

**BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN BENCH  
CHENNAI**

**APPEAL NO. 49 OF 2021 (SZ)**

**IN THE MATTER OF:**

**Rajesh Ghantayath**

..... **APPLICANT**

**Versus**

**Union of India and others**

..... **RESPONDENTS**

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**Place: Bengaluru**

**Date: 03.08.2021**



**DEPONENT**

*S. Suresh*  
31/8/2021

**S. SURESH**  
**REGIONAL DIRECTOR**  
**CENTRAL POLLUTION CONTROL BOARD**  
**REGIONAL DIRECTORATE (SOUTH)**  
**(MIN. OF ENV. FOREST & CC, GOVT OF INDIA)**  
**BENGALURU - 560 079, MOB : 9480672128**

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**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 3 - CENTRAL  
POLLUTION CONTROL BOARD (CPCB)**

I, S. Suresh, S/o S. R. Sathyanarayana, aged about 59 years, working as Scientist 'E' and Regional Director in the Regional Directorate, Bengaluru, Central Pollution Control Board, do hereby solemnly affirm and declare as under:

That I am working as Scientist 'E' in the Central Pollution Control Board (CPCB). I am well conversant with the facts of the appeal from the records maintained by the offices of the CPCB. I am competent to swear this independent response on behalf of the CPCB.

That I have carefully perused a copy of the original appeal served on the CPCB and have understood the contents therein.

The Appeal is related to the Environmental Clearance (EC) granted by Ministry of Environment, Forest and Climate Change (MoEF&CC) vide F No. 10-39/2020 – IA.III dated

09/11/2020 to Respondent No. 6 i.e M/s Mother Earth Environ Tech Private Limited for setting up of integrated Common Hazardous Waste Treatment, Storage and Disposal Facility (TSDF) with landfill and incineration facility at Plot No. 667 to 689, Karnataka Industrial Area Development Board, Harohalli Industrial Area Phase III, Ramanagara District, Karnataka.

The appellant's contention is that while granting EC to the Respondent No. 6 i.e M/s Mother Earth Environ Tech Private Limited, the provisions of Environment Impact Assessment (EIA) Notification, 2006 are not followed and the EC is granted even though the location of the proposed TSDF is not complying with the TSDF siting guidelines and rules.

It is humbly submitted that the integrated TSDF having incinerator and landfill facilities are listed as Category 'A' project in Item 7(d) in Schedule 2 of the EIA Notification, 2006. As per Schedule 2 and 7 of the EIA Notification, 2006, the prior EC for projects falling under Category 'A' is granted by Central Government in MoEF&CC on the recommendations of an Expert Appraisal Committee to be constituted by the Central Government. The copy of the said Environment Impact Assessment Notification, 2006 is annexed herewith and marked as **Annexure R3-1**. The specific comments and clarification on the EC granted to the project may be obtained from the EIA appraising/ EC issuing authority.

### PRAYER

In view of above, it is respectfully prayed that this answering Respondent No. 3, the Central Pollution Control Board shall abide by any order/ direction passed by the Tribunal.



DEPONENT

S. Suresh

31/8/2020

S. SURESH

REGIONAL DIRECTOR  
CENTRAL POLLUTION CONTROL BOARD  
REGIONAL DIRECTORATE (SOUTH)  
(MIN. OF ENV. FOREST & CC, GOVT OF INDIA)  
BENGALURU - 560 079, MOB : 9480672128

### VERIFICATION

It is verified that the content of this Reply Affidavit which is based on official record and information available in the office are true and correct. Nothing has been concealed therein.

Signed and verified on this 3<sup>rd</sup> Day of August, 2021 at Bengaluru.

**COUNSEL FOR  
RESPONDENT No. 3**

**DEPONENT-Respondent no. 3**



*S. Suresh*  
31/8/2021  
**S. SURESH**  
REGIONAL DIRECTOR  
CENTRAL POLLUTION CONTROL BOARD  
REGIONAL DIRECTORATE (SOUTH)  
(MIN. OF ENV. FOREST & CC, GOVT OF INDIA)  
BENGALURU - 560 079, MCB : 9480672128



*S. Suresh*  
REGIONAL DIRECTOR  
CENTRAL POLLUTION CONTROL BOARD  
REGIONAL DIRECTORATE (SOUTH)  
(MIN. OF ENV. FOREST & CC, GOVT OF INDIA)  
BENGALURU - 560 079, MCB : 9480672128

Item No.2:

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No. 49/2021 (SZ)

*(Through Video Conference)*

IN THE MATTER OF

Rajesh Ghantayath,

Bangaluru

...Appellant(s)

Vs

Union of India,

MoEF & CC, New Delhi and others.

