78,003 sq.m c) Construction of 17 blocks residential buildings and one block of club house with total apartments of 2768 was proposed. Total residents were calculated as 13,471 (11,824 residents + 1182 maintenace staff + 465 visitors) d) The proposed project require total water of 1659 KLD of which 856 KLD of fresh water to meet the entire common and per capita requirements and the source is ground water as the project site falls under the safe category of the central ground water board classification and hence the yield is dependable. Ground water extraction will be carried out upon approval from the competent authorities. Water requirement for flushing is 507 KLD and gardening about 296 KLD. f) Waste water generation is estimated to be 1192 KLD which would be treated in STP of capacity of 1710 KLD. The treated waste water of 1133 KLD is proposed to be partly recycled for flushing in toilet and gardening and the remaining quantity will be disposed through the CMWSSB sewage collection system. g) The power requirement during operation is estimated to be 16 MVA from nearby TNEB grid h) Emergency power back up was to be provided by 2 nos of 180 KVA, 10 nos of 400 KVA and 9 nos of 500 KVA DG sets i) Total car parking spaces provided for parking were 3586 cars of which 1300 nos at basement 1, 1400 nos at basement 2 and 835 at ground level.

15) Based on the details presented by the project proponents and after discussions, additional “Terms of Reference” were finalized to be incorporated to those furnished by



the project proponent by the EAC which was communicated to the project proponent in April 2012 & 29/05/2012. The additional TOR included (1) Re-submission of the Parking details considering the various norms as based on higher norms (2) Examination and re-submission of the details of the Impact on competitive users of ground water.

16) 4&5th Respondents resubmitted the revised application in Form 1, 1A and EIA/EMP reports incorporating additional TOR on 28th April 2012. The scope of the Project was the same as that submitted before except that (1) the 856 KLD of raw (fresh) water that required will be met through the ground water extraction/CMWSSB, (2) the total car parking spaces provided for parking were changed to 3769 nos considering the total dwelling unit area of 2,56,949 sq.m as per CMDA regulation applicable for the project.

17) 4&5th Respondents further revised and submitted the final application in Form 1, 1A and EIA/EMP reports incorporating additional TOR on 18/06/2012 in which they proposed construction of 20 Towers by amalgamating 33 blocks of building to 20 Towers comprising of amalgamation of 1 or more to a maximum of 3 blocks of buildings with a total built up area of 4,58,341 sq.m. violating the minimum set back space between building blocks. The scope of the project was revised as follows,

a) Total land area of the Project was 1,00,199 sq.m

b) Total built up area was 4,58,341 sq.m

c) Construction of 20 Towers of residential buildings and one block of club house with total apartments of 2613 was proposed. R4&5 has admitted in their Counter Affidavit dated 07/10/2021 that "The Project was to be constructed as a residential complex comprising of 20 Blocks /Towers (TOWERS). As stipulated in the EC, there are only 20 towers that have been constructed within the project. Each of these Towers comprises of one or more blocks to a maximum of 3 blocks aggregating to a total of 33 blocks." (Please refer to page 3 para 4(d) of the Counter Affidavit of 4&5th Respondents to the OA 21/2021 dated 07/10/2021).

d) Total residents were calculated as 12,911 (11,227 residents + 1123 maintenance staff + 561 visitors).

e) The proposed project would require 1575 KLD of total water of which 806 KLD of fresh water to meet the entire common and per capita requirements and



the source is ground water/CMWSSB as the project site falls under the safe category of the central ground water board classification and hence the yield would be dependable. Ground water extraction will be carried out upon approval from the competent authorities. Water requirement for flushing is calculated as 488 KLD and gardening about 230 KLD.

f) Waste water generation is estimated to be 1133 KLD which would be treated in STP of capacity of 1610 KLD. The treated waste water of 1076 KLD is proposed to be partly recycled for flushing in toilet and gardening and the remaining quantity will be disposed through the CMWSSB sewage collection system.

g) The power requirement during operation is estimated to be 16 MVA from nearby TNEB grid.

h) Emergency power back up was to be provided by 26 nos of 750 KVA DG sets.

i) Total car parking spaces provided for parking were 3769 cars.

*j) In continuation, 4&5th Respondents submitted the detailed Water Treatment Plant Design Proposal for the treatment of ground water for Prestige Bella Vista Project on 14/07/2012. As per their submission, source of water for the proposed project would be from bore wells proposed at site. The water sample obtained from bore well at site was tested and the characteristics observed were used for designing the WTP. It was noticed from the test results that the TDS of the water was on the higher side of 1100 ppm. Apart from TDS, TSS, Iron content and Hardness were also on the higher side of potable limits. Considering the above, the following treatment steps were proposed to make the ground water fit for all domestic purposes. The treatment scheme comprises of a multimedia sand filter followed by activated carbon filter and a reverse osmosis membrane filter treatment. The RO treated water is proposed for drinking and cooking purpose for 12,911 residents was calculated as 172 KLD in the project hence a RO plant of 180 KLD plant is proposed **(Please refer page 17-20 of the Rejoinder filed by Applicant to CA of CMDA dated 16/05/2022).***

18) This proposal was presented in the 114th Meeting of the Expert Appraisal Committee for Building Construction, Coastal Regulation Zone, Infrastructure Development and



Miscellaneous projects held on 9th – 10th July, 2012, Scope Complex, Lodhi Road, New Delhi. The EAC, after due consideration of the relevant documents submitted by the project proponent, have recommended for the grant of EC for Prestige Bella Vista Project. Accordingly, the Ministry of Environment and Forests (IA-III Division) issued necessary EC for the above project subject to strict compliance of the terms and conditions as mentioned in the EC Letter dated 16/10/2012. **EAC did not accept the construction of 20 Towers comprising of amalgamation of one or more to a maximum of 3 blocks aggregating to a total of 33 blocks as was proposed by the 4&5th Respondents.**

