

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT CHENNAI (SZ)**
[Under Section 18(1) read with 16 of National Green Tribunal Act, 2010]

Appeal No.45 of 2022

Between:

V. Ramasubbu,

...Appellant

And

Member Secretary SEIAA, Andhra Pradesh
And 4 others .

...Respondents

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COUNSEL FOR THE 5th RESPONDENT

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT CHENNAI (SZ)**
[Under Section 18(1) read with 16 of National Green Tribunal Act, 2010]

Appeal No.45 of 2022

Between:

V. Ramasubbu,
No.8/18 C, Sri Sakthi Nagar,
Krishnapuram, Palayamkottai – 627011,
Tirunelveli.
Email – advramasubbu@gmail.com

...Appellant

And

1. Member Secretary
State Level Environment Impact Assessment Authority – Andhra Pradesh
D.No. 33-26-14 D/2, Near Sunrise Hospital,
Pushpa Hotel Centre, Chalamavari Street, Kasturibaipet,
Vijayawada – 520010.
2. The Chairman
Andhra Pradesh Pollution Control Board,
APPCB D.No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Centre,
Chalamavari Street, Kasturibaipet,
Vijayawada – 520010.
Email: chairman@appcb.gov.in
3. The Secretary
Department of Atomic Energy,
Govt. of India,
Anushakti Bhavan, Chatrapathi Sivaji Maharaj Marg,
Mumbai – 400 001.
Email: chairman@dae.gov.in
4. The Director
Dept. of Mines and Geology,
Sri Anjaneya Tower, D.No. 7-104, B-Block,
5th & 6th Floor, Ibrahimpatnam,
Vijayawada – 521 456.
Email: admin@apmines.gov.in indirectormines@yahoo.co.in
5. The Sr. Vice President
TRIMEX SANDS PRIVATE LIMITED,
Vatsavalasa Village Srikurmam P.O,
Gara mandal Srikakulam District – 532 404.

...Respondents

**MEMO FILED ON BEHALF OF THE
RESPONDENT NO. 5**

01. It is submitted that, the present Appeal has been filed by the Appellant seeking for rejection of grant of environmental clearance dated 28.07.2022 issued by the 1st Respondent in favour of 5th Respondent. The same is being contested on behalf of the 5th Respondent.

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02. It is submitted that, however to the surprise, during the pendency of the subject appeal, by proceedings dated 21.11.2023 bearing No.SEIAA /AP/SKLM/IND/11/2021/3654/230.33, the 1st Respondent has revoked the Environmental clearance dated 28.07.2022.

03. It is submitted that, challenging the same, Writ Petition No.31657 of 2023 was filed by the 5th Respondent before the Hon'ble High Court of Andhra Pradesh praying for:

"appropriate writ order or direction particularly in the nature of Writ of Mandamus and declare the impugned order dated 21 11 2023 passed by the Respondent No.1 thereby cancelling the environmental clearance dated 28 07 2022 as illegal arbitrary unconstitutional and in gross violation of principles of natural justice and set aside the same pending the disposal of the Appeal no 45 of 2022 on the file of Honble NGT Chennai."

04. It is submitted that, after hearing both the parties, the Hon'ble High Court was pleased to pass the following order-

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order bearing No.SEIAA/AP/SKLM/IND/11/2021/3654/230.33, dated 21.11.2023, passed by the 3rd respondent- State Level Environment Impact Assessment Authority of Andhra Pradesh, and the matter is remitted back to the 3rd respondent, for consideration of the issue afresh, after complying with the principles of natural justice, so also, by issuing a show cause notice in accordance with the provisions of EIA Notification, dated 2006.

Pursuant thereto, the present memo is being filed.

Hence it is humbly prayed that, this Hon'ble Tribunal maybe pleased to take this memo on record and thus render justice.

Dated at Chennai on this the 29th day of January ,2023.



COUNSEL FOR THE 5th RESPONDENT

	State Level Environment Impact Assessment Authority (SEIAA)
	Andhra Pradesh
	Ministry of Environment, Forests & Climate Change
	Government of India
Dr. YSR Paryavaran Bhavan, APIIC Colony Road, Gurunanak Colony, Auto Nagar, Vijayawada-520007.	

