BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ)
AT CHENNAI

Appeal No. 30 of 2020

(Against Order no.1239/EC2/2019/SEIAA dated 6.08.2020 of the SEIAA, Kerala, granting Environmental Clearance No.75/2020)

Muhammed.O **::: Appellant**

Vs.

State Environment Impact Assessment Authority - Kerala
& 4 others **::: Respondents**

WRITTEN ARGUMENTS FILED ON BEHALF OF THE APPELLANT

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K R Harin

Counsel for the Appellant

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Preliminaries

The Honb'le Supreme Court in the landmark case of *Hanuman Laxman Aroskar Vs. UOI (2019) 15 SCC 401* wherein it had gone through the entire gamut of the EIA Notification, 2016, while laying down the law on the subject, held that:

- *The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come.*
- *EIA Notification, 2006 embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.*

1. There are three important facets of the Appraisal process mandated by law,–
   i. *That the project the proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification* – disclosure by the project proponent forms the basis of the subsequent appraisal of a project by the SEAC and SEIAA.
   ii. *Appraisal of a project as structured and defined by the 2006 notification by EAC* – appraisal by EAC is the ***sine quo non*** for the grant of EC. Failure

to do so is failure of due process of law and any EC granted will stand vitiated and is liable to be cancelled.

*iii. EAC has to furnish **reasons** for its recommendation – it is the base on which and they constitute a live link between its processes and the outcome of its adjudicatory function. In the **absence of cogent reasons**, the process by its very nature, together with the outcome stands vitiated.*

2. The records of SEAC & SEIAA in the matter of appraisal of the impugned project comprises of the following:

   i. The Minutes of the 94th, 96th, 106th & the 109th Meetings of SEAC.

   ii. The Inspection Reports of the Sub Committee entrusted by SEAC for site inspection dated 8.04.2019 and 10.01.2020.

   iii. The Minutes of the 104th Meeting of SEIAA.

3. From the detailed analysis of the decisions made by SEAC and SEIAA in the light of the mandate of the EIA Notification, 2016 and as laid down by the Apex Court in the *Hanuman Laxman Aroskar* case, it is clear that, –

   - the impugned EC is untenable in law and is liable to be set aside as illegal.
   - the entire process of appraisal and the grant of EC is vitiated by the concealment of vital details regarding the flora, fauna and number of trees that were going to be admittedly felled (admission of cutting of trees is mentioned in the PFR) by the project proponent by omitting any reference to these details in the EIA & EMP, thereby impeding the appraisal of those omitted but vital environmental aspects by SEAC & SEIAAA, which by law need to have been examined by the Authorities.
   - it has come out from the records of SEAC that there was NIL appraisal on any of the environmental aspects listed out by the project proponent in the EIA & EMP was carried out by SEAC in any of its Meetings.
   - no reasons are given by SEAC for the recommendation of the project for EC to SEIAA.
   - even the recommendation made in the 109th Meeting was hurried, and it was contrary to what was suggested by the Sub Committee in its 2nd Inspection Report.

- the Subsidence Stabilisation Plan was admittedly filed by the project proponent only on 7.03.2020, while the last time SEAC had an occasion to appraise the project was in its 109th Meeting held on 1.02.2020.
- there is no dispute that the Subsidence Stabilisation Plan was not thereafter looked into, studied and whatever measures suggested in the said Plan was found to be adequate by SEAC.
- from the decision recorded in the 104th Meeting of SEIAA, it is apparent that SEIAA has also not applied its mind on the Subsidence Stablisation Plan when it was very well aware that SEAC did not have the occasion to do so, nor did SEIAA notice that there was actually NIL appraisal of the project by SEAC at any point of time in any of its Meetings.
- in any event the non-appraisal of the Subsidence Stabilistation Plan alone was not the only default committed by SEAC & SEIAA in the matter of appraisal of the impugned project, as none of the other environmental issues having an impact on the environment as listed out in the EIA & EMP were looked into, which is apparent on the face of the records of SEAC & SEIAA,
- that the failure to take notice of the concealment of vital flora and faunal study by the project proponent in the EIA & EMP, despite its specific direction in its 94th Meeting to do so while submitting the Baseline Study and the resultant non appraisal of these vital issues, and the failure to look into and record satisfaction about the mitigative measures suggested on any of the environmental aspects listed out in the EIA & EMP, when taken together, throws light on the fact that there has been NIL appraisal of the project by SEAC & SEIAA as mandated by law.

