

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

ORIGINAL APPLICATION NO. 263 OF 2020 (SZ)

IN THE MATTER OF:

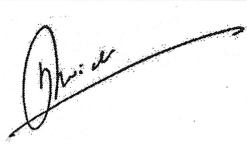
MEENAVA THANTHAI K.R. SELVARAJ
KUMAR MEENAVAR NALA SANGAM

...APPLICANT

VERSUS

UNION OF INDIA
...RESPONDENT

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**REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY FILED
BY THE SOLE RESPONDENT**

MOST RESPECTFULLY SHOWETH:

1. The present Application has been filed under Section 14 of the National Green Tribunal Act, 2010 challenging the amendment notification dated 16.01.2020 ("impugned notification") issued by the Ministry of Environment Forest and Climate Change to the limited extent that it re-categorizes "Onshore and offshore exploration of oil and gas" activity as 'B2' from 'A' under the EIA Notification, 2006 and granting certain exemptions to the offshore and onshore Oil and Gas exploration projects. It is submitted that the impugned notification is against the scheme of the EIA Notification, 2006 and the parent Act, i.e., the Environment (Protection) Act, 1986 and thereby cannot be sustained in law.
2. That in the Original Application the Applicant has primarily taken, inter-alia, the following issues/grounds of challenge:

- (i) Impugned notification does not take into consideration relevant factors
- (ii) Impugned Notification exempts EIA Studies and Public Consultation for Exploration of Oil and Gas
- (iii) Impugned notification is in violation of the provisions of the parent act, i.e. environment (protection) act, 1986
- (iv) No reasons given in impugned Notification

The contents of the Original Application are not be being repeated for the sake of brevity. The Applicant is relying upon the issues and grounds taken by it in the Original Application and the same may be regarded as part and parcel of this Rejoinder.

3. That the Sole Respondent has filed it's Additional Affidavit dated 14.06.2021.

In it's Additional Affidavit the Sole Respondent has stated as follows:

"6. It is most respectfully submitted that, in exercise of the powers conferred by Sub-Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986, the Central Government is empowered to re-categorize the off-shore and onshore oil and gas exploration projects to be granted EC under the provision of B2 category of the EIA Notification 2006, because exploration drilling is a temporary activity lasting only 3-4 months without having any permanent establishment or setup."

It is stated that the Sole Respondent has purposely not filed a para-wise Reply to the Original Application and limited it's Reply to just the above contention which actually does not answer the detailed issues/grounds taken up by the Applicant in it's Original Application.

4. That in Rejoinder it is stated that the EIA Notification, 2006 prescribes that Category 'B' projects are further categorized as category 'B1' and 'B2' (except for Township and Area Development Projects) for which the Ministry of Environment & Forests (MoEF)

have to issue appropriate guidelines from time to time as per para 7.1 Stage(1)-Screening'. The projects categorized as B1 will require EIA Report for appraisal and to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report and any other documents.

5. That by an Office Memorandum dated 24th December, 2013 of the Ministry of Environment and Forests came out with the guidelines for consideration of proposals for grant of Environmental Clearance, Environmental Impact Assessment (EIA) Notification and its amendments with respect to categorization of Category 'B' projects/activities into Category 'B1' & 'B2'.

Copy of the Office Memorandum dated 24th December, 2013 of the Ministry of Environment and Forests is annexed herewith as

ANNEXURE-A5.

6. That Office Memorandum dated 24th December, 2013 states that vide O.M No. J-11013/12/2013-IA-II(I) dated 30.01.2013, the MoEF constituted, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee submitted it's report. The recommendations of the Committee had been examined by MOEF and certain activities of Category 'B' projects/activities have been categorized into Category 'B1' & 'B2' listed in the Schedule of EIA Notification, 2006 and its amendments like Mining of Minerals, Thermal Power Plants, Mineral Beneficiation, Metallurgical Industries(ferrous & non-ferrous), Cement Plants, Chlor Alkali

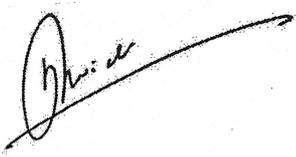
Industry, Leather/Skin/Hide Processing Industry, Chemical Fertilizers, Manmade Fibers Manufacturing, Aerial Ropeways.