21.11.2023
DESPATCHED

REGD.POST WITH ACK.DUE

Order No.SEIAA/AP/SKLM/IND/11/2021/3654/230.33 - 246
 21/11/2023

Sub	SEIAA, A.P. - Beach Sand Mineral separation plant of M/s. Trimex Sands Private Limited at Sy.No.78, 79, 80, 84, 176 to 183 & 193, Vatsavalasa Village, Gara Mandal, Srikakulam District, Andhra Pradesh - Revocation of Environmental Clearance - Reg.
Ref:	<ol style="list-style-type: none"> 1. Your application for ToR received through online on 22.11.2021 (Proposal No. SIA/AP/IND/69360/2021). 2. The minutes of SEAC meeting held on 14, 15 & 16th Dec 2021 & SEIAA meetings held on 05.01.2022 & 06.01.2022 3. The minutes of SEAC meeting held on 14.02.2022 & SEIAA meeting held on 21.03.2022 4. The ToR issued on 12.04.2022. 5. Your application for EC received through online on 30.04.2022. 6. The minutes of SEAC meeting held on 18.05.2022 & SEIAA meeting held on 26.05.2022. 7. Environmental Clearance Issued by SEIAA Vide Order dt.28.07.2022. 8. Appeal No. 45 of 2022 (SZ) filed in Hon'ble NGT, Chennai against M/s Trimex Sands Private Limited. 9. The minutes of SEAC meeting held on 10.10.2023. 10. The proponent's representation dated.09.11.2023. 11. The minutes of SEIAA meeting held on 20.11.2023.

WHEREAS, you have filed an online application in PARIVESH vide reference 1st cited, seeking Terms of Reference for the Mineral Separation Plant (MSP) of M/s Trimex Sands Private Limited at Sy.No.78, 79, 80, 84, 176 to 183 & 193, Vatsavalasa Village, Gara Mandal, Srikakulam District, Andhra Pradesh.

WHEREAS, the issue was discussed in the State Level Expert Appraisal Committee (SEAC) meetings held on 14,15 & 16th Dec 2021 & 14, 15 & 16th Feb 2022 and in the State Environmental Impact Assessment Authority (SEIAA) meetings held on 05.01.2022 , 06.01.2022 & 21.03.2022. The Member Secretary SEAC issued TOR on 12.04.2022 to Trimex Private Limited without Public Hearing.

WHEREAS, you have filed an application on 30.04.2022 seeking Environmental

Clearance for the Mineral Separation Plant (MSP) of M/s Trimex Sands Private Limited at Sy. No. 78, 79, 80, 84, 176 to 183 & 193, Vatsavalasa Village, Gara Mandal, Srikakulam District, Andhra Pradesh.

WHEREAS, the issue was discussed in the State Level Expert Appraisal Committee (SEAC) meetings held on 18.05.2022 and the SEAC recommended to issue EC with a condition that the proponent shall comply with conditions specified in the earlier EC order.

WHEREAS, the State Environmental Impact Assessment Authority (SEIAA) in its meeting held on 26.05.2022 agreed with recommendations of SEAC and issued Environmental Clearance on 28.07.2022 to M/s. Trimex Sands Private Limited stipulating the following conditions :

1. Conditions No,XVIII at Point B. of General conditions- The proponent shall obtain all other mandatory clearances from respective departments
2. Condition No.2 at Part A of Special Conditions- The proponent shall comply with conditions specified in the earlier EC order dated.17.04.2015 issued by MoEF&CC.

WHEREAS, a court case was filed in Hon'ble NGT on dt.26.08.2022 in Appeal No. 45 of 2022 (SZ) against M/s Trimex Sands Private Limited. The Hon'ble NGT directed the SEIAA vide order dt.01.05.2023 as follows:

"Let the SEIAA – Andhra Pradesh also give the answer as to how the Environmental Clearance was granted for the project, when it is not a composite project of both mining and mineral beneficiation".