Legal Submissions

Now let us examine the various illegalities committed by the Project Proponent and the Statutory Authorities in the appraisal of the impugned project **in terms of the provisions of EIA Notification, 2006** and in the light of the law laid down on the subject by the Apex Court **in *Hanuman Laxman Aroskar*** *case.*

Commissions & Omissions by the Project Proponent

1. **Non – Disclosures:** In the present Appeal the following non-disclosures and concealment on the part of the project proponent, which cannot be countenanced under the EIA Notification, 2016, are apparent on the face of record:

   - **(1) TREES, FLORA & FAUNA –** From the records of SEAC, it is apparent that SEAC in its 94th Meeting had specifically directed the project proponent to rework the details of flora and fauna.
   - Therefore the total omission of flora and fauna study, including the felling of trees in the subsequent Baseline Study, EIA & EMP submitted by the project proponent constitutes material concealment.
   - The only conclusion that arises from this is that a proper appraisal of the project on the avi-faunal and flora and felling of trees etc., was impeded by the proponent by such concealment and it ultimately led to the fact such appraisal on these matters has not been done by SEAC & SEIAA as mandated by law. For this reason alone the EC granted is liable to be set aside.
   - **(2) SPRINGS, UNDERGROUND WATER TUNNEL & SUBSIDENCE –** It is apparent from the face of record, viz., the Form 1, PFR, EIA & EMP that the project proponent had concealed the presence of springs, underground water tunnel and the existence of subsidence within the project site.
   - These were found out by the Sub Committee at the project site in its 1st Inspection made on 8.04.2019.
   - The above, therefore, definitely constitutes concealment of material information on the part of the project proponent on vital environmental aspects.

   The above two omissions in the Form 1, PFR, the EIA & EMP are vital information and the non-disclosure of the same has vitiated the entire process of appraisal, and the grant of EC is therefore bad in law.

Failures on the part of SEAC & SEIAA

1. **Improper/NIL Appraisal:**

(1) From a bare perusal of the above referred MoMs of SEAC, it is apparent from the face of the respective records that SEAC has not discharged its remit as per the mandate of law while appraising the impugned project. The reasons are as follows:

- SEAC is mandated by law, under the EIA Notification 2006, to appraise a project on the touchstone of vital environmental parameters, and for that purpose all information provided by the project proponent in the Form 1, PFR, EIA & EMP are to only be treated as inputs. The production of these documents by the project proponent is not fait accompli of the compliance of the project on all environmental issues cited therein, and SEAC merely put its stamp of approval on the same and recommend for grant of EC.
- Independent scientific appraisal on the matters listed out in the EIA, and whether anything more needs to considered and included in the Baseline Study, and in the EIA & EMP are all within SEAC's scope of function in the appraisal process stipulated by law.
- After such scrutiny, it is for SEAC to record satisfaction of all the mitigative measures suggested in the EMP as adequate and meets the threshold for grant of EC. It is only after discharging these functions that SEAC could proceed to make any recommendation to SEIAA.
- From going through the records of the proceedings before the SEAC, the same being the decisions of the SEAC right from the 94th, 96th, 106th to the 109th Meeting and the two(2) Site Inspection Reports of the Sub Committee, there is nothing of record to suggest that SEAC had, at any point of time in any of its Meetings, applied its mind and discharged its legal mandate of having carried out an objective scientific appraisal on various environmental

aspects of the project based on the inputs provided by the project proponent, being the Form 1, the PFR, the Baseline Study, the EIA & EMP.

- In none of the Meetings had SEAC recorded satisfaction of the adequacy of the mitigative measures set out in the EMP on the likely adverse environmental impact of the project on various environmental parameters that were listed out by the project proponent in the EIA & EMP.
- Hence it is evident from the face of the record of the proceedings of SEAC that there was actually **NIL** appraisal of the project, and there cannot be any other view of the matter when seen through the prism of the statutory obligations set forth in the EIA Notification, 2006.
- The perfunctory manner in which SEAC has gone about its legal mandate of scientific appraisal of a proposal/project before recommending the same to SEIAA for issuance of EC is glaring exposed by the failure by SEAC to note the omission of the vital parameter of flora and faunal study by the project proponent in EIA & EMP, and the consequent absence of any mitigative circumstances and measures set forth in the EMP, and the resultant failure to appraise the project on this very important environmental parameter. This failure is singularly indicative of the total non-application of mind in the matter of appraisal of the impugned project, not only on this issue but in the entirety of appraisal process undertaken by SEAC.

In the absence of an independent appraisal of the project and recording satisfaction that the project meets the environmental criterion as set out in the EIA & EMP, then it follows that the recommendation issued by SEAC on the back of NIL Appraisal in its 109th Meeting is therefore totally illegal.

