

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

OA No 50 OF 2023

IN THE MATTER OF:

Ramisetti Suresh Kumar

..... Applicant

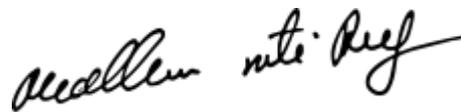
Vs

State of Andhra Pradesh & Others

.... Respondents

REPORT FILED BY THE SEIAA 3rd RESPONDENT

DATE - 14.03.2024



**M/s MADHURI DONTI REDDY
ADVOCATE**

STANDING COUNSEL FOR GOVERNMENT OF ANDHRA PRADESH

A.P. POLLUTION CONTROL BOARD

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

ORIGINAL APPLICATION No. 50 of 2023

Between

RAMISETTI SURESH KUMAR,
R/o H.No. 1-169/1, Behind CPM Office,
Thotamula Village, gampalagudem Mandalam
NTR District, Andhra Pradesh- 521403
Mobile No: 7407169404
Mail id: sureshkumar12213@gmail.com

... Applicant

VERSUS

1. STATE OF ANDHRA PRADESH
Rep by its Chief Secretary
Secretariat, Velagapudi, Guntur District,
Andhra Pradesh – 522503
Mail: cs@ap.gov.in
Ph: 08632444461 & **12 Others**

... Respondents

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It is certified that all the documents contained in the above annexure are true copies.

Date: 02-02-2024


Member Secretary
SEIAA, AP

1
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COUNTER AFFIDAVIT FILED BY THE 3rdRESPONDENT

I, S. Sri Saravanan S/o Shanmugam, Aged about 50 years, Member Secretary, AP state Environment Impact Assessment Authority, Vijayawada Andhra Pradesh do hereby solemnly and sincerely affirm and make oath and state as follows:

1. I am 3rd Respondent herein and I am authorized to sign on behalf of Chairman SEIAA, A.P and as such I am well acquainted with the facts of the case.
2. This respondent denies each averment made in the affidavit filed in support of the appeal as false and incorrect except those that are specifically admitted herein in this counter affidavit.
3. It is submitted that, the processing unit for manufacturing of bricks is not under purview of SEIAA as per the EIA notification, 2006 and its amendments thereof.


Member Secretary
SEIAA, AP

4. It is submitted that, with regards to the averments made in paragraph 6 is true. The respondents R8-R13 were not issued any Environmental Clearance from SEIAA for soil mining.
5. It is submitted that the activities of borrowing/excavation of 'brick earth' and 'ordinary earth' having lease area less than 5Ha categorized under 'B2' category as per the EIA Notification, 2006 and amendments thereof and also MOEF & CC issued office Memorandum dated 24.06.2013 (**Annexure - 1**) guidelines for consideration of proposal for grant of environmental Clearance under EIA notification, 2006 for mining of 'brick earth' and 'ordinary earth' having lease area less than 5Ha.
6. It is submitted that the EFS&T Department G.O.Ms.No.80, dt.22.04.2010 (**Annexure - 2**) issued Guidelines in respect of establishment of Brick Kilns in the State of Andhra Pradesh. As per GO the applicant shall obtain No objection/license from the local body (GramaPanchayat, ZillaParishad, Municipality or Municipal Corporation) for establishment of Brick Kilns.
7. It is submitted that, as per the G.O.Ms.No.80, dt.22.04.2010 issued by EFS&T Department the Revenue Authorities viz Collector and District Magistrate/R.D.O/ Tahsildar shall take action against defaulting units under the provision of Cr.P.C in case of violation as upheld by the Hon'ble High Court in the W.P.No.12138 of 2008 and batch cases.
8. It is submitted that, the MOEF & CC issued Notification S.O. 804(E), dated 14.03.2017 (**Annexure - 3**) at para-No. 13 (3) as follows:
 "In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance".


 Member Secretary
 SEIAA, AP

10. It is submitted that this respondent craves leave of this Hon'ble Tribunal to raise additional counter in the course of proceedings, if required.

