BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(SOUTHERN BENCH) AT CHENNAI

Appeal No. 22 OF 2020

Ravi and Another - Appellants

Vs

Union of India & 6 others - Respondents

ADDITIONAL REPLY FILED BY THE 7TH RESPONDENT

**BK & CO.**

ENOCH DAVID SIMON JOEL (E 68) K/925/09
S SREEDEV (S 2272) K 1219/2006
RONY JOSE (R 1364) K/705/2012
CIMIL C KOTTALIL K/345/2017

COUNSEL FOR THE 7TH RESPONDENT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

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Dated this the 14th day of August 2022.

Counsel for the 7th Respondent

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN BENCH) AT CHENNAI
Appeal No. 22 OF 2020

Ravi and Another - Appellants

Vs.

Union of India & Others - Respondents

ADDITIONAL REPLY FILED BY THE 7TH RESPONDENT

I, Arun Varghese, S/o. Varghese Joseph, aged 36, residing at TC 2/3497, Kottackal, Pattom P.O., Thiruvananthapuram-695004, do take oath and solemnly affirm and state as follows;

1. I am the 7th Respondent in the above Appeal and I am aware of the facts of the case and am competent to swear to this affidavit.

2. The above appeal has been filed challenging Ann.A1 Environmental Clearance Certificate issued to the 7th Respondent by the State Environmental Impact Assessment Authority, Kerala.

3. In the meanwhile, the 7th Respondent had moved the Hon'ble High Court of Kerala by filing WP(C) No. 26513/2020 seeking a revalidation of the period of validity of Ann.A1 Environmental Clearance Certificate issued to the 7th Respondent as mandated under Paragraph 9 of the Environment Impact Assessment Notification, 2006. The Hon'ble High Court by judgment dated 01.12.2020 disposed of the writ petition granting the same reliefs as granted to the Petitioners in WP(C) No. 18929/2020. True copy of the judgment dated 01.12.2020 in WP(C) No. 26513/2020 on the files of the Hon'ble High Court of Kerala is produced and marked as **Exhibit R7(d)**.

4. By judgment dated 02.11.2020 in WP(C) No. 18929/2020, the Hon'ble High Court of Kerala had held that limiting the validity of environmental clearances granted for mining

projects without any reference to the life of the project as estimated by the Appraisal Committee was ultra vires the Environment Impact Assessment Notification, 2006. Accordingly the Hon'ble High Court had directed regulatory bodies concerned to call for additional recommendations from the appraisal committee after estimating the life of the projects and thereafter to revalidate the environmental clearance. True copy of the judgment dated 02.11.2020 in WP(C) No. 18929/2020 on the files of the Hon'ble High Court of Kerala is produced and marked as **Exhibit R7(e)**.

5. In compliance to Ext.R7(d) judgment, Respondents 2 and 3 are in the process of revalidating the period of the validity of the EC. It is known that Respondents 2 and 3 are awaiting the outcome of this appeal in the meanwhile.

6. It is submitted that the grievance raised in this appeal as regards the purported variation in the recommendation by the 3rd Respondent and the final decision by the 2nd Respondent will also be considered by Respondents 2 and 3 in the process of revalidation as directed by the Hon'ble High Court of Kerala. The apprehensions of the Appellant will be considered by the authorities concerned in the said process.

Hence it is humbly prayed that this Hon'ble Tribunal may be pleased to accept this affidavit and dismiss the appeal.

All the facts stated above are true and correct.

Dated this the 14th day of August 2022.

Deponent

Solemnly affirmed and signed before me by the literate deponent who is personally known to me on this the 14th day of August 2022 at my office in Ernakulam.

Advocate

EXT. R7(a)



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

WP(C).No.26513 OF 2020(L)

PETITIONER:

M/S.TASNA MINES
KOTTAKAL, PATTOM P.O., THIRUVANANTHAPURAM-695 004,
REPRESENTED BY ITS MANAGING PARTNER,
SHRI. ARUN VARGHESE.

BY ADVS.
SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE

RESPONDENTS:

1 THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
K.S.R.T.C BUS TERMINAL COMPLEX, 4TH FLOOR,
THAMPANOOR, THIRUVANANTHAPURAM-695 001
REPRESENTED BY ITS MEMBER SECRETARY

2 THE STATE LEVEL EXPERT APPRAISAL COMMITTEE
K.S.R.T.C BUS TERMINAL COMPLEX, 4TH FLOOR,
THAMPANOOR, THIRUVANANTHAPURAM-695 001
REPRESENTED BY ITS CHAIRMAN.