(2) In the absence of an independent analysis and appraisal of the project by SEAC, what then was the material based on which the recommendation is apparently seen to be done in the 109th Meeting of SEAC.

- The only material before the SEAC as on the date of the 109th Meeting, viz., 1.02.2020, when the impugned project was taken up for consideration, was the recommendation contained in the 2nd Site Inspection Report made on 10.01.2020 by the Sub Committee.
- The only recommendation of the Sub Committee to SEAC in the above said Site Inspection Report of 10.01.2020 was the suggestion to obtain from the project proponent a Plan for Stabilization of the Area of Subsidence found within the project site, and it was not a recommendation that the project was found environmentally compliant and was fit for being recommended for EC.
- Therefore, it is apparent that SEAC should have first obtained the Plan for stabilization of the area of subsidence from the project proponent, evaluated the same on the touchstone of scientific parameters, recorded satisfaction of any/all of the measures submitted in the Plan, and only thereafter should have made any recommendation to SEIAA.
- By not satisfying itself of the adequacy of the Plan for Stabilization of the area of subsidence, and instead recommending the project for grant of EC "*subject to the specific condition that the proponent shall take adequate measures for slope stabilization and a report for stabilization has to be provided",* smacks of total abdication of its statutory mandate on the part of SEAC.
- Imposing of any number of conditions/special conditions will not absolve SEAC & SEIAA of its primary responsibility of first making a detailed analysis and scientific appraisal of the project on all environmental aspects. Failure to appraise and imposing of

conditions instead as a course of action does not satisfy the mandate of law.

- Imposition of conditions can come only after scrutiny of the project and the resultant findings, and not before that; and conditions can be imposed in the nature of any solution or mitigation of any problem that was noted in such appraisal. Bare imposition of conditions without any appraisal is totally antithetical to the express provisions of the EIA Notification, where the appraisal mechanism is set as the bulwark between securing the objective of sustainable development while at the same time protecting the environment.

2. **No reasons is recorded for the decision to recommend the EC:**
   - Except for prescribing an ill-founded special condition as stated above, which cannot be a substitute for a proper appraisal of a project on scientific basis, no reasons for recommending the project to SEIAA for EC are recorded by SEAC in its decision taken in the 109th Meeting, or for that matter is there any findings in any of the previous 94th, 96th & 106th Meetings of SEAC to indicate that the project was appraised on the enviro-legal aspects and that on such appraisal the project was found fit for EC.
   - It is not as if all other environmental aspects and impact of the project on environment on the basis of EIA & EMP was carried out by SEAC, and that only an appraisal on the Subsidence Stabilisation Plan was omitted to be done by SEAC. NIL appraisal of the project on even a single aspect of the potential impact of the project listed out in the EIA & EMP by SEAC is the sad reality that is emerging from the records of SEAC.

3. **Proceedings before SEIAA:** The impugned project was thereafter taken up by SEIAA in its 104th Meeting held on 22nd, 23rd & 24th June 2020 as Item.no: 104.26 for considering the grant of EC, though the project was not included in Agenda for the Meeting prepared on 15.06.2020. It seems to be a lateral entry to the 104th Meeting of SEIAA. Be that as it may be, –

- SEIAA has failed to note that SEAC has not made any scientific appraisal of the project by testing the project on various environmental parameters by way of an independent analysis of the EIA & EMP filed by the project proponent.
- SEIAA could have easily found out that SEAC had never appraised the project as mandated by law at any point of time, had only it had gone through the decisions of the SEAC as recorded in the Minutes of the 94th, 96th, 106th & 109th Meetings of SEAC.
- The mechanical recording by SEIAA to the effect that the *Authority noted that SEAC had appraised the proposal based on the details given in the application, Pre-feasibility Report, additional details/documents obtained from the proponent during appraisal, Mining Plan and the filed inspection report*, is a clear pointer to the fact that SEIAA has not even gone through the records of SEAC.
- It is apparent that SEIAA has unilaterally and arbitrarily supplemented the findings of SEAC, which SEAC itself has not recorded in any of its decisions rendered in any of its Meetings, including in the 109th Meeting. It is therefore apparent that SEIAA has mechanically and in a routine manner made the above observation, without actually looking into the records of SEAC, for if only it had taken a cursory look at the same, then SEIAA would have been shocked to find out about the NIL appraisal in the matter by SEAC.
- The non-application of mind by SEIAA is further exposed in its stipulation of the Special Condition no.2, wherein it states that "*The proponent shall take adequate measures for slope stabilization as pointed out by SEAC"*, when the fact remains that SEAC had not pointed out any adequate measures for slope stabilization while making its recommendation to SEIAA.
- It is borne by record that SEAC had washed its hands off the appraisal of the impugned project on 1.02.2020, while the Plan was admittedly filed only on 7.03.2020, and therefore SEAC could not have even gone through the same and found the measures suggested in the Plan as

satisfactory or not, and the fact remains that SEAC had not/could not have pointed out any slope stabilization measure while recommending the project to SEIAA for grant of EC in its 109th Meeting held on 1.02.2020.