7. That it is stated that neither the Expert Committee nor the OM above cited talks about categorization of "Onshore and offshore exploration of oil and gas" activity as 'B2' from 'A' under the EIA Notification, 2006. It is stated that in view of the contentions, issues, grounds of the Original Application and this Rejoinder the prayer of the Original Application may very kindly be allowed.

Any other or further Relief may be granted in favour of the Applicant and against the Respondent.


APPLICANT

THROUGH



RITWICK DUTTA



**G. STANLEY HEBZON SINGH
ADVOCATES**

Date: 20-10-2021

Place: New Delhi/Chennai

No. J-13012/12/2013-IA-II (I)
Government of India
Ministry of Environment and Forests

Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

Dated 24th December, 2013

OFFICE MEMORANDUM

Subject: Guidelines for consideration of proposals for grant of environmental clearance Environmental Impact Assessment (EIA) Notification, 2006 and its amendments – regarding categorization of Category 'B' projects/activities into Category 'B1' & 'B2'.

The EIA Notification, 2006 mandates prior Environmental Clearance (EC) for new projects or activities including expansion, or modernization of existing projects listed in its Schedule. The Category 'A' projects shall obtain EC from the Central Government and Category 'B' projects from the concerned State Level Environment Impact Assessment Authority (SEIAA)/Union Territory Environment Impact Assessment Authority (UTEIAA). The EIA Notification, 2006 prescribes that Category 'B' projects, will be further categorized as category 'B1' and 'B2' (except for Township and Area Development Projects) for which the Ministry of Environment & Forests (MoEF) shall issue appropriate guidelines from time to time - provisions under '7.1 Stage(1)-Screening' of the Notification refer. The projects categorized as B1 will require EIA Report for appraisal and to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report and any other documents.

2. In compliance with such a requirement under the EIA Notification and to examine other issues, the MoEF had constituted vide O.M No. J-11013/12/2013-IA-II(I) dated 30.01.2013, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee has since submitted its report. The recommendations of the Committee have been examined by MOEF and the following has been decided w.r.t. categorization of Category 'B' projects/activities into Category 'B1' & 'B2' listed in the Schedule of EIA Notification, 2006 and its amendments:

I. Mining of Minerals

Mining of minor minerals

As of now, mining projects of minor minerals with less than 50 ha of mining lease area are categorized as Category 'B' as per Notification S.O.2731(E) dated 9th September, 2013. Also vide OM No.L-11011/47/2011-IA.II(M) dated 24.06.2013, guidelines have been issued regarding categorization of mining projects of 'brick earth' and 'ordinary earth' having lease area less than 5 ha as category 'B2' subject to stipulations stated therein.

In the above backdrop, the projects of mining of minor minerals, categorized as Category 'B' are hereby categorized as 'B2' as per the following:

- (i) 'Brick earth' / 'Ordinary earth' mining projects having lease area less than 5 ha will be considered for granting EC as per the aforesaid guidelines issued by MOEF on 24.6.2013.
- (ii) 'Brick earth' / 'Ordinary earth' mining projects with mining lease area ≥ 5 ha but < 25 ha and all other minor mineral mining projects with mining lease area < 25 ha, except for river sand mining projects will be appraised as Category 'B2' projects. These projects will be appraised based on following documents:
 - (a) Form -1 as per Appendix-I under EIA Notification, 2006
 - (b) Pre-feasibility report of the project
 - (c) Mining plan approved by the authorized agency of the concerned State Government

Provided, in case the mining lease area is likely to result into a cluster situation, i.e., if the periphery of one lease area is less than 500 m from the periphery of another lease area and the total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

- (iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area ≥ 5 ha but < 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:
 - (a) The mining activity shall be done manually.
 - (b) The depth of mining shall be restricted to 3m/water level, whichever is less.
 - (c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.
 - (d) No in stream mining shall be allowed
 - (e) The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with tarpoline to minimize dust/sand particle emissions.
 - (f) EC will be valid for mine lease period subject to a ceiling of 5 years.