3 THE DIRECTOR OF MINING AND GEOLOGY
DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM-695 004.

SRI. M.P SREE KRISHNAN , SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.12.2020, ALONG WITH WP(C).26496/2020(J), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**W.P.(C) Nos.26496 & 26513 of 2020**

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**JUDGMENT**

The issues raised in these writ petitions are covered by the judgment of this court in W.P.(C) No.18929 of 2020 and connected cases.

In the circumstances, these writ petitions are disposed of granting to the petitioners the same relief as granted to the petitioners in W.P.(C) No.18929 of 2020 and connected cases, subject to the modification that the directions aforesaid shall be complied with, within six months from today.

**Sd/-**
**P.B.SURESH KUMAR**
**JUDGE**

PV

EXT. R7(d)/3



# APPENDIX OF WP(C) 26513/2020

PETITIONER'S EXHIBITS:

| | |
|---|---|
| EXHIBIT P1 | TRUE COPY OF THE ENVIRONMENTAL CLEARANCE CERTIFICATE NO.51/2019 DATED 14.10.2019 WITH FILE NO.1201/SEIAA/KL/2016 ISSUED BY THE IST RESPONDENT. |

*This is the true copy of the document marked as Ext. R7(d)*

*Advocate*

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 02ND DAY OF NOVEMBER 2020 / 11TH KARTHIKA, 1942

**WP(C).No.18929 OF 2020(M)**

**PETITIONER:**

SAJI JOSE, AGED 41 YEARS
KATTARATH HOUSE, MUKKOM, KUNNAMANGALAM, KOZHIKODE.

BY ADV. SRI.PHILIP J.VETTICKATTU

**RESPONDENTS:**

1 DISTRICT LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(DEIAA), KOZHIKODE REPRESENTED BY ITS MEMBER SECRETARY, THE REVENUE DIVISIONAL OFFICER, KOZHIKODE-673 001.

2 THE DISTRICT LEVEL EXPERT APPRAISAL COMMITTEE (DEAC)
KOZHIKODE, REPRESENTED BY ITS MEMBER SECRETARY, THE GEOLOGIST, MINI CIVIL STATION, KOZHIKODE-673 020

3 THE DISTRICT COLLECTOR,
KOZHIKODE, CIVIL STATION, KOZHIKODE, IN THE CAPACITY OF CHAIRMAN TO THE DISTRICT LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY (DEIAA), KOZHIKODE.

4 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA KERALA), REPRESENTED BY ITS MEMBER SECRETARY, 4TH FLOOR, KSRTC BUS TERMINAL COMPLEX, THIRUVANANTHAPURAM-695 001

5 STATE LEVEL EXPERT APPRAISAL COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, PALLIMUKKU,
KANNAMMOOLA ROAD, OVERBRIDGE,
VELAKUDI,TRIVANDRUM-695 024.

6 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT, SECRETARIAT, TRIVANDRUM-695001.

7 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
INDUSTRIES (A) DEPARTMENT, SECRETARIAT,
TRIVANDRUM-695 001

8 THE MINISTRY OF ENVIRONMENT,
CLIMATE AND FOREST CHANGE, JORBAGH ROAD, NEW
DELHI-110 003, REPRESENTED BY ITS DIRECTOR.

R3, R6-7 BY SRI.K.V.SOHAN, STATE ATTORNEY
SRI. RENJITH THAMPAN, ADDL.AG
SRI. M.P. SREEKRISHNAN, CGC
SRI. VIJAYAKUMAR ASG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02.11.2020, ALONG WITH WP(C).17533/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

**P.B.SURESH KUMAR, J.**

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**W.P.(C) Nos.17533, 10803, 10860, 10862, 10880, 11048, 11053, 11079, 11106, 11409, 11614, 11763, 12420, 12391, 12439, 13113, 15089, 15507, 18778, 18929, 19032, 19039, 19589 and 19629 of 2020**

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**Dated this the 2nd day of November, 2020**

**JUDGMENT**

Common questions relating to the validity of Environmental Clearance (EC) granted in terms of the Environment Impact Assessment Notification, 2006 (2006 notification) issued by the Central Government under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (the Act), arise for consideration in this batch of writ petitions. The writ petitions are, therefore, disposed of by this common judgment.