- Therefore, in the absence of any findings in the decision made in the 104th Meeting of SEIAA, to the effect that it has noted the all the failures of SEAC, including the NIL appraisal, but has however taken the onus on itself and conducted an independent appraisal of the project as per the mandate of law, the impugned EC granted is totally in violation of the express provisions of the EIA 2006, and the law laid down by the Apex Court in the *Hanuman Laxman Aroskar case.* The impugned EC is vitiated by failure of due process of law, and is therefore liable to be set aside as illegal.

Law laid down by Honb'le Supreme Court on the subject of Appraisal & grant of prior EC under the EIA Notifications, 2006

1. Now let us examine if the above commissions and omissions on the part of the project proponent and on the part of SEAC & SEIAA constitutes gross illegality and whether the impugned EC can be sustained under the provisions of the EIA Notification, 2006.
2. Rather than the Appellant stating what the expectation of law Is, it would be more appropriate and rather convincing to look into the law laid down by Honb'le Supreme Court in so far as the mandate on the project proponent, SEAC and SEIAA in terms of the EIA Notification, 2006 issued under Sec.3(3) of the EP Act, 1986, which the Apex Court had the occasion to do in the ***Hanuman Laxman Aroskar*** case. The Apex Court opined as follows:
    i. *Under the 2006 notification, the EC process is based on the information provided by the applicant in Form 1. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and*

provide the applicant an opportunity to address these concerns in the subsequent study.

ii. ***Missing or misleading*** *information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately.*

iii. *That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification.*

iv. *The EAC and SEAC comprise experts in the field of environmental law.*

v. *The EAC and the SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1A and preparing comprehensive ToR which guide the preparation of the EIA reports*

vi. *The regulatory authority at the state level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI.*

vii. *Appraisal by the EAC is structured and defined by the 2006 notification. The process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and other documents like the EIA report, submitted by the applicant to the regulatory authority for the grant of an EC. On the conclusion of these proceedings, the EAC has to make "categorical recommendations" to the regulatory authority either for: (i) the grant of a prior environmental clearance on stipulated terms and conditions; or (ii) the rejection of the application. The recommendations made by the EAC to the regulatory authority must be based on "**reasons**".*

viii. *The requirement that the EAC must record reasons, besides being mandatory under the 2006 notification, is of significance for two reasons:*

(i) The regulatory authority has to consider the recommendation and convey its decision to the project proponent; and

(ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010.

ix. *The reasons furnished by the **EAC** for its **recommendation** are a basic link in the ultimate decision of the regulatory authority. They constitute **substantive material** which **will be** considered **by the Tribunal** when it considers **a challenge** to the grant of an EC.*

x. *The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project **bearing upon the environment**. It is **not bound** by the analysis which is conducted in the EIA report. **It is duty bound to analyse the EIA report**. The **reasons** which are furnished by the EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the **absence of cogent reasons**, the process by its very nature, together with the outcome stands vitiated.*

xi. *The EAC, as an expert body, has to scrutinize all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by the EAC as an expert body and **its reasons must reflect that this has been done**.*

3. From the above exposition of law as laid down by the Apex Court, the mandate of law in a nutshell is as follows:

- disclosure of all relevant information touching upon the environment and the likely impact of the project on the same by the project proponent is basic tenet on which the entire appraisal proceeds; independent appraisal on the environmental impact of a project as set out in the EIA and the adequacy of the mitigative measures suggested in the EMP is the '*causa essendi*' or the reason for existence of SEAC and SEIAA under law; and recording reasons for the recommendation/rejection by the SEAC is a mandatory requirement of law.

Hence any failure to appraise a project as per the mandate of law is deemed to be a failure of due process of law and the same will invalidate any EC granted on such outcome.

