

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE
BENCH, CHENNAI**

**ORIGINAL APPLICATION NO. 56 OF 2023 (SZ) &
I.A. No.58 of 2023 (SZ)
WITH
MISCELLANEOUS APPLICATION NO. 04 OF 2023 (SZ)
IN
ORIGINAL APPLICATION NO. 180 OF 2021 (SZ)**

IN THE MATTER OF: -

Baddam Bhaskar Reddy and Ors. Applicant(s)

Versus

Union of India and Others Respondent(s)

INDEX TO TYPED SET FILED BY MoEF&CC

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Dated at Chennai this the 13th day of March 2024



Sai Srujan Tayi
Counsel for MoEF& CC/1st Respondent
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IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE

BENCH, CHENNAI

ORIGINAL APPLICATION NO. 56 OF 2023 (SZ) &

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**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1, MINISTRY
OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**

MOST RESPECTFULLY SHOWETH:

I, Sh. Tarun Kathula, S/o Shyamala Rao, aged about 46 years working as Director/Scientist 'F' in the Ministry of Environment, Forest and Climate Change (MoEFCC), Sub office, Hyderabad do hereby solemnly affirm on oath and state as under:



Tarun Kathula
Director/Scientist 'F' (C)
Integrated Regional Office,
Ministry of Environment Forest and Climate Change,
Aranya Bhavan, Hyderabad, Telangana-500 004.

1. That the Hon'ble Tribunal issued an order on 16.12.2023 stating that certain directions passed in the order dated 10.02.2022 were not complied by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as 'MoEF&CC/Ministry'). The relevant portion is reproduced below:

"5. At this juncture, it would be appropriate to refer to the relevant directions given in the Original Application [O.A. No.180 of 2021 (SZ)] while disposing of the same:-

"4. If the project proponent makes an application for including the change of scope and apply for Environmental Clearance (EC), the same should not be granted by way of an amendment for existing EC and the entire process will have to be reassessed afresh as has been observed by the Hon'ble Apex Court in Key Stone Realtors Vs. Anil V. Tharthare (2020) 2 SCC 66.

5. Ministry of Environment, Forests and Climate Change (MoEF&CC) is also at liberty to conduct further enquiry regarding the nature of damage caused and also the cost required for restoration of damage caused to the environment and reassess the compensation to be recovered from the State of Telangana.

6. The Ministry of Environment, Forests and Climate Change (MoEF&CC) is directed to complete the process of the enquiry as early as possible at any rate within a period of four months and submit the further action taken report before this Tribunal after the expiry of four months has to be fixed by this Tribunal."



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6. To be noted is that the above said directions given to the MoEF&CC have not yet been complied with despite the timeframe of four months given therein.

7. In the report dated 01.11.2023 referred supra, the MoEF&CC has stated that the same being a partial compliance affidavit, a final compliance status report would be filed after the grant of the Environmental Clearance to the project under the violation category.

8. We are at a loss to understand as to how the MoEF&CC can even consider the application without complying with our order dated 10.02.2022 in O.A. No.180 of 2021 (SZ).

9. Therefore, without referring to any other aspects at this point of time, we direct the MoEF&CC to comply with the earlier directions given in Clause (4), (5) and (6) as referred to above before the date of next hearing.

10. Let the matter be listed on 23.01.2024."

2. It is submitted that thereafter, this Hon'ble Tribunal vide order dated 23.02.2024 directed filing of the status affidavit before the date of next hearing and produce the relevant Office Memorandums (hereinafter referred to as 'OM') along with the copy of the order passed by the Hon'ble Supreme Court staying the O.M. dated 07.07.2021. In this regard the following is submitted:

I. Regarding the action taken so far in compliance of the order dated 10.02.2022:

a) That prior to the final order dated 10.02.2022, based on the observations in the Joint Committee Report, the Ministry issued a Show cause Notice dated 07.01.2022 to the Project Proponent for not taking prior Environment



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Clearance regarding expansion work under project titled Flood Flow Canal Project from Sri Rama Sagar project, Telangana. The response to the said Show cause Notice was examined by the Ministry in consultation with the sectoral Expert Appraisal Committee EAC (River Valley and Hydro-electric) on 15.06.2022 wherein after detailed deliberation it was observed that *“based on fact submitted by the project proponent and report of the Joint Committee, it has been confirmed that the project involves violation and the project will be appraised by the EAC as per the Standard Operating Procedure (SoP) for identification and handling of violation cases under EIA Notification, 2006 mentioned in OM dated 7.07.2021. The EAC therefore, suggested the project proponent to submit the proposal a fresh at PARIVESH portal for terms of reference (ToR) under violation category.”*

(The copy of Show cause notice dated 07.01.2022 has been annexed in the Counter Affidavit filed by the Ministry on 23.01.2022 and the copy of EAC meeting held on 15.06.2022 is annexed in the Interim Action Taken Report filed by the Ministry.)