In the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to pass an appropriate order in the above the O.A No. 50 of 2023 and pass such further or other orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

Solemnly affirmed
Andhra Pradesh on
this the 2nd day of February 2024
and signed his name in my presence

BEFORE ME

Advocate


Member Secretary
SEIAA, AP

VERIFICATION

I, Sri Saravanan, S/o Shanmugam, Aged about 50 years, Member Secretary, AP state Environment Impact Assessment Authority, Vijayawada, Andhra Pradesh do hereby verify that the contents of Para's of Counter Affidavit are based on record and information are true to the best of my knowledge and belief.

Hence, verified on the 2nd day of February 2024 at


DEPONENT
Member Secretary
SEIAA, AP

No. L-11011/47/2011-IA.II(M)
Government of India
Ministry of Environment & Forests

Paryavaran Bhawan,
C.G.O. Complex, Lodhi Road,
New Delhi-110003.

Dated: 24th June, 2013

OFFICE MEMORANDUM

Subject: Guidelines for consideration of proposals for grant of environmental clearance under EIA Notification, 2006 for mining of 'brick earth' and 'ordinary earth' having lease area less than 5 ha – regarding categorization as Category 'B2'

The Hon'ble Supreme Court, vide its order dated 27.02.2012 in I.A.No.12-13 of 2011 in SLP (C) No.19628-19629 of 2009 titled Deepak Kumar etc. Vs. State of Haryana & Ors. has inter alia ordered that leases of minor mineral including their renewal for an area less than 5 ha be granted by the State / Union Territory only after getting environment clearance (EC) from the Ministry of Environment & Forests (MoEF). In order to ensure compliance of the aforesaid order of the Hon'ble Supreme Court, MoEF issued an OM No.L-11011/47/2011-IA.II(M) dated 18.05.2012 stating inter alia that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior EC and that the projects of minor minerals with lease area less than 5 ha would be treated as Category "B" as defined in EIA Notification, 2006 and will be considered by the respective State Environment Impact Assessment Authorities (SEIAAs) notified by MoEF and following the procedure prescribed under the EIA Notification, 2006.

2. MoEF has received a number of representations conveying problems being faced by the brick kiln manufacturers in obtaining EC for 'brick earth' mined by them for making bricks and by the developers of road projects in respect of mining of 'ordinary earth' used for road construction. The brick kiln manufacturers have requested that as the digging of 'brick earth' for making bricks is a small scale activity requiring digging only upto a certain depth, the activity may be kept outside the purview of EC. The project proponents developing roads have represented that the 'ordinary earth' required for road construction is generally taken from the farmers / individuals along the road alignment from their borrows. It would be impractical to ask the farmers / individuals to obtain EC for such digging. In a nutshell, the arguments being put forth are that while digging of 'brick earth' for brick making and 'ordinary earth' for road making do not have serious environmental implications, the provisioning for EC for such operations is impeding these development activities because of practical problems in obtaining EC.

3. MoEF vide OM No.F.No.J-11013/12/2013-IA-II(I) dated 30.01.13 has constituted an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur, to categorize Category "B" projects / activities into Category "B1" and "B2" under EIA Notification, 2006 and review classification of projects / activities into "A" and "B" and General conditions as contained in the aforesaid Notification. The issues raised by brick kiln manufacturers regarding 'brick earth' and road developers in respect of 'ordinary earth' were referred by MoEF to this Expert Committee to give their recommendations. The Committee deliberated upon these issues and has since given its recommendations in the matter.

4. The recommendations of the Committee have been examined by MoEF and the following has been decided:

(a) The activities of borrowing / excavation of 'brick earth' and 'ordinary earth', upto an area less than 5 ha, may be categorized under 'B2' Category subject to the following guidelines in terms of the provisions under '7.I Stage(1)-Screening' of EIA Notification, 2006:

- (i) The activity associated with borrowing/excavation of 'brick earth' and 'ordinary earth' for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.
- (ii) The borrowing/excavation activity shall be restricted to a maximum depth of 2 m below general ground level at the site.
- (iii) The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.
- (iv) The borrowing/excavation activity shall not alter the natural drainage pattern of the area.
- (v) The borrowed/excavated pit shall be restored by the project proponent for useful purpose(s).
- (vi) Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.
- (vii) Measures shall be taken to prevent dust emission by covering of borrowed/excavated earth during transportation.
- (viii) Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.
- (ix) Workers / labourers shall be provided with facilities for drinking water and sanitation.
- (x) A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.