Summation

To sum up, on the basis of the above submissions on what transpired before the SEAC & SEIAA culminating in the grant of the impugned EC, it is clear that the

proceedings and grant of EC cannot pass muster in the eyes of law and is liable to be set aside as illegal. The proceedings before both SEAC & SEIAA are vitiated for the following, as submitted in details in the paragraphs supra:

- Non-Disclosure and material concealment in the EIA & EMP of vital details of flora, fauna and about trees to be felled, and about the existence of springs, underground water tunnel and existence of subsidence at the project site.
- Failure to notice the above concealment of vital environmental aspects in the EIA& EMP is indicative of the non-application of mind in the matter by both SEAC and also SEIAA, and it reveals the perfunctory manner in which they have gone about their statutory duties and obligations.
- NIL Appraisal of the project by SEAC/SEIAA on even a single environmental aspect set forth in the EIA and the EMP submitted by the project proponent.
- SEAC's recommendation of the impugned project to SEIAA for grant of EC is in contradiction to what was actually suggested to it by the Sub Committee as revealed in the 2nd Inspection Report of 10.01.2020.
- Stipulating any number of special conditions is not a substitute for the appraisal a project as per the mandate of law. Appraisal on each and every environmental aspect, the likely adverse impact of the project on the environment and the adequacy of the mitigative measures to protect the environment is the sine quo non for the grant of an EC.
- Non appraisal of the Subsidence Stabilisation plan by SEAC & SEIAA is not the sole default committed by them in this matter. None of the other environmental aspects that may be impacted by the project as stated in the EIA & EMP was also not independently appraised.

Since the entire proceedings is vitiated from start to finish, both at the hands of the project proponent and the Statutory Authorities, it is most respectfully prayed that this Honb'le Tribunal may be pleased to set aside the Order no.1239/EC2/2019/SEIAA dated 6.08.2020 on the files of the 1st Respondent SEIAA granting Environmental Clearance No.75/2020 to the quarrying operations of the

2nd & 3rd Respondent in Arimbra Hill area in Survey No. 153/2 and 154pt, Morayoor Village, Kondoty Mallapuram District, and thus render justice.

INCIDENTAL POINTS FOR CONSIDERATION:

If this Honb'le Tribunal is inclined to pass orders as prayed for, the counsel for the Appellant humbly submits that following points may be kindly considered so that full justice is done to the cause of protection of environment in this matter.

- The impugned project is a private project primarily driven for the profit of the 2nd & 3rd Respondent project proponents, quite unlike the public projects in the Hanuman Laxman Aroskar case (greenfield international airport project) and the Bengaluru Development Authority case (peripheral ring road project), where hundreds of crores of rupees of tax payers money was already expended on the preparatory work, like land acquisition, etc., and where thousands of crores of public money was hanging in balance on the projects; and also where the projects itself were intended for the benefit millions of the general public, augmenting the infrastructure development of the State/City.
- In both the above cited public projects, the State/Public Authority was the project proponent, and they had diligently prosecuted the case by appearing before the Tribunal and the highest Court of the land in right earnest and was represented by the highest law officers of the State. The assistance rendered by all the counsels, both on the side of the Appellants and the project proponents, was acknowledged and appreciated by the Apex Court.
- In contradistinction, in this Appeal, the private project proponent has chose to stay outside the above Appeal proceedings pending before this Honb'le Tribunal despite the service of notice of the above Appeal proceedings at the address shown in the impugned EC, and has the audacity to proceed with its preparatory works at the site, by moving in heavy earthmovers, in the smug belief they are beyond the reach of law. This can be seen from the photographs produced by the Appellant in the I.A.No. of 2021 seeking early hearing in the matter, taking advantage of

the fact that no interim orders were passed in the matter at the time of admission of the Appeal.

In consideration of the above submissions, the Appellant most respectfully submits that if any directions are issued to the 1st Respondent SEIAA to take up the appraisal of the impugned project once again in any time bound manner, as was done by the Honb'le Supreme Court in both the matters cited above, while setting aside the respective ECs, by exercising its power of rendering full and complete justice under Article 142 of the Constitution, the same will result only in playing into the hands of the Respondent project proponents, and they will ultimately have the last laugh by enjoying the benefits of fast tracked appraisal of the project on the strength of directions of this Honb'le Tribunal, in a proceedings they chose not to participate.

In any event the project proponent had not gone with clean hands to the Statutory Authorities and their actions suffer from the vice of material concealment and non-disclosure of vital environmentally sensitive information in the EIA & EMP. Hence the entire proceedings is vitiated ab initio.

Hence it is respectfully prayed that this is a fit case where the Appeal should be allowed as prayed for and the impugned EC is set aside; and the Respondent project proponent should be left to their means to take up any course of action which is available to them under the law.