1. *Instead, EC stipulated construction of 20 blocks of building and one block of club house only. It didn't stipulate the exact number of apartments to be constructed.*
2. *Total land area of the Project was stipulated to be 1,00,199 sq.m*
3. *Total built up area was stipulated to be 4,78,003 sq.m*
4. *Total water requirement was calculated as 1659 KLD*
5. *Fresh water requirement of 859 KLD was proposed to be sourced from bore wells and metro water. Permission to draw ground water should be obtained from the competent authority prior to construction/operation of the project.*
6. *Waste water generation was estimated to be 1133 KLD which would be treated in STP of capacity of 1610 KLD. The treated waste water was proposed to be partly recycled for flushing in toilet and gardening. Excess waste water was proposed to be disposed through the municipal sewage collection system.*
7. *The power requirement during operation was estimated to be 16 MVA*
8. *Emergency power back up was to be provided by 26 nos of 750 KVA DG sets.*
9. *Total car parking spaces for parking were stipulated to be 3769 ECS.*

19) 4&5th Respondents got the planning permission from CMDA vide PP No.C/PP/MSB-IT/38 A to Ac/2012, Permit No.7115 in letter no. C3(N)/4606/2011 dated 13/02/2013

under premium FSI for the construction of multi storied building comprising of 33 blocks and a club house. As per the approved plan,

1. total land area is 1,00,182.7 sq.m and
2. the total built up area is 4,64,047 sq.m
3. the number of blocks is 33 nos
4. the total apartments were 2610.

3rd Respondent regularized the unauthorized sub division and amalgamation of 33 blocks to 20 Towers, comprising of amalgamation of one or 3 blocks aggregating to a total of 33 blocks violating rules regarding minimum set back spaces between those blocks. CMDA levied ₹ 25,10,000/- as regularization charges and issued planning permit **(please refer to page 167 para 2(iii) of OA No. 21/2021(SZ)**. By this regularization, 3rd Respondent violated section 2 and 7(ii) of EIA notification, 2006 as well as Supreme Court Judgment in Civil Appeal No. 15581 of 1996 in V.M. Kurian vs State of Kerala and Ors dated 27/03/2001.

20) 6th Respondent issued Consent to Establish to the project proponent of Prestige Bella Vista vide CTE Proc.No.T11/TNPCB/F.18722/OL/SPR/W&A/2013 dated 28/06/2013 for construction of 33 blocks in 20 Towers of residential buildings violating EC conditions which permitted to construct 20 blocks only.

21) 1st Respondent failed to monitor and send reports regarding the violations committed by R4&5 to SEIAA (2nd Respondent) or initiate any action against R4&5 for not sending six monthly monitoring reports (From June 2013 to June 2016). But 1st Respondent helped R4&5 to fabricate compliance report from June 2014 to June 2016. 1st Respondent along with other 2 members of the Joint Committee submitted their Report before Hon'ble Tribunal(SZ) on 10/08/2021 stating that R4&5 has been submitting compliance reports from June 2014 onward based on the acknowledgment submitted by R4&5, discrediting RTI statement of Dr. M T Karuppiah of MOEF&CC, ROSEZ **(Please refer to page 2 para 5 of the Rejoinder to MOEFCC dated 24/10/2021)**. The PIO of the MOEFCC, ROSEZ stated before Central Information Commission on 09/01/2023 that the covering letter with the Diary number & date of receipt at Chennai Office with office seal of the



compliance report from December 2014 to June 2016 were missing from Chennai Office. Thus indirectly admitting that original 6 monthly compliance reports from Dec 2014 – June 2016 were not received at Chennai Office. The PIO raised lame excuse that the documents were earlier maintained at Bangalore Office and the covering letter might have been missed during the transfer to Chennai Office **(Annexure-1 CIC decision dated 11/01/2023)**. But the Chennai Office started functional from March 2013 onward and these docs were addressed only to Director, MOEFCC of Chennai Office as per the address mentioned in the forged covering letter attached with the 6 monthly compliance reports **(Annexure-2 CAG report on Environmental Clearance and post clearance monitoring, Report No. 39/2016; para 7.1)**.

22) In the meanwhile, CPCB Bangalore and Chennai office replied to Applicant's RTI query that they didn't receive six monthly compliance report of Project Proponent of Prestige Bella Vista Residential Project from 2012-2016, either through email or by registered post. MOEF&CC infra-2 division replied that Ministry of Environment, Forest and Climate Change is not having copies of compliance reports of PBV from 2012 to 2016 **(please refer to para 22 to 24 in page 10&11 of Rejoinder to MOEFCC dated 24/10/2021)**.

23) 3rd Respondent issued first partial completion certificate on 08/01/2016 for 14 blocks and the second partial completion certificate on 16/03/2016 for 11 blocks of buildings violating Environmental Clearance conditions which stipulated construction of only 20 blocks. 3rd Respondent accepted the reduced distance between blocks, i.e., regularised the minimum set back space violations between the blocks and issued those 2 partial Completion Certificates **(Please refer Para 8 of Status Report of CMDA in I.A No. 181 of 2021 in OA No. 21 of 2021 & Para 9 of Status Report of CMDA in I.A No. 11 of 2022 in OA No. 21 of 2021 dated 03/01/2023)**. This action of CMDA is in violation of Madras High Court order in W.P. Nos. 25811 and 25812 of 2017 which specifically held that CMDA cannot and shall not permit the regularization of set back violations. CMDA made submission in the Status Report dated 03/01/2023 that they issued those 2 partial completion certificate based on the Fire Compliance Certificate issued by the Directorate of Fire and Rescue Services vide D. Dis. No. 8805/C1/2015 in



C.C.No.41/2015 dated 25.08.2015. **But CMDA overlooked the fire Compliance Certificate directive that “the entire setback area of 12 M available as per DR Regulations should be made permanent with concrete paving so as to withstand the capacity of 45 tons of weight of Aerial Ladder Platform Vehicle and also to move around the building blocks and to operate the vehicle.”**

24) 6th Respondent issued CTO for 25 block of building in Prestige Bella Vista Project vide Proc.No.T2/TNPCB/F.1918SPR/RL/SPR/W&A/2018 dated 26/11/2018 violating EC conditions which permitted construction of 20 blocks only. TNPCB violated the Office Memorandum of MOEF&CC dated 02/11/2018 and issued CTO for 25 blocks.