Provided, in case the mining lease area is likely to result into a cluster situation i.e. if the periphery of one lease area is less than 1 km from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

II. Other projects or activities

The guidelines for categorizing some of the other category of projects or activities into 'B1' or 'B2' out of the category 'B' projects listed in schedule to EIA Notification, 2006, as amended from time to time, are as follows. These projects will be appraised based on Form-1 as per Appendix-I under EIA Notification, 2006, as amended and pre-feasibility report of the project.

S. N. of Schedule	Activities	Category B2	Category B1
1 (d)	Thermal Power Plants	Thermal power plants based on coal/lignite/naphtha and gas of capacity ≤ 5 MW.	Thermal power plants based on coal/lignite/ naphtha and gas of capacity > 5 MW and < 500 MW.
2 (b)	Mineral Beneficiation	The mineral beneficiation activity listed in the Schedule as Category 'B', with throughput $\leq 20,000$ TPA, involving only physical beneficiation.	All other mineral beneficiation activity falling in the Schedule as Category 'B'.
3 (a)	Metallurgical Industries (ferrous & non-ferrous)	All non toxic secondary metallurgical processing industries involving operation of furnaces only, such as induction and electric arc furnaces, submerged arc furnaces, and cupola with capacity $> 30,000$ TPA but $< 60,000$ TPA provided that such projects are located within the notified Industrial Estates.	All other non toxic secondary metallurgical processing industries falling in the Schedule as Category 'B'.
3 (b)	Cement Plants	All stand-alone grinding units listed in the Schedule as Category 'B' subject to the condition that transportation of raw material and finished products shall be primarily* through Railways.	All stand-alone grinding units listed in the Schedule as Category 'B' where the transportation of raw material and finished products is not primarily through Railways.
4 (d)	Chlor Alkali Industry	All Chlor Alkali plants with production capacity < 300 TPD (located within notified industrial area) listed in the Schedule as Category 'B'.	All Chlor Alkali plants with production capacity < 300 TPD (located outside notified industrial area) listed in the Schedule as Category 'B'.
4 (f)	Leather/Skin/Hide Processing Industry	All new or expansion projects of leather production without tanning, located within a notified industrial area/estate, listed in the Schedule as Category 'B'.	All others projects listed in the Schedule as Category 'B'.

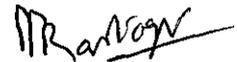
5 (a)	Chemical Fertilizers	Single Super Phosphate (SSP) plants involving only the activity of granulation of SSP powder.	All other Single Super Phosphate (SSP) plants listed in the Schedule as Category 'B'.
5 (d)	Manmade Fibres Manufacturing	All manmade fibre manufacturing units producing fibres from granules or chips.	All other manmade fibre manufacturing units listed in the Schedule as Category 'B'
7 (g)	Aerial Ropeways	All Aerial Ropeway projects, listed in the Schedule as Category 'B', should be categorized as Category B2.	

* transportation by railways should not be less than 90% of the traffic (inward and outward put together)

3. The guidelines for categorization of Category 'B' projects/activities into Category 'B1' & 'B2' are applicable only to those projects/activities mentioned above. All the other Category 'B' projects/activities listed under the Schedule of EIA Notification, 2006 and its amendments shall be considered as Category 'B1' projects and appraised as per the procedure prescribed in the EIA Notification.

4. The information filled in Form-1 by the project proponent inter-alia relates to land, water and energy requirement, use of hazardous substances, disposal of hazardous waste, emissions from combustion of fossil fuels, emissions from production process, handling and disposal of hazardous waste, etc. In case the concerned SEAC, based on the information provided by the project proponent in Form-1, comes to the conclusion that a project though falling in Category 'B2' as per these guidelines needs to be appraised as 'B1' Category project, it will accordingly be appraised as 'B1' category project notwithstanding the provisions under these guidelines.

This issues with the approval of the Competent Authority.



(Dr. P.B. Rastogi)
Director
Telefax : 24342436

To,

1. All the Officers of I.A Division
2. Chairpersons/Member Secretaries of all the SEIAAs/SEACs
3. Chairman, CPCB
4. Chairpersons/Member Secretaries of all the SPCBs/UTPCCs

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