It is also a fit case exemplary costs may be also fixed and the Respondent project proponents may also be directed to bear the costs of the Appellant, in the interest of justice.

Dated at Chennai, this the 13th day of December 2021

Counsel for Appellant

Materials Handed over to Tribunal at the time Arguments:

1. Minutes of the 94th, 96th, 106th & 109th Meetings of SEAC & the 104th Meeting of SEIAA
2. Agenda of the 104th Meeting of SEIAA
3. Photostat copy of the decision of the Apex Court in *Hanuman Laxman Aroskar Vs. UOI* **(2019) 15 SCC 401**

ANNEXURE

LEGISLATIVE SCHEME Vis – a – Vis DEVELOPMENT ACTIVITIES & PROTECTION OF ENVIRONMENT

The protection of the environment and ecology is a constitutional mandate on the State under Article 48-A, and on every Citizen under Article 51-A(g) of the Constitution of India. The Environment Protection Act, 1986 ['EP Act'] was brought into force for the better protection of the environment by striking a right balance between development objectives and the need to protect the environment.

A. Environment Protection Act, 1986

Section 3(3)

- *SEIAA and SEAC are constituted under this enabling provision of the EP Act.*
- *They are thus statutory authorities discharging statutory functions.*

B. EIA Notification, 2006

➢ *Para 2 – Requirement of prior EC* ➢ *Para 5 – Screening, Scoping and Appraisal Committee* ➢ *Para 7 – Stages in the prior EC process for new projects*	➢ *Para 3 – Constitution of SEIAA* ➢ *Para 6 – Application for prior EC* ➢ *Para – 8 Grant or reject of prior EC*
➢ *Item 1(a) of the Schedule – Mining of minerals*	

C. NGT Act, 2010

➢ ***Section 16. Tribunal to have appellate jurisdiction.***— *Any person aggrieved by,—*

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal

DETAILED ANAYSIS OF THE RECORDS OF SEAC & SEIAA

1. In the 94th Meeting held on 12th & 13th March 2019, the impugned project was taken up for the 1st time by SEAC as item no: 94.55. The following was recorded.

Decision: *The Committee decided to inform the proponent for submission of the following documents:*

1. Baseline details

2. Monitoring data of sound and air

3. Flora and Fauna should be reworked

4. CER to be reworked in consultation with the working group of Local Self Government concerned.

The Committee entrusted Dr.P.S.Easa & Dr.S.Sreekumar for the site inspection.

2. The following emerges from the decision of SEAC in its 94th Meeting:

   - That it was only a preliminary meeting in so far as the impugned project was concerned, where the project proponent was directed to produce Baseline details (EIA), including monitoring data of sound and air, flora and fauna should be reworked and CER to be reworked in consultation with the working group of LSG concerned.
   - That the only documents that were present before the SEAC at that time was the Form 1 and PFR, and it is also clear that the Baseline Study, EIA and EMP was not before the SEAC as on that date.
   - That there was no appraisal of the project per se on vital environmental aspects, as important documents like EIA & EMP were only being directed to be filed and are therefore to be appraised and scrutinized in future.

3. On 8.04.2019, the Sub Committee inspected the project site and filed its Report to SEAC.

   i. A bare perusal of the said Inspection Report reveals that it has not gone into any of Environmental aspects listed in the Form 1 or as pointed out in the PFR.

   ii. The preliminaries of the Inspection Report are only an extract from the Form 1/PFR of the location and lie of the project site and nothing more is stated therein on any of the Environmental aspects as provided in the Form 1/PFR.

   iii. In the observations also there is no whisper about the Baseline Study, the EIA and the EMP. Hence it is clear and very important to note that the Sub Committee had not gone into any of the environmental parameters that SEAC was duty bound to look into while appraising a project.

   iv. That being so, the Sub Committee was however able to dig out grave environmental hazards in the proposed site, which was evidently concealed by the project proponent in the Form 1, by answering 'NO' to the query at Sl.no.14 under the 2nd Heading.

   v. It found evidence of existence of seasonal springs, an underground water tunnel and also existence of subsidence within the project site.

   vi. The Sub Committee suggested the deference of a decision on EC for further observation of the observed problems and another inspection after the monsoon ends for assessment based on which decision could be taken.

4. In the 96th Meeting held on 26th & 27th April 2019, the impugned project was taken up for consideration by SEAC as item no: 96.63. The following was recorded.