25) 1st Respondent issued certified compliance report to Prestige Bella Vista Project vide F.No.EP/12.1/2012-13/SEIAA/16/TN/0255 dated 15/02/2019 stating that the project proponent obtained EC to construct 20 Residential Towers having 33 blocks of buildings and that they have completed 33 blocks in compliance with all EC conditions. This Compliance Report overlooked EC conditions which stipulated construction of only 20 blocks of building. 1st Respondent overlooked several non compliance of EC conditions and issued the Compliance Report. The Joint Committee appointed by the Hon’ble NGT in which 1st Respondent was a member, submitted a report before Hon’ble NGT highlighting the violations/non-compliance of the said project on 10/08/2021. The major non-compliance/violation are as follows, (1) EC clearance to Prestige Bella Vista involves construction of 20 blocks only but the project proponent constructed 33 blocks in 20 Towers (2) inadequate car park spaces was noticed which is treated as violation (3) they have not obtained NOC for ground water abstraction and 200 KLD of water is obtained through tanker lorries (4) there is no RO water plant provided for treatment of drinking water (5) they have installed DG sets for 12.75 MVA instead of proposed 19.5 MVA in the EC (6) Consent to Operate was not obtained for the entire project so far (7) Project Proponent hasn’t installed solar voltaic cell in the Project. **The Joint Committee recommended R4&5 to pay environmental compensation of ₹95,97,656/- for the violation/noncompliance of EC conditions.**

26) 4&5th Respondents constructed 34 blocks of building and a club house including one non – residential block which is now functioning as the Assistant Engineer (O&M)



Office, TANGEDCO, Ayyappanthangal. 3rd Respondent in his letter No. EC/C-1/4841/2015 dated 14/09/2020 had requested 4&5th Respondents to pay additional developmental charges and I&A charges for the additional construction noticed during the process of final CC application process (**please refer to para 10 -12 of Rejoinder filed by Applicant to CA of CMDA dated 16/05/2022**).

27) 3rd Respondents issued 3rd and final Completion Certificate on 08/12/2022 during the pendency of the OA No. 21/2021. 3rd Respondent accepted the reduced distance between blocks, i.e., regularised the minimum set back space violations between the blocks and issued the 3rd and Final Completion Certificate. CMDA made in the submission that they issued the 3rd and final CC for 8 blocks as the 4&5th Respondents have paid all the necessary dues, and the Director of MOEF&CC Chennai had issued Environmental compliance in No.F. No. EP/12.1/2012-2013/SEIAA/11/TN/0255 dated 15.02.2019 for 20 residential towers having 33 blocks. Accordingly, the Final Completion Certificate for 8 blocks was issued in letter No.CMDA/CC/HRB/C/4841/2015 in CC No.EC/Central-1/395/2022 dated 08.12.2022. But the validity of the said Compliance Report stands canceled as the Joint Committee Report and the TNPCB Report have already mentioned serious environmental violations and noncompliance committed by the 4&5th Respondents and recommended to levy environmental compensation from R4&5.

PARAGRAPH WISE OBJECTIONS TO THE STATUS REPORT :-

28) The said Para 1 to 7 contain facts on records and hence require no specific traversal.

29) The Applicant strongly objects the statement made by 3rd Respondent in Para 8 that “It was decided in the Committee of Senior officers of CMDA that while considering the 3rd and final CC, it was also decided to accept the reduced distance between blocks for which partial completion certificate were already issued (1 & 2nd Partial CC), since the Fire Safety Compliance were obtained from the Director of Fire & Rescue Services for these blocks. They further added that the present blocks for which 3rd and final



Completion Certificate was applied satisfies Development Regulations and Completion Certificate norms.” This act of the CMDA officials to regularize the violation in the minimum set back space between the blocks violated the Judgment of Hon’ble Madras High Court in **W.P. Nos.25811 and 25812 of 2017 in Kalyani & Srinivasan vs The Commissioner of Greater Chennai Corporation** and the Hon’ble Supreme Court verdict in **Civil Appeal No. 15581 of 1996 in V.M. Kurian vs State of Kerala and Ors.** There is no provision in the CMDA Developmental Regulations and in the Tamil Nadu Town and Country Planning Act, 1971 to regularize the amalgamation of building blocks without leaving minimum spaces between the blocks.

- 30) Applicant strongly objects to the statement in Para 9 made by 3rd Respondent as false. The Environmental Clearance issued by SEIAA vide letter No. SEIAA/F430/2011-IA-III dated 16.10.2012 stipulated construction of 20 blocks of building only. But 1st & 2nd Partial Completion Certificate was issued by CMDA for 25 block of buildings. Fire Compliance Certificate from the Directorate of Fire and Rescue Services for these two Partial Completion Certificate vide D. Dis. No. 8805/CI/2015 in C. C. No. 41/2015 dated 25.08.2015 was issued with the directive that “the entire set back area of 12 M available as per DR Regulations should be made permanent with concrete paving so as to withstand the capacity of 45 tons of weight of Aerial Ladder Platform Vehicle and also to move around the building blocks and to operate the vehicle.” 3rd Respondent overlooked this directive and issued those two partial completion certificates.
- 31) Applicant strongly objects to the statement in Para 10 as false and baseless. As per EC Specific Conditions, “Application of solar energy should be incorporated for the illumination of common areas, lighting for garden and street lighting in addition to provision for solar water heating. A hybrid system or fully solar system for a portion of the apartments should be provided.” Indeed, the Govt., H & UD [UD4(3)] Dept. in G.O. (Ms).No. 17, dated 05.02.2016 regarding the installation of Solar Energy System in Special Buildings, Group Developments and MSB was issued on 09.02.2016. But it has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. According to Hon’ble Supreme Court judgment in

CIVIL APPEAL NO. 10854 OF 2016 in M/S Goel Ganga Developers India vs UOI, “14.....When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms.Therefore, the authority granting EC may lay down conditions which the project proponent must comply with.”