WHEREAS, the matter was referred SEAC to examine on the Hon'ble NGT direction. The SEAC in the meeting held on 10.10.2023 discussed the matter and the minutes of SEAC meeting are as follows:

- a. M/s. Trimex Sands Private Limited was operating Integrated Mining cum Beneficiation project for Beach Sand Minerals at Vatsavalasa(V), Tonagi (M), Srikakulam District.
- b. The industry obtained Environmental Clearance from MoEF vide order dt 10.11.2004 for mining of Beach Sand and Separation of heavy minerals (Garnet, Ilmenite, Leucoxene, Seliminite & minor amount of Rutile & Zircon) and to set up an export oriented mining unit at Vatsavalasa & Tonagi villages, Gara (M), Srikakulam in an extent of 7.2 Sq Kms. The industry obtained EC for expansion vide order dt 17.04.2015 from 2 MTPA to 6 MTPA over an extent of 720 HA.
- c. The project involves mining, wet Pre-Concentration Plants (PCP) and Mineral Separation Plant (MSP) to produce Ilmenite, Garnet, Rutile, Zircon and Sillimanite. Pulverizing unit with ball mill installed in the mineral separation plant. The Mining and PCPs are established within the mining lease area, whereas the Mineral Separation Plant (MSP) has been established outside the mining lease area.
- d. The unit was in operation since 2009-10. The policy decision of the

Government of India in 2019 to permit only Govt. companies in the mining of beach sand minerals resulted in the stoppage of the Mining activity and MSP, though it is situated outside the Mine Lease area.

- e. The proponent submitted application for grant of TOR on 22.11.2021 and also requested for exemption from Public Hearing to start Mineral Separation Operation by using mineral concentrate from India / abroad.
- f. This proposal was examined in the 172nd SEAC meeting held on 16.12.2021 and the SEAC Committee recommended for issue of Standard TOR with EIA & Public Hearing. The proposal was placed before the 169th SEIAA meeting and the SEIAA AP referred the proposal to SEAC to re-examine the application in the light of request letter dt. 20.12.2021 submitted by the proponent to SEIAA seeking exemption for public hearing.
- g. The committee noted that as it is an established unit & in operation for several years and it is 50% lower capacity than for which PH was conducted & EC accorded earlier, the decision of 179th SEAC meeting is as follows:
 "The committee after examining the project proposal, presentations, MoEF&CC notification & OMs and detailed deliberations, recommended for issue of Standard TOR with EIA, without public hearing under 7(II) of EIA Notification, 2006 and its amendments thereof".
- h. The proposal along with recommendation of the SEAC 179th SEAC meeting was placed before the 177th SEIAA meeting and the SEIAA agreed with 179th SEAC meeting recommendations. Accordingly, TOR was issued on 12.04.2022.
- i. The project proponent has applied for Environmental clearance on 30.04.2022 and was placed before the 187th SEAC meeting. The decision of 187th SEAC meeting is as follows:
 "The Committee after examining the project proposals, presentations, MoEF&CC' Notifications & OMs and detailed deliberations, recommended for issue of Environmental Clearance with conditions specified in the earlier EC order accorded by MoEF & CC."
- j. The proposal was placed before 184th SEIAA meeting and agreed with recommendation SEAC to issue Environmental clearance. The SEIAA granted Environmental clearance on 28.07.2022 for Mineral Separation Plant of 0.44 MTPA stipulating a condition that
 - i. The Mineral Separation Plant shall be operated by sourcing mineral concentrate from India/Abroad.
 - ii. No mining shall be carried out without obtaining EC.
- k. An appeal No 45 of 2022(SZ) was filed by V.Ramasubbu, Krishnapuram, Palayamkottai, Tirunelveli in the Hon'ble National Green Tribunal (NGT), South Zone, Chennai and questioned "the SEIAA – Andhra Pradesh also give the answer as to how the Environmental Clearance was granted for the project, when it is not a composite project of both mining and mineral beneficiation".
- l. It is to submit that as per the Environment impact assessment Notification, 2006 and its amendments thereof and MoEF & CC Notification S.O. 1886(E) dt.

File No.APPCB-11033/6/2022-TEC-EC-APPCB

20.04.2022, the project categorized as Mineral Beneficiation under 2(b) said that "All Mineral beneficiation project irrespective of the procedure for beneficiation". Mineral beneficiation alone only can appraise under category 2(b) of EIA notification, 2006 and its amendments thereof.

m. During the appraisal the SEAC noted that:

1. During the meeting the project proponent has informed that they are procuring mineral from Andhra Pradesh Mineral Development corporation Limited., (APMDCL).
 2. The project proponent also informed that the Minerals after extraction and they are going to sell product through Indian Rare earths Ltd (IREL) and also informed that the project will obtain permission of Department of Atomic Energy (DAE).
 3. The SEAC, AP has examined the order dt. 01.03.2019 and noted the Para No. 12 (Henceforth, any Mineral concession of Beach Sand Minerals shall be granted to a "Government company or corporation owned or controlled by the Government" under the provisions of the Atomic Minerals Concession Rules, 2016).
 4. The MoEF&CC S.O.No. 1886 (E) dt. 20.04.2022, it is clear that against item 2 (b) in column (4), for the symbol, figures, words and letters — "< 0.5 million TPA throughput", the words — All mineral beneficiation projects irrespective of the procedure for beneficiation shall be substituted.
 5. The SEAC, AP has recommended Environmental Clearance. Since M/s. Trimex Sands Private Limited is procuring and proposed to sell mineral to Government body only.
- n. The Under Secretary, Department of Atomic Energy (3rd Respondent) filed an affidavit before the Hon'ble NGT in connection with Appeal No 45(2022) and extract of the para no 6 is as follows:

"The amendment of Atomic Mineral Concession Rules (AMCR), 2016 on 20.02.2019 has resulted in bringing all the Beach Sand Mineral (BSM) deposits in the country under the umbrella of ACMR-2016 irrespective of grade of Monazite and prohibited the entry of private entities for **the downstream activities** (Mining and Separation) in the BSM sector in the country. Accordingly, vide order dt.01.03.2019, Ministry of Mines (MoM) requested all the State Governments for pre-mature termination of all mining leases granted to private BSM operators with the objective of conserving and protecting the critical elements occurring in BSM. Further vide circular dt.11.04.2019, MoEF&CC prohibited Environment Clearance for private BSM entities. The responsibility of handling and liberation of Radioactivity from any source material including BSM (atomic minerals) lies with Department of Atomic Energy (DAE)."

- o. The SEAC discussed the matter regarding the Affidavit filed by Atomic Energy Department in its 230th meeting held on 10.10.2023 and noted that the

Department is considering the downstream activities of mining (Mineral separation plant) also as a prohibited activity. MoEF&CC vide circular dt.11.04.2019 prohibited the grant of statutory clearance for mineral concession of Beach Sand Minerals held by Private persons / company.

- p. **In light of the above the SEAC Committee recommended for revocation the EC order dt.28.07.2022 in accordance with AMCR 2016 under G.S.R. 134(E) dt.20.02.2019 & MoEF&CC vide circular F.No. 22-19/2019-IA.III dt.11.04.2019 as the process of Mineral Separation Plant is also considered as downstream activities. However, the SEIAA, AP is also suggested to obtain legal opinion from the Standing Counsel before taking final decision on the matter.**

WHEREAS, the proponent vide letter dt.09.11.2023 requested the SEIAA, A.P., to reject the recommendation of SEAC for revocation of the EC order.

WHEREAS, the SEIAA in its meeting held on 20.11.2023 examined the recommendations of SEAC, representation of the proponent dated.09.11.2023 & legal opinion dated.17.11.2023 of the standing counsel of SEIAA and decided to **Revoke** the EC order dated.28.07.2022 as per the recommendations of SEAC on the following grounds:

1. The Department of Atomic Energy is considering the downstream activities of mining (Mineral separation plant) also as a prohibited activity as per the Affidavit filed by Atomic Energy Department **in accordance with AMCR 2016 under G.S.R. 134(E) dt.20.02.2019**. The MoEF&CC vide circular dt 11.04.2019 prohibited the grant of statutory clearance for mineral concession of Beach Sand Minerals held by Private persons / company .
2. As per the Condition No.2 at Part A of Special Conditions- The proponent shall comply with conditions specified in the earlier EC order dated.17.04.2015 issued by MoEF&CC& **condition No,XViii at Point B. of General conditions- The proponent shall obtain all other mandatory clearances from respective departments**. The proponent has not obtained permission from AERB clearance after the lapse of one year 3 months, there by not complied the condition stipulated in EC order.

In view of the above, the SEIAA hereby revokes the EC order dt.28.07.2022 issued to M/s. Trimex Sands Private Limited at Vatsavalasa Village, Gara Mandal, Srikakulam District, Andhra Pradesh as per the condition No. xx & xxi of General conditions of EC order.

No beneficiation work shall be carried out without obtaining Environmental Clearance as per the provisions laid under E(P) Act, 1986 and EIA notification 2006 dt.14.09.2006 and its amendments thereof.