2. The facts of the cases involved in this batch are similar, if not identical. As such, it is not necessary to refer

to the facts of all cases. I am, therefore, referring to the facts brought out in W.P.(C) No.17533 of 2020 alone for the purpose of adjudicating the questions.

3. The petitioner in W.P.(C) No.17533 of 2020 is the grantee of a quarrying lease in terms of the Kerala Minor Mineral Concession Rules, 2015 (KMMC Rules) framed under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) for extracting building stones for a period of 12 years. In order to commence the operation of the building stone quarry of the petitioner, he applied for EC to the State Level Environment Impact Assessment Authority (SEIAA), the regulatory body at the State level under the 2006 Notification, and on the basis of the recommendation made by the State Level Expert Appraisal Committee (SEAC), the appraisal body at the State level, the petitioner has been granted EC by SEIAA for his building stone quarry project on 05.12.2014. It is stated by the petitioner that the life of the project of the petitioner as estimated by him and intimated by him to SEIAA is 20 years and as such, he should have been granted EC for a period of 20 years. Instead, it is alleged that the SEIAA had limited the

validity of the EC issued to the petitioner to five years. The case of the petitioner in the writ petition, in essence, is that the decision of SEIAA to limit the validity of the EC granted to him to five years is *ultra vires* the 2006 notification, in terms of which the EC has been granted to him. In order to make out the said case, the petitioner relies on Clause (9) of 2006 notification to contend that in terms of the said provision, if the appraisal body, viz, SEAC recommends for grant of EC to a particular applicant and if the recommendation is found acceptable, SEIAA is bound to grant EC for mining projects for the life of the project. It is stated by the petitioner that since the life of the project of the petitioner is 20 years, on the expiry of the period of five years, the petitioner preferred an application before SEIAA for extension of the validity of the EC granted to him. It is alleged that to the dismay of the petitioner, the application preferred by him is treated by SEIAA as a fresh application for grant of EC and is being processed accordingly. It is also stated by the petitioner that the enquiries made by him in this regard reveal that on 31.10.2014, as sufficient enforcement arrangement were not

available, the SEIAA has decided to limit the validity of the ECs to mining project to five years, instead of the life of the projects and to permit the project proponents to apply for fresh ECs after five years. Ext.P20 is the said decision of SEIAA. It is stated by the petitioner that Ext.P20 decision was made known to the public only when it was uploaded by SEIAA in its website on 13.08.2020. It is also stated by the petitioner that it is revealed that in the meanwhile, on 27.02.2019, the SEIAA has also decided to simplify the process of the application for extension of ECs made, in accordance with Ext.P20 decision, by insisting the applicants concerned to prefer applications for extension at least six months before the expiry of the validity of the EC in the updated Form 1 with the mining plan, processing fee and photographs and to consider the same with the report of SEAC. Ext.P21 is the decision taken by SEIAA in this regard. The case of the petitioner as regards Exts.P20 and P21 decisions of SEIAA is also that the same are *ultra vires* the 2006 notification. The petitioner, therefore, challenges in this writ petition, Exts.P20 and P21 decisions of SEIAA. He also seeks directions to the SEIAA to validate the EC granted to him

for the life of his project, viz, 20 years.

4. As indicated, the facts of the remaining cases are more or less similar. The difference in the remaining cases is mainly as regards the project life estimated by the project proponents concerned and intimated by them to the regulatory authorities. The project life in the remaining cases varies from 6.5 years to 20 years. Similarly, ECs have been granted to the petitioners in the remaining cases between 24.05.2014 and 29.12.2017. Among these cases, except in W.P.(C) No.10880 of 2020, ECs have been granted after Ext.P20 decision. As far as W.P.(C) No.10880 of 2020 is concerned, the EC is seen granted to the petitioner therein prior to Ext.P20 decision namely, on 24.05.2014. Though it is stated in the EC given to the petitioner in the said case that its validity is 13 years, it is mentioned therein that the petitioner shall renew the same once in five years. Similarly, in a few cases, ECs have been issued by the district level regulatory bodies, and the validity of the said ECs have also been limited to five years by the regulatory bodies concerned, placing reliance on Ext.P20 decision of SEIAA. Unlike in W.P.(C) No.17533 of 2020, in some

writ petitions, the petitioners seek a declaration that the ECs granted to them are valid for the duration of the life of the projects of the petitioners concerned.