...Respondent(s)

Date of hearing: 02.07.2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE DR. K. SATYAGOPAL, EXPERT MEMBER

For Appellant(s):

Mr. G. Stanly Hebzon Singh

For Respondent(s):

Mr. R. Thirunavukarasu for R3

Mr. K.S. Viswanathan for R6

ORDER

1. The above appeal has been filed by challenging the Environmental Clearance (EC) granted to the 6<sup>th</sup> respondent by the 1<sup>st</sup> respondent as per **Annexure-1** vide proceedings No. **F. No. 10-39/2020-IA.III dated 09.11.2020**. On the ground that the project proponent had made material suppression of the

existence of eco-sensitive zones and also the existence of another Treatment, Storage & Disposal Facility (TSDF) within the prohibited distance against the guidelines provided by the Ministry of Environment, Forests and Climate Change (MoEF & CC) itself.

2. The limitation has been overcome by the appellant, in view of the orders passed by the Hon'ble Apex court in *Writ Petition (Civil) No. 03/2020 dated 23.03.2020* and subsequent order of the Hon'ble Apex Court in *Miscellaneous Application No. 665/2021 in SMW(C) No. 03/2020 dated 27.04.2021*.
3. Ongoing through the allegations made in the appeal memorandum and the grounds of appeal raised regarding the validity of the clearance granted, we feel the matter has to be heard in detail. So the appeal is admitted.
4. When the matter came up for hearing today through Video Conference, Mr. G. Stanly Hebzon Singh represented the appellant. Mr. R. Thiruvavukarasu represented 3<sup>rd</sup> respondent and Mr. K.S. Viswanathan represented 6<sup>th</sup> respondent.
5. Issue notice to the respondents by Registered post with acknowledgement due, by e-mail and also by dusthi if possible and produce proof of service on them by filing proof affidavit as per rules.
6. The applicant is also directed to serve copy of the appeal memorandum along with the documents produced to the standing counsel appearing for

- the respondents 3 & 6 within a week and produce proof of such service by filing proper affidavit as per rules to avoid delay.
7. The appellant is also directed to produce necessary requisites along with postal cover and the necessary postal stamps before this Tribunal within a week, so as to enable this Tribunal to send notice to all the respondents through Tribunal, to ensure service on them, so as to enable this Tribunal to proceed against them, if they did not appear, in their absence in accordance with law.
  8. The counsel appearing for the appellant wanted an interim order for staying the proceedings as he was relying on the joint committee report filed in **O.A. No. 104 of 2020** in respect of the similar facility as provided by the 6<sup>th</sup> respondent, stating that it is near the water body and also near the residential area and the siting criteria has been violated and these aspects have not been considered by the issuing authority, when they granted the clearance.
  9. It may be mentioned here that the project is only at the initial stage of establishment and even, if any, construction made, that will be subject to the result of this appeal. So there is no necessity to issue any interim order at this stage.
  10. The parties are directed to file their reply statement along with the documents they want to rely on within one month from the date of service of notice on them as provided under the provisions of the National Green Tribunal Act, 2010.

11. The issuing authority is also directed to produce the file relating to the issuance of the environmental clearance along with the reply statement, so that this Tribunal will be able to peruse the file to ascertain the fact as to whether there is proper application of mind by the issuing authority and the recommending authority and also as to whether there is any suppression of material facts made by the project proponent while making the application.
12. The counsel respondents are directed to serve a copy of the same on the counsel appearing for the appellant, so that they can file their rejoinder, if any, before the next hearing date to avoid delay and expedite the hearing in the appeal itself.
13. The Registry is directed to communicate this order to the official respondents immediately through e-mail so as to enable them to comply with the direction and avoid delay and completing the pleadings in view of the provisions of the National Green Tribunal Act, 2010, the entire proceedings will have to be culminated after due process within a period of six months from the date of filing the appeal or application.
14. For appearance of parties, for filing their reply statement, post on **04.08.2021.**

Sd/--

.....J.M.  
(Justice K. Ramakrishnan)

Sd/--

.....E.M.