32) Applicant strongly objects to the statement in Para 11 as false and baseless. R4&5 obtained Certified copy of Compliance report on Environmental Clearance from the Ministry of Environment, Forest & Climate Change (South Eastern Zone) for 20 residential towers having 33 blocks vldc letter No. F. No. EP/12.1/2012-2013/SEIAA/II/TN/0255 dated 15.02.2019. But the validity of the said Compliance Report stands canceled as the Joint Committee Report and the TNPCB Report that were submitted to Hon’ble NGT have already mentioned serious environmental violations and non-compliance committed by the 4&5th Respondents and recommended to levy environmental compensation from R4&5. So CMDA can’t issue Final Completion Certificate based on invalidated Compliance Report till the OA No. 21/2021 is disposed of.

33) Para 12 & 13 contain facts on records and hence require no specific traversal.

34) Applicant strongly objects to the statement in Para 14 as false and baseless. As per EC, the total parking space to be provided by R4&5 is 3769. 4&5th Respondents are bound to comply with all EC conditions in its letter and spirit. Also, 3rd Respondent is not the competent authority to exempt any of the EC stipulations arbitrarily. Please refer to Para 31 mentioned above.

35) Applicant lodges strong objection to the submission of the 3rd Respondent in para 15 that they withheld the final completion certificate of the project for the non payment of the balanced premium FSI charges only. 4&5th Respondents are running this project without TNRERA registration, CTO and Completion Certificate violating EIA notification, 2006 and CMDA Developmental Regulations and the Tamil Nadu Town and Country Planning Act, 1971 since 2016. **At the outset, Applicant call upon 3rd Respondent to**

cancel the two partial Completion Certificates and the final Completion Certificate issued to the PBV project.

PRAYER

It is, most respectfully prayed that the Hon'ble National Green Tribunal(SZ) may kindly be pleased to pass appropriate further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice.



**Applicant
Party in Person**

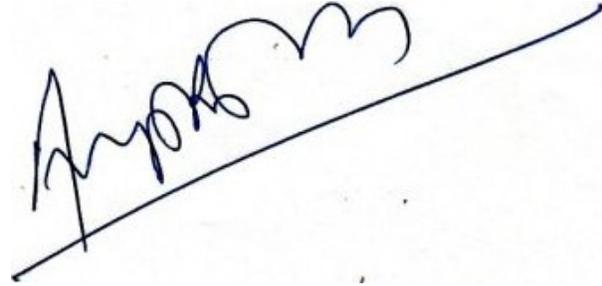
AFFIDAVIT

I, Dr.Anupkrishnan. V, aged 57 yrs, son of Late K. Viswanathamenon, resident of Flat 7173, Prestige Bella Vista, Tower 7, Ayyappanthangal Village, Chennai-600056, do hereby solemnly affirm and declare under:-

- 1. That I am the Applicant in the OA No. 21/2021(SZ) and in the instant rejoinder and I am well conversant with the facts and circumstances of the case and is competent to swear the present affidavit.**



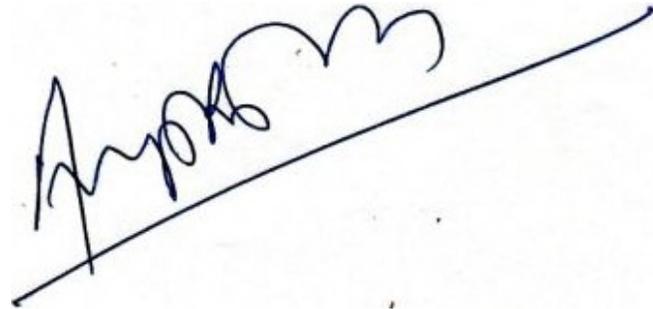
2. That I have read the contents of the instant rejoinder and the same are true and correct and is drafted by my own instruction.

A handwritten signature in blue ink, appearing to be 'Ayyappa', written over a diagonal line.

Deponent

VERIFICATION:-

Verified at Ayyappanthangal, Chennai-56 on the 18th January 2023, that the contents of the affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

A handwritten signature in blue ink, appearing to be 'Ayyappa', written over a diagonal line.

Deponent

केन्द्रीय सूचना आयोग
Central Information Commission
 बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
 नईदिल्ली, New Delhi – 110067

File No : CIC/ROCHI/A/2021/647758

ANUPKRISHNAN VISWANATHAMENON

.....अपीलकर्ता/**Appellant**

VERSUS

बनाम

CPIO,

Ministry Of Environment Forest And Climate Change,
 Integrated Regional Office, RTI Cell, First Floor,
 Additional Office Block For GPOA, Shastri Bhavan,
 Nungambakkam, Chennai-600006,
 Tamilnadu.

...प्रतिवादीगण /**Respondent**

Date of Hearing : 09/01/2023

Date of Decision : 09/01/2023

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 21/07/2021

CPIO replied on : 12/08/2021 & 27/08/2021

First appeal filed on : 04/09/2021

First Appellate Authority order : 22/09/2021

2nd Appeal/Complaint dated : 10/10/2021

Information sought:

The Appellant filed an RTI application dated 21.07.2021 seeking the following information:

Certain details in public domain about Prestige Bella Vista Residential Complex having prior Environmental clearance letter issued by MOEF&CC in

1


Ref.F.No.SEIAA/F430/2011-IA-III dated 16.10.2012 situated at the Ayyappanthangai village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056.

1. Please let me know if the project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated Ec conditions from October 2012 to December 2016 to the respective office of the MOEF&CC in hard copies as well as by email.