   Decision: *The Committee accepted the recommendation of Sub Committee and decided to keep pending the case until next monsoon to observe whether the observed problems are aggravated or reduced.*

5. The following is emerging from the decision of SEAC in its 96th Meeting:

   - SEAC has not mentioned anywhere whether the directions issued to the project proponent made in its 94th Meeting, including the direction to produce the Baseline Study (the EIA Report & EMP), including the reworking of flora and fauna were complied with or not.
   - If EIA Report and EMP were indeed made available to it, then there is nothing on record to show that such documents were taken into consideration by SEAC in the above Meeting, and that SEAC had carried out an objective scientific analysis on all aspects of the environmental parameters and the impact of the project based on the inputs given by the project proponent in Form 1, the PFR, the Baseline Study, and the EIA & EMP Report.
   - That none of the vital environmental parameters that are mandated for an appraisal of a project based on the Form 1, the PFR, the Baseline Study, and the EIA & EMP Report was looked into by the Sub Committee is evidenced by the Site Inspection Report of 8.04.2019. It is silent on all those aspects.
   - That the only thing that the Sub Committee had noted in its Inspection Report was its own findings and observations at the project site which were in fact concealed in Form 1/PFR/EIA and EMP; and the only recommendations it made to SEAC in the said Report are those as submitted in the paragraph 18(iv), (v) & (vi) hereinabove.
   - In accepting the said recommendation of the Sub Committee, SEAC was only accepting what was recommended to it and nothing more.
   - There is nothing to show that SEAC had taken a serious note of such material concealments that was revealed in the site inspection, which it was mandated to do under the EIA 2006 Notification. It has simply glossed over the factum of concealment and swept it under the carpet.

6. In the 106th Meeting held on 28th, 29th & 30th November 2019, the impugned project was taken up for consideration by SEAC as item no: 106.71. The following was recorded:

Decision: *Committee decided to entrust Dr. P.S.Easa & Dr. S.Sreekumar for field inspection.*

7. The following emerges from the decision of SEAC in the 106th Meeting:

   - That the only business that was transacted in the 106th meeting was authorization of the site inspection by the Sub Committee.
   - That it is evident on the face of the record that a scientific appraisal on vital environmental parameters and concerns based on the inputs given by the project proponent in Form 1, the PFR, the Baseline Study, and the EIA & EMP Report was not carried out by SEAC in its 106th Meeting also.

8. On 10.01.2020, the Sub Committee inspected the project site and filed its Report to SEAC.

   i. A bare perusal of the said 2nd Inspection Report of 10.01.2020 reveals that it has not gone into any of the Environmental aspects listed in the Form 1 or as pointed out in the PFR, the Baseline Study, the EIA and the EMP. The preliminaries of the 2nd Inspection Report are only an extract from the Form 1/PFR of the location and lie of the project site and a narration of its observations and recommendations made after the earlier visit to the project site.

   ii. In the extant observations also there is no whisper about the Baseline Study, the EIA and the EMP. Hence it is clear and very important to note that the Sub Committee had not gone into any of the vital environmental parameters in the 2nd Inspection also that SEAC was duty bound to look into while appraising a project.

   iii. That being so, the Sub Committee was concerned only about its earlier findings at the project site, and on nothing else.

   iv. While recording its observations, the Sub Committee noted that though soil piping was observed during the 8.04.2019 visit, no reactivation of ground subsidence or new failures have been observed in the nearby area. Subsidence has also not worsened even after the intense rainfall during the 2019 monsoon period.

   v. In its recommendations to SEAC, the Sub Committee opined that the proponent should submit a Plan to stabilize the area of subsidence based on which the application could be recommended for EC.

9. In the 109th Meeting held on 31st January and 1st February 2020, the impugned project was taken up for consideration by SEAC as item no: 109.40. The following was recorded:

   Decision: *The Committee accepted the field inspection report and decided to recommend the issuance of EC subject to the specific condition that the proponent shall take adequate measures for slope stabilization and a report for stabilization has to be provided.*

10. The following emerges from the decision of SEAC in its 109th Meeting:

   - That acceptance of the field inspection report and recommendation for issuance of EC were the only business transacted in the said Meeting.
   - That the recommendation for issuance of EC was made despite the Sub Committee recommending to SEAC that a Plan to stabilize the area of subsidence should be called for from the project proponent.
   - The Sub Committee had categorically recommended that only based on such Plan for Stabilization of subsidence the application could be recommended for EC.
   - That none of the other vital environmental parameters that are mandated for an appraisal of a project based on the Form 1, the PFR, the Baseline Study, and the EIA & EMP Report was looked into by the Sub Committee is evidenced from the contents 2nd Site Inspection Report of 10.01.2020. It is silent on all those aspects, same as the 1st Site Inspection Report of 8.04.2019.
   - That it is evident on the face of the record that the recommendation for issuance of EC was made by SEAC evidently without conducting any scientific enquiry by any independent appraisal of the inputs given by the project proponent in Form 1, the PFR, the Baseline Study, EIA and EMP Report and impact on the environment by the project, even in the 106th Meeting also.
   - Not even a single word by way of reasoning is given by SEAC for arriving at its decision for recommending the project to SEIAA for issuance of the EC.