5. A statement has been filed by the learned Standing Counsel for SEIAA in W.P.(C) No.17533 of 2020 and a joint statement has been filed by him in W.P.(C) Nos.11763 of 2020, 10803 of 2020, 10860 of 2020, 10862 of 2020, 10880 of 2020, 11048 of 2020, 11053 of 2020, 11079 of 2020, 11106 of 2020, 11409 of 2020, 11614 of 2020, 11763 of 2020, 12420 of 2020, 12439 of 2020 and 12391 of 2020. It is contended in the aforesaid statements that the petitioners having not challenged the condition in the ECs granted to them as regards its validity before the National Green Tribunal in appeals, as provided for under Section 16 of the National Green Tribunal Act, they are precluded from instituting writ petitions invoking Article 226 of the Constitution for the said purpose, that too, after the period prescribed for filing appeals before the National Green Tribunal. It is also contended by SEIAA in the statements that the petitioners having accepted the limited term ECs granted to them and having conducted quarrying

EXT. R7(e)/9

operations on the strength of the same, they are precluded from challenging its validity in any forum. It is further contended by SEIAA in the aforesaid statements that the life of the mine as stated by the project proponents in their applications for grant of ECs and the project life in terms of Clause (9) of 2006 notification are different; that the validity of EC was limited to five years since the mining plan is being approved by the competent authority under the KMMC Rules only for a period of five years so as to make the EC in consonance with the KMMC Rules. It was further contended by SEIAA in the statements that the State of Kerala being an ecologically sensitive place, if the ECs are issued for mining projects for a longer period than five years, there will be dilution in post monitoring leading to environmental instability.

6. Heard the learned counsel for the petitioners, the learned Standing Counsel for SEIAA as also the learned Additional Advocate General for the State.

7. As indicated, the essence of the submissions made by the learned counsel for the petitioners in the writ petitions is that the decision of SEIAA to limit the validity of the

ECs granted to the petitioners to five years is *ultra vires* the 2006 notification, in terms of which the ECs are granted to the petitioners. They rely on Clause (9) of 2006 notification to contend that in terms of the said provision, if SEIAA finds that the applicant concerned is entitled to EC, it is bound to grant EC for mining projects for the life of the project. In order to reinforce the said contention, the learned counsel for the petitioners pointed out that in the earlier notification which was substituted by 2006 notification, the provision was to the effect that the ECs are to be granted for a limited period and the said provision was removed when 2006 notification was issued. It was also pointed out by the learned counsel that it is on account of the said scheme of 2006 notification, no provision is made in the said notification for renewal of the EC once granted. According to the learned counsel, SEIAA has, in fact, acted contrary to 2006 notification in the matter of taking Exts.P20 and P21 decisions. It was also pointed out by the learned counsel for the petitioners that SEIAA being an authority constituted for exercising the powers under 2006 notification, they cannot take decisions in the nature of

Exts.P20 and P21 contrary to 2006 notification, whatever be the reasons justifying such decisions. It was pointed out by the learned counsel that the life of the projects as estimated by the petitioners and informed to the regulatory authorities concerned has not been found to be incorrect by the appraisal bodies and therefore, the petitioners ought to have been granted ECs for the duration of their project, as claimed by them in their applications.

8. Apart from the aforesaid general arguments, placing reliance on the decision of the Supreme Court in **Chief Settlement Commissioner, Punjab and Others v. Om Parkash and Others,** AIR 1969 SC 33, Adv.Sri.Philip J. Vettickattu, appearing for the petitioners some of the writ petitions contended that the bodies like SEIAA have no inherent power or authority, and their decisions shall always be within the limits of the authorities given to them by the statute or the subordinate legislation, as the case may be. According to the learned counsel, since the scheme of the 2006 notification is that the validity of the EC shall be the life of the project, an authority constituted to exercise the powers of the