I got a RTI reply from you on 09/09/2020 with F.No. A.14033/RTI-10/ROSEZ/CHN/2020-21/GOI MOEFCC saying that you received half early compliance report from the Project Proponent from December 2016 onwards only and the half yearly compliance report of Prestige Bella Vista for the period a for the period 2012 to June 2016 was not available in your office. It was not available in the Bangalore regional office also (please refer my RTI request with no.ROBAN/R/E/20/00026). But the Project Proponent M/s Prestige Estates Projects Ltd have deposed recently that they have been sending the half yearly compliance report to MOEF&CC RO Chennai regularly from 2014 till now in hard copy as well as by email.

2. Please send me the soft copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016 with covering email from the project proponent by registered post (preferably stored in CD/DVD). Please let me know the fee so that I can remit the amount on time.

The CPIO replied to the appellant on 12.08.2021 stating as under:-

.....the request to provide requisite information since the subject matter is not dealt by the undersigned. As per the input received from the Officer concerned, the requisite information in respect of the above RTI application comprising of 104 pages of the soft copies are readily available and 218 pages needs to be scanned and thus it is requested that an amount of Rs.2280/- (rupees two thousand two hundred and eighty only) towards scanning charges @ Rs.10/- per page for 218 pages and CD & postal charges (Rs.1001) be deposited either by postal order or by demand draft drawn in favor of "The Cheque Drawing and Disbursing Officer, RO(SEZ), Chennai" or through online payment through RTI portal preferably within one month from the date of issue of this letter. After the receipt of requisite amount, the soft copy of the

2


desired information would be supplied in a CD through post. Accordingly, the above RTI application is disposed of.

After deposit of an amount of Rs. 228/- by the appellant, the CPIO provided the relevant information on 27.08.2021 to the appellant.

Being dissatisfied, the appellant filed a First Appeal dated 04.09.2021. FAA's order dated 22.09.2021, resent the replies furnished by the CPIO to the Appellant.

Feeling aggrieved and dissatisfied, the appellant approached the Commission with the instant Second Appeal on the following grounds -

"...6) But the CPIO didn't answer to my first specific question. He communicated that he would send the requisite information comprising of 104 pages of soft copies and 218 pages of hard copies which needs to be scanned, on payment of Rs 2280/-. He sent me scanned copies of the 6 monthly compliance report in DVD format from the period April 2014 to June 2021 after receiving the full payment. But he did not attach covering email for any of the compliance reports. He failed to attach copies of the covering letter to six monthly monitoring reports from October 2016 – March 2017, October 2017 – March 2019 and October 2020 – March 2021 that was received at Office of MOEF&CC. CPIO sent the monitoring report of "Prestige Palladium residential project" by mistake for the period April 2019 to September 2019.

7) Actually none of the copies of covering letter sent to me by CPIO has got proof of receipt at the Office of MOEF&CC, ROSEZ in the form of Diary number with date and Office seal. These reports are not the copies of the original Compliance Reports received at the Office of MOEF&CC and the CPIO actually sent forged/fabricated copies which is a serious offense.

8) A few of the monitoring reports have the proof of service in the form of speed post acknowledgment affixed to the covering letter. (October 2015 – March 2016 with tracking id ET118086883IN dated 25/07/2016, April 2016 – September 2016 with tracking id ET176327442IN dated 30/12/2016 and April 2017 – September 2017 with tracking id ET097235338IN dated 29/12/2017). This documents conclusively proved that the PIO issued me copies supplied by Prestige Builders at later date instead of copies of original office documents.

xxx

3 

11) There are serious incongruities in the covering letters of the reports sent by him. His reports prove beyond doubt that the Office of MOEF&CC RO Chennai is hand in gloves with the fabrication of evidence to substantiate that Project Proponent of Prestige Bella Vista started sending six monthly compliance reports from 2014 April onward. I am enumerating the congruities one by one in the following para 13 to 16.

12) Covering letter of the alleged December 2014 report (April 2014 – September 2014) dated 17/12/2014 is not having the Diary no. and date of receipt with office seal. But it was assigned a Diary no. 502/24-12-2014 in the list of receipt of compliance report attached with the reply. Appellate Authority attached an illegible photostat page of the alleged Diary register (without ROSEZ seal and page number) as the proof. Even then, the Diary no. 502/24-12-2014 in the Diary Register page is showing the receipt of compliance report of "IT Park Prestige Polygon". So the alleged covering letter of the December 2014 monitoring report sent to me is not the original one received in the MOEF&CC ROSEZ and the Appellate Authority fabricated the document.

13) Appellate Authority could not trace the Diary no. of June 2015 and December 2015 compliance reports. Hence copies of covering letters of those two reports (Annexure B & C) sent by the Appellate Authority is obviously a forged/fabricated one which was not originally received in the ROSEZ.

14) Covering letter of June 2016 (period between October 2015 to March 2016) report which is mentioned as Annexure D in the list of receipt of compliance report was received by hand in the Office according to the reply by the Appellate Authority. It is not having a Diary no. and Office seal with date. But it is assigned a Diary no. 2721 in the list of receipt of compliance report attached in the reply. Again, there is no proof in the photostat page of the Diary register (Annexure-D) that the document received as no. 2721/27-7-2016 is from Prestige Bella Vista. Interestingly, the covering letter of the report Annexure-D sent by the Appellate Authority is having a proof of service in the form of speed post acknowledgment pasted on to it with a tracking id ET113086883IN. It is obvious that this covering letter is also a forged one, not received in ROSEZ.

15) The covering letters of December 2016 to June 2019 reports (Annexure E to J) are having proper Diary number with date and office seal affixed to it. This report is exactly similar to the RTI reports sent by CPIO, Dr. M.T. Karupiah in his reply with registration no. ROSEZ/R/E/20/00034 dated 09/05/2020. Appellate

4


Authority has sent a duplicate covering letter also from December 2016 to December 2018 (Annexure E to I) along with the original one with proof of service in the form of speed post acknowledgment with tracking id pasted on it.

16) As the Environmental Clearance issued to Prestige Bella Vista is expired on 16/10/2019, there is no relevance to the Compliance reports sent by Project Proponent of Prestige Bella Vista after December 2019 report..."