(xii) The concerned SEIAA while considering granting environmental clearance for such activity for brick earth / ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be liable to be cancelled in case of any violation of above guidelines.

(b) Notwithstanding what has been stated at (a) above, the following will apply:-

- (i) No borrowing of earth / excavation of 'brick earth' or 'ordinary earth' shall be permitted in case the area of borrowing/ excavation is within 1 km of boundary of national parks and wild life sanctuaries.
- (ii) In case the area of borrowing / excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the borrow areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

This issues with the approval of the Competent Authority.


 (Dr. Saroj)
 Director
 Telefax : 24364067

To

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

Copy to:-

1. PS to MEF
2. PPS to Secretary(E&F)
3. PPS to ADG(F)
4. PPS to ADG(WL)
5. PPS to JS(AT)
6. PPS to IG(FC)
7. Website, MoEF
6. Guard File

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

E.F.S.&T. Department – Brick Kilns – Guidelines in respect of establishment of Brick Kilns in the State – Issued.

ENVIRONMENT, FORESTS, SCIENCE & TECHNOLOGY (ENVIRONMENT) DEPARTMENT

G.O.Ms.No.80.

Dated:22-04-2010.

Read the following:-

1. From the Advocate General, High Court Buildings, Hyderabad, Letter No.619 of 2010, dated:28-01-2010.
2. Government D.O.Lr.No.579/Env./2010, dated:01-02-2010.
3. From Member Secretary, A.P. Pollution Control Board, Hyderabad, Letter No.76/PCB/CFE/HO/Brick Kilns/2010-55, dated:08-04-2010.
4. From the Advocate General, High Court Buildings, Hyderabad, Letter No.357 of 2010, dated:17-04-2010.
5. From Member Secretary, A.P. Pollution Control Board, Hyderabad, Letter No.76/PCB/CFE/HO/Brick Kilns/2010-114, dated:19-04-2010.

In W.P. No.26243 of 2007 filed by Sri Adapa Narayana Swamy and others questioning the establishment of Bricks Kilns in Survey No.162/7, 162/8 and 162/9 of Kulla village, K. Gangavaram Mandal, East Godavari District, the Court directed the State to evolve guidelines and policy to regularize and monitor the Brick Kilns activities in the state.

2. The issue has been examined in consultation with the Member Secretary, A.P. Pollution Control Board, Hyderabad, and considered that the activity of brick manufacturing is not among the scheduled 66 categories of small scale polluting units as per GOs 1 & 2 of Environment, Forests, Science & Technology Department, dated: 23-01-1995 and their amendments thereof, for which pollution clearance needs to be obtained. Hence, the Pollution Control Board does not issue any clearances to these brick clamps. However, the brick clamp's owner has to obtain an acknowledgement from the General Manager, District Industries Centre (GM,DIC). This acknowledgement serves the purpose of the consent of the Board. As, the activity of brick manufacturing is not one of the scheduled industries in the Air (Prevention & Control of Pollution) Act, 1981, the A.P. Pollution Control Board does not have any direct control over the manufacturers of bricks. The limited control which can be exercised on such industries, is through Tahsildar of concerned area who can take action under section 133 of Cr.P.C in case of violations.

3. The Hon'ble High Court of Andhra Pradesh while disposing Writ Petition No. 12138/2008 & batch cases vide order dated:30-07-2008 observed that "the activity of the brick manufacturing, which is not one of the scheduled industries in the Air (Prevention & Control of Pollution) Act, 1981, and it is not open for the Andhra Pradesh Pollution Control Board to have any direct control over the manufacturers of bricks. The limited control which can be exercised on such industries, is through Tahsildar of the concerned area who can be instructed to take appropriate action and directed the District Collector to initiate action against the brick manufacturers within the stipulated time."

4. In the reference 5th cited, the Member Secretary, A.P. Pollution Control Board, Hyderabad, after interacting with the Industries Department, has furnished revised draft guidelines in the matter.