notification cannot take a decision contrary to the notification, whatever be the justification for the same. Placing reliance on the decision of this Court in **Easwaranunni v. State of Kerala**, 2020 (2) KLT 362, the learned counsel argued that Exts.P20 and P21 are vitiated by the principle of fraud on power, for the exercise of power by an authority not intended by the law making bodies, would amount to fraud on power. Placing reliance on the decision of the Apex Court in **Satish v. State of Uttar Pradesh**, 2020 (5) KLT OnLine 1009 (SC), the learned counsel also argued that once the law has been made by the appropriate legislature, then it is not open for the executive authorities to surreptitiously subvert its mandate. Similarly, placing reliance on the decision of this Court in **Nagaroor Grama Panchayat v. Vijayakumar,** 2016 (3) KLT 82, Adv.Sri. Enoch David Simon Joel, appearing for the petitioners in some other writ petitions contended that the authorities constituted in terms of a statute have to exercise their power independently and shall not exercise their power based on anything which is not statutorily insisted or permitted. He has also pointed out that in **MGM Minerals Ltd.**

**v. SEIAA**, 2014 SCC OnLine Orissa 510, the High Court of Orissa has held that the decision of the regulatory body involved in that case under the 2006 notification in limiting the validity of the EC granted to the petitioner therein to five years is without jurisdiction.

9. The learned Standing Counsel for SEIAA reiterated the stand taken by SEIAA in the statements filed in the matters.

10. The learned Additional Advocate General supported the contentions taken by SEIAA, pointing out that insofar as the ECs granted to the petitioners were appealable before the National Green Tribunal, the writ petitions seeking directions for modifying the ECs are not maintainable. It was also argued by the learned Additional Advocate General that at any rate, the writ petitions shall not be entertained by this Court since they are unreasonably belated. It was also argued by the learned Additional Advocate General that the principle of "approbate and reprobate" precludes the petitioners from seeking the reliefs claimed in the writ petitions as they have availed the benefit of the grant subject to the condition which

is impugned in the writ petitions. The learned Additional Advocate General relied on the decisions of the Apex Court in **State of Punjab and Others v. Dhanjit Singh Sandhu,** (2014) 15 SCC 144 and **Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another**, (2013) 5 SCC 470), in support of the said contention. It was also argued by the learned Additional Advocate General that SEIAA being a regulatory authority, it is certainly within its powers to impose general conditions in the nature of one impugned in the writ petitions in the matter of granting ECs. It was argued that at any rate, the issue being one relating to environment, the precautionary principle suggests that the court shall accept only the stand taken for the purpose of protecting the environment. As regards the merits of the contentions advanced by the learned counsel for the petitioners, it was argued by the learned Additional Advocate General that what is provided for in Clause (9) of the 2006 notification as regards the validity of the EC is that the validity of EC as far as mining projects are concerned shall be

the project life as estimated by the expert appraisal committees. It was pointed out by the learned Additional Advocate General that the expert appraisal committees have not estimated the project life in any of the cases, and the petitioners cannot, therefore, be granted the relief claimed by them.

11. In reply to the arguments advanced by the learned Standing Counsel for SEIAA that the petitioners could have challenged the ECs granted to them in appeal before the National Green Tribunal, Adv.Sri.Philip J. Vettickattu contended, relying on the decision of the Division Bench of this Court in **Panopharam v. Union of India,** 2010(3) KLT 149 that the relief claimed by the petitioners in the writ petitions are certainly not relief that could have been granted by the National Green Tribunal, had the petitioners preferred appeal challenging the ECs granted to them before the said Tribunal and therefore, the writ petitions are certainly maintainable. As regards the contention advanced by the learned Additional Advocate General that the writ petitions are belated, Sri.P.Deepak, the learned counsel appearing for the petitioner

in W.P.(C) No.19629 of 2020 contended that the relief claimed in the writ petitions essentially being a declaration that the ECs granted to the petitioners have a longer period of validity, the writ petitions admittedly instituted within the said longer period of validity cannot be said to be belated.

12. In the light of the pleadings of the parties and the submissions made at the Bar, the question falls for consideration is whether the regulatory bodies empowered to grant EC in terms of 2006 notification are justified in restricting the validity of the ECs to five years. However, having regard to the various contentions raised by SEIAA as also the State as regards the maintainability of the writ petitions, the question aforesaid needs to be considered only if this court finds that the contentions raised as regards the maintainability of the writ petitions are unsustainable.