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Not present.

Respondent: Saranya, Scientist 'D' & CPIO present through video/audio-conference.

The CPIO submitted that the Appellant has filed two RTI Applications seeking similar information and as per their records, the available information has already been provided to him. He further added that being dissatisfied with it, the Appellant filed the instant Appeal raising other allied issues which is an afterthought and are not contained in the original RTI application. The Appellant alleged that NGT report provided by the Respondent's office was tempered / forged and was in fact, fabricated one. He also alleged that the covering letter was in fact , which suggest that a copy of the report provided to him was either incomplete or fabricated. In this regard, the CPIO clarified that the records of information sought were earlier maintained by their Bangalore office and subsequently, transferred to their Chennai office; therefore, the possibility of the cover page missing cannot be ruled out. Hence, in the copy of the report provided to the Appellant; the cover page of the report was not very clear and nothing malafide is entailed in the disclosure of information sought by him. Upon query from the Commission, she further emphasized that the Appellant is one of the residents of the Prestige Bella Vista project for which the matter regarding issuance of environment clearance is sub judice before Hon'ble NGT and a Committee has also been constituted on the directions of NGT to look into the irregularities in construction of the project. However, in sum and substance, the available information as per the records has already been furnished to the Appellant.

Decision:

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The Commission observes from a perusal of records and after hearing submissions of the CPIO that the factual reply coupled with relevant permissible information furnished by the CPIO adequately suffices the information sought by the Appellant as per the provisions of RTI Act.

Further, the issue raised by the Appellant in the instant Appeal challenging the veracity of information furnished by the CPIO is purely a matter of grievance which is outside the mandate of RTI Act. In this regard, reference may be had of a judgment of the Hon'ble High Court of Delhi in the matter of **Hansi Rawat and Anr. v. Punjab National Bank and Ors. (LPA No.785/2012) dated 11.01.2013** wherein it has been held as under:

"6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2 LPA No.785/2012 from the employment of the respondent Bank is admittedly pending consideration before the appropriate fora. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished."(Emphasis Supplied).

The aforesaid rationale finds resonance in another judgment of the Hon'ble Delhi High Court in the matter of **Govt. of NCT of Delhi vs. Rajender Prasad (W.P.[C] 10676/2016) dated 30.11.2017** wherein it was held as under:

"6. The CIC has been constituted under Section 12 of the Act and the powers of CIC are delineated under the Act. The CIC being a statutory body has to act strictly within the confines of the Act and is neither required to nor has the jurisdiction to examine any other controversy or disputes."

While, the Apex Court in the matter of **Union of India vs Namit Sharma (Review Petition [C] No.2309 of 2012) dated 03.09.2013** observed as under:

"20. ...While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more

parties concerning their legal rights other than their right to get information in possession of a public authority....” (Emphasis Supplied)

Nonetheless, by taking a liberal view in the matter and in the spirit of RTI Act, the CPIO is directed to provide a revised reply stating the facts as mentioned during hearing. The said reply should be provided by the CPIO free of cost to the Appellant within 15 days from the date of receipt of this order under due intimation to the Commission.

The appeal is disposed of accordingly.

Saroj Punhani (सरोज पुनहानि)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

(C.A. Joseph)
Dy. Registrar
011-26179548/ ca.joseph@nic.in
सी. ए. जोसेफ, उप-पंजीयक
दिनांक /

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CHAPTER

7

Amos

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Post Environment Clearance Monitoring by Regional Offices

7.1 Introduction

Environmental Clearance (EC) is accorded along with conditions to be complied with by the PPs. The monitoring of the EC conditions is required to be done by the Regional Offices (ROs) of MoEF&CC to ensure adequacy of the suggested safeguards and also to undertake mid-course corrections required, if any.

MoEF&CC had set up five ROs in 1986 at Bengaluru, Bhopal, Bhubaneswar, Lucknow and Shillong with a Headquarter unit at New Delhi to monitor and evaluate ongoing forestry development projects. In view of the increasing work relating to all aspects of environmental management including pollution control and environmental management of projects, the ROs were further strengthened in 1988 by opening the sixth Regional Office at Chandigarh.

In the case of Lafarge Umiam Mining (August 2011), the Hon'ble Supreme Court of India directed the Central Government to increase the number of ROs from six to 10 to facilitate more frequent inspections and in-depth scrutiny and appraisal of the proposals. In compliance, four new ROs were opened (March 2013) at Chennai, Dehradun, Nagpur and Ranchi.

The monitoring cell of MoEF&CC at New Delhi is responsible for supervision and coordination of all the functions assigned to the ROs.

7.2 Mandate of ROs

MoEF&CC's resolution (January 2014) regarding the mandate of the ROs for Environmental Management and Pollution Control functions, *inter alia*, contains following functions:

- a. To follow up implementation of conditions and safeguards laid down for projects when environmental clearance was given;
- b. To examine and analyse the six monthly progress reports received from the PPs;
- c. To undertake surprise and random checks/verifications of EC conditions of various projects by site visits;
- d. To collect and furnish information relating to environmental impact assessment of projects, pollution control measures, methodology and status, legal and enforcement measures, environmental protection for special conservation areas like wetlands, mangroves and biosphere reserves;
- e. To maintain liaison and provide linkage with the State Governments and other stakeholders.

7.3 Non-submission of half yearly compliance report by PPs

As per EIA Notification 2006, PPs were to submit half-yearly compliance reports in respect of the stipulated EC conditions in hard and soft copies to the ROs/SPCBs concerned on 1st June and 1st December of each calendar year. In the event of non-submission of six monthly compliance reports by PPs, MoEF&CC could take action as deemed fit under the provisions of the Environment Protection Act, 1986.

The RO wise details of half yearly reports due and submitted by PP, out of the 352 projects selected in audit is given in Table 7.1.