Any appeal against this letter shall lie with the National Green Tribunal as prescribed under section 16 of National Green Tribunal Act 2010.

Special Secretary To Govt

MEMBER SECRETARY, SEIAA, A.P.	MEMBER, SEIAA, A.P.	CHAIRMAN, SEIAA, A.P.
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To
M/s Trimex Sands Private Limited,
Sri V.H. Rafi Ahammed , Sr. Vice President,
Vatasavalasa Village, Srikakulam P.O,
Gara Manadal, Srikakulam District,
Andhra Pradesh -532404.

Copy to:

1. The Chairman, SEAC, A.P. for kind information.
2. The Member Secretary, APPCB for kind information.
3. The EE, RO: Srikakulam, APPCB for information.
4. The IRO, Sub Officer, MoEF& CC, GoI, Vijayawada for kind information.
5. The Secretary, MoEF&CC, GoI New Delhi for kind information.
6. Monitoring cell, MoEF&CC, GoI, New Delhi for kind information.
7. The District Collector, Srikakulam District, Andhra Pradesh for kind information.

Digitally Signed by Dr P V
Chalapathi Rao
Date: 21-11-2023 20:56:14
Reason: Approved

**THE HON'BLE SRI JUSTICE A.V. SESA SAI
&
THE HON'BLE SMT.JUSTICE SUMATHI JAGADAM**

WRIT PETITION No.31657 of 2023

ORDER : *(per the Hon'ble Sri Justice A.V. Sesa Sai)*

Heard Sri Avinash Desai, learned Senior Counsel representing Sri D.S.Sivadarshan, learned counsel for the petitioner, Sri Jupudi V K Yagnadutt, learned In-charge Deputy Solicitor General for respondent Nos.1 & 2, Sri V.Surendhra Reddy, learned Standing Counsel for the respondent Nos.3 & 4 and Sri Md.Abdul Basith, learned Standing Counsel for respondent No.5.

2. Order bearing No.SEIAA/AP/SKLM/IND /11/2021/3654/230.33, dated 21.11.2023, passed by respondent No.3-State Level Environment Impact Assessment Authority of Andhra Pradesh, cancelling the Environmental Clearance accorded to the petitioner on 28.07.2022, is under challenge in the present Writ Petition.

3. By way of the proceedings, dated 28.07.2022, earlier the 3rd respondent herein, granted Environmental Clearance in favour of the petitioner herein. Now, by way of

the impugned order, the said Environmental Clearance came to be cancelled by the 3rd respondent.

4. The essence of the case of the petitioner as advocated by the learned Senior Counsel, Sri Avinash Desai, is that, without being preceded by a Show cause notice and opportunity of being heard to the petitioner, the 3rd respondent herein passed the impugned order. It is also the submission of the learned counsel that, the action on the part of the 3rd respondent is not only violative of the principles of natural justice, but also in contravention of paragraph 8(vi) of the Environmental Impact Assessment (for short 'EIA') Notification, dated 2006. Paragraph 8(vi) of the EIA notification, 2006, reads as follows :

“Rejection of an application or cancellation of a prior environment clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice”.

5. According to the above said paragraph 8(vi) of the EIA Notification, dated 2006, the respondent authorities are required to follow the principles of natural justice.

Admittedly, in the case on hand, no show cause notice was issued by the 3rd respondent before resorting to the impugned action. Therefore, on the said short ground, the impugned order is liable to be set aside.

6. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order bearing No.SEIAA/AP/SKLM/IND/11/2021/3654/230.33, dated 21.11.2023, passed by the 3rd respondent- State Level Environment Impact Assessment Authority of Andhra Pradesh, and the matter is remitted back to the 3rd respondent, for consideration of the issue afresh, after complying with the principles of natural justice, so also, by issuing a show cause notice in accordance with the provisions of EIA Notification, dated 2006.

No order as to costs.

As a sequel, pending miscellaneous petitions, if any, stand closed.

A.V. SESA SAI, J

SUMATHI JAGADAM, J

20th December,2023.
RPD

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THE HON'BLE SRI JUSTICE A.V. SSHA SAI
&
THE HON'BLE SMT.JUSTICE SUMATHI JAGADAM

W.P. No.31657 of 2023

(per A.V. Sessa Sai, J)

Date: 20.12.2023

RPD