13. Let us, therefore, consider the contentions raised by SEIAA as also the State as to the maintainability of the writ petitions. Section 16(h) of the National Green Tribunal Act, 2010 provides for an appeal against an order granting EC in an area where any industries, operations, processes or class

of industries, operations and processes shall not be carried out or shall be carried out only subject to certain safeguards under the Act. Obviously, the said right of appeal is provided in favour of third parties who are aggrieved by such grants and the said right is subject to the restrictions in the provision, viz, that the grant must relate to the areas mentioned in the provision. Similarly, Section 16(i) of the National Green Tribunal Act provides for a right of appeal against an order refusing to grant EC for carrying out any activities or operation or process under the Act. The said provision, of course, is one in favour of the project proponents whose applications for grant of EC have been rejected by the competent authority. But, as evident from the provision, the remedy provided therein is against an order refusing to grant EC. The question is whether the petitioners in this batch of cases could have challenged the grant in their favour limiting its validity to 5 years in appeal invoking the said provision before the Tribunal. It is well settled that right of appeal is a creature of statute, for the right of appeal inheres in no one and therefore, for maintaining an appeal, there must be authority of law. Needless to say, a right of appeal cannot

be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. [See **Ganga Bai v. Vijay Kumar**, (1974) 2 SCC 393]. The scheme of the appellate provision referred to above is not to provide for a right of appeal against any order passed by the competent authority empowered to grant or refuse EC, but only to provide for right of appeal against a few specific orders. As such, the question to be examined is whether the ECs granted in favour of the petitioners limiting its validity to 5 years could be regarded as orders refusing to grant EC. ECs granted in favour of the petitioners cannot be regarded as orders refusing to grant EC to the petitioners and therefore, it cannot be said that the petitioners could have challenged the decision of the regulatory authorities in limiting the validity of the grant in their favour in appeal before the Tribunal.

14. True, the petitioners could have approached this Court when they were granted ECs limiting its validity to

five years. As indicated, the petitioners who were granted ECs in between 24.05.2014 and 29.12.2017 have instituted the writ petitions only during 2020. Should this Court decline jurisdiction to entertain the writ petitions on that ground is the next question. While it is settled that a belated petition cannot be entertained under Article 226 of the Constitution, it is equally settled that the aforesaid rule is only a rule of practice and not a jurisdictional bar. Further, the defence of laches or inordinate delay is a defence in equity and as such, if there is no breach of equity, there is no reason why the courts should decline to exercise the jurisdiction vested in it. Coming to the cases on hand, the respondents in the writ petitions have a case that the petitioners are in breach of equities in the matter of approaching this Court for the relief claimed. Further, as pointed out by Adv.Sri.P.Deepak, the relief claimed in the writ petitions being essentially for a declaration that the ECs granted to the petitioners have a longer period of validity, the writ petitions having been instituted within the said longer period of validity cannot be said to be belated. The objection of the respondents that the writ petitions are belated is,

therefore, rejected.

15. The principle that one cannot approbate and reprobate is a species of doctrine of election and the doctrine of election is a species of doctrine of estoppel. It is now trite that the principle of estoppel has no application when statutory rights and liabilities are involved. It cannot, at any rate, impede a right of appeal, particularly the constitutional remedy [See the decision of the Apex Court in **P.R.Deshpande v. Maruti Balaram Haibatti** (1998) 6 SCC 507]. The objection that the principle that one cannot approbate and reprobate, precludes the petitioners from instituting the writ petitions is also therefore, rejected.

16. I shall now deal with the question formulated for decision. Section 3 of the Act reads thus:

> **3. Power of Central Government to take measures to protect and improve environment.** - (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.
>
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:

(i) co-ordination of actions by the State Governments, officers and other authorities

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to

exercise those powers or perform those functions or take such measures.

As indicated, 2006 notification is one issued by the Central Government under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Act. Sub-section (3) of Section 3 of the Act empowers the Central Government to constitute, by order, authorities for the purpose of exercising the powers and performing the functions of the Central Government under the Act with respect to matters referred to in sub-section (2) of Section 3 as may be mentioned in the order. Sub-section (3) of Section 3 of the Act provides that the authorities so constituted may exercise the powers or perform the functions so mentioned in the order. Exts.P3 to P5 in WP(C) No.17533 of 2020 are orders issued by the Central Government under Sub-section (3) of Section 3 of the Act constituting SEIAA. Exts P3 to P5 orders provide categorically that the SEIAA shall exercise such powers and follow such procedures as enumerated in 2006 notification. Needless to say, SIEAA is empowered to exercise only the powers conferred on it in terms of 2006 notification.