11. Now let us examine on how SEIAA had acted in the matter, after it received the recommendation from SEAC for issuance of EC. The impugned project was taken up by SEIAA in its 104th Meeting held on 22nd, 23rd & 24th June 2020 as Item.no: 104.26 for considering the grant of EC. The decision of SEIAA which is glaringly wrong and the unsustainable condition imposed as recorded in the MoM of the said Meeting is extracted as follows:

    "*xxxx*

Authority noted that SEAC had appraised the proposal based on the details given in the application, Pre-feasibility Report, additional details/documents obtained from the proponent during appraisal, Mining Plan and the filed inspection report and SEAC had recommend for issue of EC subject to certain conditions.

Authority decided to issue EC for a period of 5 years for the quantity mentioned in the approved Mining Plan subject to the following specific conditions in addition to the general conditions.

xxxx"

2. The proponent shall take adequate measures for slope stabilization as pointed out by SEAC and activities taken up for slope stabilization shall be included in the compliance reports.

xxxx

12. The following clearly emerges from the decision taken by SEIAA in its 104th Meeting:

- SEIAA has failed to note that SEAC has not made any scientific appraisal of the project by testing the project on various environmental parameters by way of an independent analysis of the EIA & EMP filed by the project proponent.
- SEIAA could have easily found out that SEAC had never appraised the project as mandated by law at any point of time, had only it had gone through the decisions of the SEAC as recorded in the Minutes of the 94th, 96th, 106th & 109th Meetings of SEAC.
- The mechanical recording by SEIAA to the effect that the *Authority noted that SEAC had appraised the proposal based on the details given in the application, Pre-feasibility Report, additional details/documents obtained from the proponent during appraisal, Mining Plan and the filed inspection report,* is clear pointer to the fact that SEIAA has not even gone through the records of SEAC and has blindly issued the EC on the presumption that SEAC has discharged its statutory duty. It is apparent that SEIAA had unilaterally and arbitrarily supplemented the findings of SEAC, which SEAC itself has not recorded in any of its decisions rendered in any of its Meetings, including in the 109th Meeting.
- The non-application of mind is further exposed in its stipulation of the Special Condition no.2, wherein it states that "*The proponent shall take adequate measures for slope stabilization as pointed out by SEAC"*, when the fact remains that SEAC had not pointed out any adequate measures for slope stabilization while making its recommendation to SEIAA.

- It is borne by record that SEAC had washed its hands off the appraisal of the impugned project on 1.02.2020, while the Plan was admittedly filed only on 7.03.2020, and therefore SEAC could not have even gone through the same and found the measures suggested in the Plan as satisfactory or not, and the fact remains that SEAC had not pointed out any slope stabilization measure while recommending the project to SEIAA for grant of EC in its 109th Meeting.
- By holding that SEAC has miserably failed in its statutory duty, SEIAA should have atleast on its own made an independent analysis of the EIA & EMP and found the project was fit for grant of EC.
- It should have also gone into the Plan for Stabilization of the Subsidence and recorded satisfaction of any/all measures suggested in the Plan and directed the proponent to execute the same at the project site as special condition for grant of EC. On the contrary, it is apparent that SEIAA has assumed and presumed that SEAC has discharged its statutory obligation of proper appraisal of the project on all environmental aspects with reference to the documents submitted by the project proponent and by the Sub Committee. Therefore, in the absence of any findings in the decision made in the 104th Meeting of SEIAA, to the effect that it has noted the failures of SEAC, but has however conducted an independent appraisal of the project as per the mandate of law, the impugned EC granted is totally in violation of the express provisions of the EIA 2006 as laid down by the Apex Court in the *Hanuman Laxman Aroskar case.* The impugned EC is vitiated by failure of due process of law, and is therefore liable to be set aside as illegal.

13. The above is the detailed analysis of the decision taken by SEAC & SEIAA as can be gathered from the respective MoMs & the 2 Inspection Reports of the Sub Committee of SEAC.