(P.T.O)

5. The Government, after careful examination of the matter, hereby issue the following guidelines for establishment of Brick Clamps in the State of Andhra Pradesh:

1. An application for establishment of Brick Clamp made to Industries Department shall be accompanied by a no objection / license from the local body (Gram Panchayat, Zilla Parishad, Municipality or Municipal Corporation). It is open to the local body to consider the objections, if any, made to such application before grant of No objection Certificate to the applicant.
2. The edge of the Brick Clamp (batti) shall be at a radial distance of -
 - a. 1 Km from any human habitation, hospitals, educational or any other institutions;
 - b. 100 m as far as practicable, but in no case less than 50 mtrs from the neighbors' agricultural/horticulture lands. The Brick Clamp shall have the accessibility without disturbing the surrounding crops;
 - c. 100 mtrs from flood banks of river;
 - d. 200 mtrs from the National Highways/State Highways / Expressways / Ring Roads; and
 - e. 25 m from the village roads.
3. The General Managers, District Industries Centres shall issue acknowledgements to those Units which are complying with above guidelines duly stipulating the above mentioned guidelines as conditions.
4. Mitigative measures to control pollution;
 - a. To minimize generation of fugitive emissions due to movement of vehicles, the passage around the brick clamps within the premises should be paved with broken bricks;
 - b. Ash produced everyday shall be transported to a disposal site or reused in brick making to reduce fugitive emissions;
 - c. The brick clamp (Batti) shall be located / operated in such a way that it shall not affect the agricultural activity in the vicinity; and
5. The Revenue Authorities viz. Collector and District Magistrate / R.D.O. / Tahasildar shall continue to take action against defaulting units under the provisions of Cr.P Code as upheld by the Hon'ble High Court in the W.P.No.12138 /2008 and batch cases.
6. The District Collector of the concerned District shall monitor implementation of the guidelines.
7. The G.O. is available on the Internet and can be accessed at the address "<http://www.ap.gov.in/goir>".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

JANAKI R.KONDAPI,
SPECIAL CHIEF SECRETARY TO GOVERNMENT.

To
 ✓ The Member Secretary, Andhra Pradesh Pollution Control Board, Hyderabad.
 All the District Collectors in the State.
 The Commissioner of Industries, Andhra Pradesh, Hyderabad.
 The Industries and Commerce Department.
 SF/SC

// FORWARDED :: BY ORDER //

P. Hanumanthrao
 SECTION OFFICER.

से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा।

14. ऐसी परियोजनाएं और क्रियाकलाप, जो इस अधिसूचना की तारीख को उल्लंघनकारी हैं, इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए आवेदन करने के पात्र होंगे और परियोजना प्रस्तावक इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए केवल इस अधिसूचना की तारीख से छह मास के भीतर ही आवेदन कर सकते हैं।

[फा. सं. 22-116/2015-आईए-III]

मनोज कुमार सिंह, संयुक्त सचिव

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION**

New Delhi, the 14th March, 2017

S.O. 804(E).—Whereas, a draft notification under sub-section (1), and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), *vide* number S.O. 1705(E), dated the 10th May, 2016, as required by sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for finalising the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance under the Environment Impact Assessment Notification, 2006 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;

2. And whereas, copies of the said notification were made available to the public on the 10th May, 2016;

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

4. Whereas, subject to the provisions of the Environment (Protection) Act, 1986, under sub-section (1) of section 3 of the Act, the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environment pollution;

5. Whereas, section 5 of the Environment (Protection) Act, 1986 empowers the Central Government to give directions which reads as "Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions;

6. Whereas the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12.12.2012 and 27.06.2013 to establish a process for grant of environmental clearance to cases of violation.

7. Whereas, the Hon'ble High Court of Jharkhand had passed an order dated the 28th November, 2014 in W.P. (C) No. 2364 of 2014 in the matter of Hindustan Copper Limited *Versus* Union of India in which the High Court held that the conditions laid down under Office Memorandum dated 12th December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon'ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws;

8. And whereas, Hon'ble National Green Tribunal, Principal Bench *vide* its order dated 7th July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had also held that the Office Memoranda dated 12th December, 2012 and 24th June, 2013 on the subject of consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the Environment (Protection) Act, 1986 or Environment Impact Assessment Notification, 2006 Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment notification, 2006 and had quashed the same;

9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;

10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;

12. And whereas, Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India* (the Bichhri village industrial pollution case), while delivering its judgment on 13th. February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon'ble Court observed that section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures..... Hon'ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be

looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) 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; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-

(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification.

[F. No. 22-116/2015-IA-III]

MANOJ KUMAR SINGH, Jt. Secy.