17. 2006 notification, among others, deals with the requirements of prior EC, the constitution of the regulatory authorities, the manner in which the regulatory authorities have to transact their business, the validity of EC, etc. The scheme of the notification is that applications for prior ECs would be appraised by the appraisal committees concerned in the manner indicated in the notification and would be placed before the regulatory bodies concerned with their recommendations. The regulatory bodies would, thereafter, consider and take a decision either to grant or reject EC. Clause 8(ii) of the notification, however, clarifies that if the regulatory bodies disagree with the recommendations of the appraisal committees, they shall request the appraisal committees to reconsider the recommendations and in that event, the appraisal committees shall forward to the regulatory bodies its views on the reasons for disagreement. The said provision also clarifies that the regulatory bodies have to take a decision thereafter on the applications for grant of ECs, based on the recommendations and the views forwarded by the appraisal committees concerned on the reasons for

disagreement communicated to them. Clause 9 of 2006 notification dealing with the validity of the EC reads thus:

> **9. Validity of Environmental Clearance (EC):**
>
> (i) The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iii) of paragraph 8, to the start of production operations by the project or activity, or completion of all constructions operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects [item 1(c) of the Schedule], project life as estimated by the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and seven years in the case of all other projects and activities.
>
> (ii) In the case of Area Development projects and Townships [item 8(b)], the validity period of seven years shall be limited only to such activities as may be the responsibility of the applicant as a developer;
>
> Provided that this period of validity with respect to sub-paragraphs (i) and (ii) above may be extended by the regulatory authority concerned by a maximum period of three years if any application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form 1A for construction projects or activities (item 8 of the Schedule):
>
> Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee, as the case may be, for grant of such extension.
>
> (iii) Where the application for extension under sub-paragraphs

(i) and (ii) above has been filed---

(a) within thirty days after the validity period of Environmental Clearance, such cases shall be referred to concerned Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, State Level Expert Appraisal Committee or Member Secretary, District Level Expert Appraisal Committee, as the case may be;

(b) more than thirty days after the validity period of Environmental Clearance but less than ninety days after such validity period, then, based on the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee, the delay shall be condoned with the approval of the Minister in charge of Environment, Forest and Climate Change or Chairman, as the case may be:

Provided that no condonation for the delay shall be granted for any application for extension filed beyond ninety days after the validity period of Environmental Clearance.

While the clause aforesaid prescribes specific validity periods for the ECs to be granted for various projects or activities, the same does not prescribe a specific validity period for the ECs to be issued for mining projects. Instead, it is provided therein that the validity of the ECs to be issued for mining projects shall be the project life as estimated by the expert appraisal committees concerned, subject to a maximum of 30 years. Likewise, though the clause aforesaid makes a provision for

extension of the validity of the ECs issued for projects falling under clause 8 of the schedule to 2006 notification, there is no provision therein for extension of the validity of the ECs granted for mining projects. Further, there is also no provision in the notification for a fresh grant of EC for a project for which EC is granted once. In other words, the scheme of 2006 notification as far as mining projects are concerned, is that if it is found that EC is to be granted for a mining project, the same shall be granted for the life of the project as estimated by the expert appraisal committees concerned. In the said the view of the matter, according to me, the decision of SEIAA to limit the validity of the ECs to be granted for mining projects to 5 years, is against the terms and spirit of 2006 notification. As noted, SEIAA being a body constituted only for the purpose of exercising the powers of the Central Government in terms of 2006 notification, it cannot take a decision otherwise than in accordance with the notification, for it does not have any inherent power or authority. That does not mean that SEIAA cannot exercise any powers incidental to the powers vested in it in terms of the notification. SEIAA would certainly be justified

in exercising powers incidental and ancillary to the powers conferred on it for the purpose of achieving the object of the notification, but it can never take any decision contrary to the terms of the notification or its scheme and spirit, whatever be the justification for the same. It is trite that where the power exercised by a quasi-judicial authority cannot reasonably be held to be incidental to the power expressly granted, the action would be *ultra vires* [See **Bishweshwar Dayal Sinha v. University of Bihar**, AIR 1965 SC 601]. Insofar as it was found that the petitioners in this batch of writ petitions were eligible for ECs in terms of 2006 notification, the regulatory authorities concerned should have granted to them ECs for the life of their respective projects. Similar view is seen taken by the High Court of Orissa in **MGM Minerals Ltd.**