(Dr. K. Satyagopal)

Appeal No. 49 of 2021  
02.07.2021, Sr.



**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**  
**ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION 2006 AND SUBSEQUENT**  
**AMENDMENTS**

(Incorporating subsequent amendments issued up to 18th March, 2021 and status before Courts /  
Tribunal)

New Delhi, 14th September, 2006

**S.O.1533(E).**-Whereas, a draft notification under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India<sup>1</sup>, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006 and the procedure specified in the notification, by the Central Government or the State or Union Territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union Territory Administration concerned under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for the purpose of this notification, was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) vide number S.O. 1324 (E) dated the 15th September, 2005 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

And whereas, copies of the said notification were made available to the public on 15th September, 2005;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, 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, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

**2. Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, \*<sup>2</sup>[and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category 'B2' for mining of minor minerals in the in the said schedule] before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;

<sup>1</sup> Includes territorial waters

<sup>2</sup> Words inserted vide S.O. 141(E), dated the 15th January, 2016 (This notification has been suspended by NGT in EA No. 55/2018 in OA No. 520/2016 in the matter of Vikrant Tongad Vs. UoI vide order dated 11th December, 2018 and same has been appealed before Hon'ble Supreme Court and matter is sub-judice)

- <sup>1</sup>[(ii) Expansion, modernisation or any change in the product mix or raw material mix in existing projects or activities, listed in the Schedule to this notification, resulting in capacity beyond the threshold limits specified for the concerned sector in the said Schedule, subject to conditions and procedure provided in the sub-paragraph (ii) of paragraph 7];

**3. State Level Environment Impact Assessment Authority:** - (1) A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary to be nominated by the State Government or the Union territory Administration concerned.

- (2) The Member-Secretary shall be a serving officer of the concerned State Government or Union territory administration familiar with environmental laws.
- (3) <sup>2</sup>[The Chairman shall be an expert in terms of the eligibility criteria given in APPENDIX VI in one of the specified fields, with sufficient experience in environmental policy or management.
- (4) The other member shall be an expert fulfilling the eligibility criteria given in APPENDIX VI in one of the specified fields.]
- (5) The State Government or Union territory Administration shall forward the names of the Members and the Chairman referred in sub- paragraph 3 to 4 above to the Central Government and the Central Government shall constitute the SEIAA as an authority for the purposes of this notification within thirty days of the date of receipt of the names.
- (6) The non-official Member and the Chairman shall have a fixed term of three years (from the date of the publication of the notification by the Central Government constituting the authority).

<sup>3</sup>[Provided that wherever considered necessary and expedient, the Central Government may extend the term for a further period not exceeding <sup>4</sup>{twelve} months.]

- (7) <sup>5</sup>[All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF].

**<sup>6</sup>3A. District Level Environment Impact Assessment Authority:** - (1) A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub- section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.

- (2) The District Magistrate or District Collector shall be the Chairperson of the DEIAA.
- (3) The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.

<sup>1</sup> Subs. by S.O. 980(E), dated 2nd March, 2021

<sup>2</sup> Substituted para by S.O.1737 (E), dated 11th October, 2007.

<sup>3</sup> Inserted by S.O. 1562(E), dated 21st May, 2020

<sup>4</sup> Substituted the words "twelve months" for the words "six months" by S.O. 3752(E), dated 20th October, 2020

<sup>5</sup> Substituted by S.O.3067 (E), dated 1st December, 2009

<sup>6</sup> Inserted. by S.O. 141, dated 15th January, 2016

## SCHEDULE

(See paragraph 2 and 7)

## LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity	Category with threshold limit		Conditions if any	
	A	B		
<b>1</b>	<b>Mining, extraction of natural resources and power generation (for a specified production capacity)</b>			
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
<sup>1</sup> [1(a)]	Mining of minerals	> 100 ha of mining lease area of non-coal mine lease.	≤ 100 ha of mining lease area in respect of non-coal mine lease.	General Condition shall Apply except: (i) For project or activity of mining of minor minerals of Category 'B2' (up to 25 ha of mining lease area); (ii) For project or activity of mining of minor minerals of Category 'B1' in case of cluster of mining lease area, and (iii) River bed mining projects on account of inter-state boundary.
		> 150 ha of mining lease area in respect of coal mine lease.	≤ 150 ha of mining lease area in respect of coal mine lease.	
		Asbestos mining irrespective of mining area		
	(ii) Slurry pipelines (coal lignite and other ores) passing through national parks/sanctuaries/coral reefs, ecologically sensitive areas.	All projects		<p><b>Note:</b></p> <p>(1) Mineral prospecting is exempted;</p> <p>(2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI];</p> <p><sup>2</sup>[(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.];</p>

<sup>1</sup> Substituted by S.O. 3977 (E), dated 14th August, 2018.<sup>2</sup> Inserted by S.O. 1224 (E), dated 28th March, 2020

		use		Control are exempted]
7(b)	All ship breaking yards including ship breaking units	All projects	-	-
7(c)	Industrial estates/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.	If at least one industry in the proposed industrial estate falls under the Category A, entire industrial area shall be treated as Category A, irrespective of the area.  Industrial estates with area greater than 500 ha and housing at least one Category B industry.	Industrial estates housing at least one Category B industry and area <500 ha.  Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B.	<sup>1</sup> [General as well as Special conditions shall apply  <b>Note:</b> 1. Industrial Estate of area below 500 ha. and not housing any industry of category 'A' or 'B' does not require clearance.  2. If the area is less than 500 ha but contains building and construction projects less than 2000 sq. mtr. and or development area more than 50 ha it will be treated as activity listed at Serial No.8(a) or 8(b) in the Schedule, as the case may be]
7(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	All integrated facilities having incineration & landfill or incineration alone	All facilities having land fill only	General Condition shall apply
<sup>2</sup> 7(da)	Bio-medical Waste Treatment Facilities	-	All Projects	-]
7(e)	<sup>3</sup> [Ports, Harbours, break waters, dredging]	< 5 million TPA of cargo handling capacity (excluding fishing harbours)	<5million TPA of cargo handling capacity and/or ports/ harbors <10,000TPA of fish handling capacity	<sup>3</sup> [General Condition shall apply.  <b>Note:</b> 1. Capital dredging inside and outside the ports or harbors and channels are included;  3. Maintenance dredging is exempt provided it formed part of the original proposal; for which Environmental Management Plan (EMP) was prepared and environmental Clearance obtained];

<sup>1</sup> Subs. by S.O.3067(E), dated 1st December, 2009

<sup>2</sup> Inserted by S.O. No.1142(E), dated 17th April, 2015

<sup>3</sup> Subs. by S.O.3067(E), dated 1st December, 2009

				<p><b>Note 2.-</b> The projects or activities shall not include industrial shed, educational institutions, hospitals and hostels for educational institutions.</p> <p><b>Note 3.-</b> General conditions shall not apply.</p>
<b>8(b)</b>	Townships and Area Development projects as well as industrial sheds, educational institutions, hospitals and hostels for educational institutions		≥ 1,50,000 sq. mtrs and <3,00,000 sq. mtrs built up area or covering an area ≥50 ha	<p>A projects of Townships and Area Development Projects covered under this item shall require an Environmental Assessment Report and be appraised as Category 'B1' Project.</p> <p><b>Note.-</b> General Conditions shall not apply.]</p>

**Note: -**

<sup>1</sup>[**General Condition (GC):**

Any project or activity specified in category 'B' will be appraised at the Central level as Category 'A', if located in whole or in part within 5 km. from the boundary of : (i) Protected areas notified under the Wildlife (Protection) Act, 1972 (53 of 1972); (ii)critically polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986 and (iv) inter-State boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), industries estates/parks/complexes/areas, export processing zones (EPZs), Special Economic Zone (SEZs), biotech parks, lather complexes specified in item 7(c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7(d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective State or the Union Territories sharing the common boundary in case the activity does not fall within 5km or 10 km, as the case may be of the areas mentioned at item (i), (ii) and (iii) above.]

**Specific Condition (SC):**

If any Industrial Estate/Complex / Export processing Zones /Special Economic Zones/Biotech Parks / Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre –defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates /complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate).

<sup>1</sup> Subs. by S.O. 1599 (E) dated 25th June, 2014