Table 7.1: Submission of half yearly Compliance Report (CR)

Regional office	1st Jun 2011		1st Dec 2011		1st Jun 2012		1st Dec 2012		1st Jun 2013		1st Dec 2013		1st Jun 2014		1st Dec 2014		1st Jun 2015		1st Dec 2015*	
	D	R	D	R	D	R	D	R	D	R	D	R	D	R	D	R	D	R	D	R
1. Bengaluru	29	6	30	3	31	7	32	7	32	7	33	10	33	10	33	8	33	12	33	10
2. Bhopal	Out of 48, in 22 cases CR not received even once, in 26 case CRs were received for intermittent period.																			
3. Bhubaneswar	37	13	41	16	45	21	47	22	48	27	48	26	48	28	48	25	48	27	48	0
4. Chennai	39	2	39	1	39	4	39	5	39	3	39	11	39	9	39	1	39	9	39	4
5. Chandigarh	26	6	29	7	29	12	30	10	30	13	30	13	30	13	30	13	30	11	30	7
6. Dehradun	11	2	13	6	14	7	14	6	15	9	15	7	15	9	15	6	15	8	15	8
7. Lucknow	21	9	21	9	25	11	29	12	30	9	32	13	32	13	32	11	32	10	32	11
8. Nagpur	Out of 46, in 15 cases CR not received even once, in 31 case CRs were received for intermittent period.																			
9. Ranchi	19	7	24	6	27	12	31	14	31	17	31	14	31	14	31	16	31	15	31	0
10. Shillong	20	10	23	5	24	8	28	14	30	16	30	22	30	21	30	16	30	17	30	19

(D)- Half yearly reports due, (R) Half yearly reports received, * the position of half yearly report received has been shown at the time of audit (December 2015)

The above table shows that there was shortfall of 43²⁸ to 78²⁹ per cent (with reference to compliance reports of June 2015) in submission of half yearly compliance reports. Further, it was observed in audit that most of the PPs did not submit half yearly compliance reports timely and regularly and there was delay ranging from one month to 48 months in submission of the compliance reports.

We noticed that the ROs did not issue reminders regularly for submission of compliance report to PPs. Also, no action was taken by the MoEF&CC against the PPs under the provisions of the Environment Protection Act, 1986 for non-submission of compliance report by PPs.

While accepting the audit observation, MoEF&CC stated (October 2016) that there was increasing trend of receiving the compliance report in these years and reminders were being issued from the ROs.

However, the fact remains that all the PPs did not submit half yearly compliance reports and the reminders were not issued regularly.

²⁸ RO Shillong: $(30-17)/30*100=43$ per cent.

²⁹ RO Chennai: $(39-9)/39*100=78$ per cent.

7.4 Non uploading of half yearly compliance report on website of the Project Proponents

As per MoEF&CC circular (June 2009), the PPs had to submit hard copy and soft copy of the half yearly compliance reports to the concerned ROs/SPCBs and had to be posted on the website of the company.

Out of 352 projects, we test checked 25 ECs with regard to uploading of the reports. We observed that in 10 cases, the Ministry had not incorporated the condition for the PP to upload the compliance report on their website. Of the remaining 15 cases in which the EC condition was stipulated, none of the PPs had uploaded the compliance reports on their website.

MoEF&CC (October 2016) remained silent on the audit observation.

7.5 Shortage of scientists in the environment wing of Regional Offices

As per the details provided by MoEF&CC, the combined total number of sanctioned posts of scientists in all the ROs was 41 against which 15 scientists were in position as of 31st March 2015.

Thus, there was wide gap between the sanctioned strength and men in position in all the ROs. In the Environment Wing of four ROs, only one scientist was in position against the sanctioned strength of four each in Bengaluru, Chandigarh and Dehradun and five in Shillong. MoEF&CC had not taken sufficient efforts to fill up the gap by deputing the appropriate number of scientific staff in the Environment wing.

While accepting the audit observation, MoEF&CC stated (October 2016) that it had taken appropriate action to appoint the scientists which will help taking up more projects for monitoring and follow up of the projects.

7.6 Monitoring of projects by ROs

As per the information provided by MoEF&CC and its ROs, a total 9,878 Category A projects and 12,657 Category B projects were to be monitored by the ROs which had been given ECs since the inception of the EIA process, following the notification of 1994.

Of these, we verified 352 projects which had been given ECs during 2008-12 with regard to monitoring done by ROs. The details are given in Table 7.2.

Table 7.2: Regional Office-wise sampling of half yearly reports

Regional Offices	Category A projects	Category B projects	Projects sampled for audit
1. Bengaluru	1,364	Not available in RO	33
2. Bhopal & Nagpur	1,748	1,813	94 (48+46)
3. Bhubaneswar	960	721	48
4. Chennai	2,439	5,045	39
5. Chandigarh	868	1,303	30
6. Dehradun	250	1,250	15
7. Lucknow	1,516	2,483	32

Regional Offices	Category A projects	Category B projects	Projects sampled for audit
8. Ranchi	393	7	31
9. Shillong	340	35	30
Total	9,878	12,657	352

Our scrutiny revealed that out of 352 projects selected in audit, only 147 projects were monitored by ROs. Audit examined the monitoring reports of ROs which indicated that the PPs did not follow all the general as well as specific environmental conditions during implementation of project and violated the EC conditions. The details are given in the **Annexure VI**. We also observed that, no powers had been given to the ROs to take action for violation of EC conditions by the PPs.

7.7 Unrealistic fixation of monitoring targets

As per MoEF&CC norms (July 2015) each scientist was to monitor at least five projects per month. Therefore, minimum 60 projects were to be monitored every year by each scientist.

Details of the targets fixed by the MoEF&CC to ROs for monitoring of projects and actual number of projects monitored by each RO for last five years are given in Table 7.3.