18. As evident from clause 9 of the 2006 notification, the provision therein as regards the validity of the ECs to be granted for mining projects is that it shall be valid for the period of the project life as estimated by the appraisal committees concerned. In other words, it was obligatory for the appraisal committees concerned in all the cases to make an

estimation of the life of each project. As rightly pointed out by the learned Additional Advocate General, the project life is not one to be estimated by the project proponents, but to be estimated by the appraisal committees concerned. Though it was submitted on behalf of some of the petitioners that the appraisal committees in their cases have made an estimation of the project life, on a meticulous examination of the materials, I am unable to accept the said contention. Further, as noted, as early as on 31.10.2014, SEIAA has decided to limit the ECs to be issued for mining projects to 5 years and therefore, there was no occasion at all for the expert appraisal committees concerned to make an estimation of the life of the projects of the petitioners.

19. I have already found that the decision of SEIAA to limit the validity of the ECs to be granted for mining projects to 5 years is against the terms and spirit of 2006 notification and the said decision is *ultra vires* the 2006 notification. In the said view the matter, Ext.P20 decision of SEIAA is illegal and without jurisdiction.

20. The learned Standing Counsel for SEIAA has

made an attempt to justify Ext.P20 decision contending that the same was one issued to make the ECs to be granted in terms of 2006 notification in tune with the KMMC Rules. This is an afterthought. It is seen from Ext.P20 decision itself that the same was taken since it was felt that sufficient enforcement mechanism is not available in the State for monitoring compliance of the various conditions imposed in the matter of granting ECs. When a statutory functionary makes an order based on a ground, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons, for otherwise, an order which is bad at the beginning would get validated when it comes to the court on account of a challenge [**Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**, (1978) 1 SCC 405]. Be that as it may, since it is found that SEIAA has no authority to take a decision in the nature of Ext.P20, the reason that prompted SEIAA to take such a decision is irrelevant as well.

21. As regards the arguments advanced by the learned Additional Advocate General based on precautionary principle, I must state that the various principles evolved by

the courts in environmental law such as polluter pays, sustainable development, precautionary principle etc. cannot be put forward in a case where the decision taken by the statutory authority is impugned for of want of jurisdiction. The aforesaid are only principles evolved to be followed as guiding principles while dealing with matters relating to environment.

22. As noted, the appraisal committees concerned have not estimated the life of the projects of the petitioners in any of the cases while making recommendations to the regulatory bodies for grant of ECs. As such, the declaration sought by the petitioners that they are entitled to ECs for the life of their respective projects as estimated by them cannot be granted. In other words, the life of the projects of the petitioners needs to be estimated by the appraisal committees concerned.

In the circumstances, the writ petitions are disposed of directing the regulatory bodies concerned to call for additional recommendations from the appraisal committees after estimating the life of the projects of the petitioners in respect of which ECs have been issued to them, and

thereupon, re-validate the ECs granted to the petitioners, wherever necessary. It is made clear that in the matter of making estimation of the life of the projects in terms of this judgment, it will be open to the appraisal committees to call for additional information required and in that event, it will be obligatory for the petitioners to furnish the additional information called for. It is also made clear that the recommendations of the appraisal committees in this regard would not be binding on the regulatory bodies, and in the event the regulatory bodies disagree with the recommendations made by the appraisal committees as regards the project life of the petitioners, the regulatory bodies would be free to follow the procedure mentioned in clause 8 of 2006 notification in the matter of arriving at the conclusion as to the life of the projects of the petitioners, for the purpose of complying with the directions contained in this judgment. The directions aforesaid shall be complied with, within four months from today.

**P.B.SURESH KUMAR**
**JUDGE**

ds 21.10.2020

This is the true copy of the document marked as Ext. R7(e)

Advocate