Table 7.3: Monitoring targets fixed by MoEF&CC

Regional Offices	2011-12		2012-13		2013-14		2014-15		2015-16	
	T	A	T	A	T	A	T	A	T	A
1. Bengaluru	200	351	180	379	230	272	230	166	240	97
2. Bhopal	180	73	220	73	220	126	220	128	220	206
3. Bhubaneswar	110	111	110	107	120	109	120	115	120	124
4. Chennai	-	-	-	-	-	-	-	224		301
5. Chandigarh	190	180	230	182	230	218	230	204	280	173
6. Dehradun	-	-	-	-	-	-	10	10	41	41
7. Lucknow	200	299	200	301	240	324	240	273	220	224
8. Nagpur	Position merged with Bhopal as shown above.									
9. Ranchi	--	--	--	--	--	--	--	--	55	11
10. Shillong	40	52	80	77	90	89	75	69	40	40
Total	920	1,066	1,020	1,119	1,130	1,138	1,125	1,189	1,216	1,217

T- Target, A- Achievement

The men-in-position of scientists was 15 as of 31st March 2015, thus, as per MoEF&CC norms around 900 projects could have been monitored in a year with the present men in position.

Our scrutiny showed the following:

- As of 31st March 2015, only one scientist was posted at Bengaluru and Chandigarh each and achievement of these ROs have been reported as 166 and 204 respectively, which was 277 *per cent* and 340 *per cent* against the norm of at least 60 projects per scientist per year.
- There was one scientist posted at RO Chandigarh and three scientists at RO Lucknow but the targets of monitoring of projects were almost the same.

It is evident from the above that the targets for monitoring of the implementation of the projects were not fixed realistically with reference to the manpower and quantum of work besides the size/approachability of the area and the complexity of the projects.

While accepting the audit observation, MoEF&CC stated (October 2016) that the appointment of scientists would help taking up of more projects for monitoring. However, Ministry remained silent on fixing of target with reference to manpower and quantum of work.

It is evident from the above table that the overall monitoring targets were achieved except for RO Bhopal, Chandigarh, Ranchi and Shillong. On correlating the figures with the position in Table 7.2 it may be seen that MoEF&CC/ROs would not be able to monitor all projects under their jurisdiction even in a period of five years.

7.8 Action taken for violation of EC conditions

As per the Environment (Protection) Act 1986, for violation of the ECs, MoEF&CC had the power to direct (a) the closure, prohibition or regulation of any industry, operation or process; or (b) stoppage or regulation of the supply of electricity or water or any other service.

In reply to a Parliament question, the Ministry submitted (July 2016) that no penalty was imposed by the MoEF&CC for violating conditions of EC in the last two years.

We observed that MoEF&CC did not have a compiled database of cases/projects received by it from the ROs where the violations were reported by ROs after their monitoring/inspection. Data register with year wise breakup of such cases was also not maintained.

Audit forwarded a list of selected projects to MoEF&CC for furnishing the files of monitoring reports and action taken by the Ministry on the reports. MoEF&CC could not furnish records of the selected projects except for five cases.

Audit scrutiny of these five cases revealed that in respect of three cases, no action was taken by MoEF&CC based on the reply given by the PPs. In case of, **M/s Nirani Sugar Ltd, Karnataka**, MoEF&CC asked the PP to furnish the compliance to violation to EC conditions in October 2015 but the PP had not replied/complied till July 2016.

In another case of **M/s Kailashpati Cement (P) Ltd**, did not submit compliance to specific and general conditions such as feasibility for full utilization of gases generated from the kiln, regular monitoring of influent and effluent surface, non-development of prescribed 33 *per cent* of green belt, non-earmarking of five *per cent* towards activities under ESR, lapse of CTO, etc. Although the case was put up for issuing Show Cause Notice in December 2015, the same was withheld by MoEF&CC. No further action was taken by MoEF&CC.

Further, MoEF&CC on its own furnished 13 files where the Show Cause Notices were issued between August 2015 and December 2015. Scrutiny of these files revealed that in

eight cases no reply was received in MoEF&CC till 15 July 2016 and no reminders were issued by MoEF&CC to the defaulting PPs. In two cases, **M/s MIDC Tarapur, Maharashtra** and **M/s Gallant Metal Ltd, Gujarat**, the compliance report/reply furnished by the PPs were not verified by the MoEF&CC/ROs. In another case of **M/s Rowale Bauxite Mine, Ropali Ratnagiri**, the reply furnished by the PP was termed unsatisfactory but no directions were issued by the MoEF&CC.

While accepting the audit observation, MoEF&CC stated (October 2016) that reminder had been issued to **M/s Nirani Sugar Ltd, Karnataka** and in case of **M/s Kailashpati Cement (P) Ltd** the RO was being requested for fresh site inspection. Further, in respect of **M/s MIDC Tarapur, Maharashtra** and **M/s Gallant Metal Ltd Gujarat**, it stated that the submission given by the PPs were found satisfactory hence were not verified with ROs.

7.9 Conclusion

ROs were not ensuring that the PPs submitted half yearly compliance reports timely and regularly. PPs were also not uploading half yearly compliance report on their website.

There was wide gap between the sanctioned strength *vis a vis* men in position of scientists in all the ROs. Consequently, MoEF&CC/ROs would not be able to monitor all projects under their jurisdiction even in a period of five years.

No power was delegated to ROs to take action against the defaulting PPs and they had to report the violations of the EC conditions to the Ministry. The Ministry did not have a database of cases received where the violations were reported by ROs. No penalty was imposed by the MoEF&CC for violating conditions of EC in the last two years.

7.10 Recommendations

We recommend that,

- i. MoEF&CC may put in place a mechanism to ensure that the compliance reports are regularly and timely received and uploaded by PPs and the Ministry on their websites.
(Paragraph 7.3 and 7.4)
- ii. MoEF&CC may take expeditious measures to have the requisite number of scientists in place in the respective ROs.
(Paragraph 7.5)
- iii. MoEF&CC should evolve a system by delegating powers to ROs for taking action against the defaulting PPs.
(Paragraph 7.6)
- iv. MoEF&CC should have a system in place where the reports of violation received from ROs are compiled and constantly monitored in coordination with the ROs for ensuring that the PPs comply with EC conditions and take action as per law.
(Paragraph 7.8)