- b) It is submitted that the Ministry's Notification S.O. No. 1886 (E) dated 20.04.2022, which states that irrigation projects, mentioned at Item no. 1 (c) of the Schedule to the EIA Notification, 2006, as amended, irrespective of its command area, are Category 'B' project and shall be appraised by State Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA'), except for irrigation projects involving inter-state issues.

The copy of the Ministry's Notification S.O. No. 1886 (E) dated 20.04.2022 is annexed as **Annexure-1**.

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c) Accordingly, the Project Proponent submitted the proposal (No. SIA/TG/RIV/409365/2022) on 06.12.2022 titled as "expansion of Gouravelli reservoir, from 1.410 TMC to 8.23 TMC" before the SEIAA in compliance of the aforesaid order seeking Terms of Reference (hereinafter referred to as 'ToR') for conducting EIA study under the provisions of EIA Notification, 2006, as amended in violation category. The State Expert Appraisal Committee (SEAC) i.e. the technical body of the SEIAA, Telangana has considered the proposal in its 210th meeting held on 03.01.2023 and *inter-alia* recommended that:

".... The SEAC confirmed the project as a case of violation of the EIA Notification, 2006 and the project has to be considered in the terms of the provisions of the S.O.No.804 (E) dt.14.03.2017: S.O.1030 (E), dt.08.03.2018, and O.M. dt: 07.07.2021 & O.M. dt: 28.01.2022 issued by the MoEF&CC. GoI w.r.t. SOP for identification and handling of violation cases under EIA Notification, 2006.

After detailed discussions, the proponent is directed to prepare EIA report, as per the Standard Terms of Reference (TORs) issued by the MoEF&CC. GoI for "1 (c) river valley projects" and following Additional Terms of Reference along with the Specific Terms of Reference w.r.t. violation as per S.O. No 804 (E) dt.14.03.2017 & S.O.1030 (E). dt. 08.03.2018 and OM dt. 07.07.2021 & 28.01.2022 undergo the process of Public Hearings (District wise) in consultation with TSPCB and submit final EIA report along with minutes of Public Hearings & response of the proponent to the issues emerged in the Public Hearings to the SEAC for appraisal.

Additional Terms of Reference:



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- *Capacity table (1 mtr interval) with graphical representation.*
- *Details of submergence*
- *Details of development of greenbelt as per the Report of the Joint Committee constituted by the Hon'ble NGT, Chennai.*
- *Compliance of Order dt.10.02.2022 in OA No.180 of 2021 (SZ) of the Hon'ble NGT, Chennai..."*

d) Thereafter, accepting the recommendations of the SEAC, the SEIAA has accorded Standard ToR along with Public hearing and following specific and additional ToR to the project on 15.02.2023 in its meeting held on 04.02.2023. The relevant conditions mentioned in ToR are provided hereunder:

- The State Government/SPCB to take action against the project proponent under the provisions of section 19 of the Environment (Protection) Act, 1986, and further no consent to operate to be issued till the project is granted Environmental Clearance (if Credible Action was not initiated).
- The Project Proponent shall be required to submit a bank guarantee equivalent to the amount of remediation plan and natural and community resource augmentation plan with the SPCB prior to the grant of Environmental Clearance (hereinafter referred to as 'EC'). The quantum shall be recommended by the SEAC and finalized by the regulatory authority. The bank guarantee shall be released after successful implementation of the EMP followed by recommendations of the SEAC and approval of the regulatory authority. The Project Proponent also shall pay penalty amount to be levied by SEIAA as per O.M. dated 07.07.2021.



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- Assessment of ecological damage with respect to air, water land and other environmental attributes. The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) Act. 1986, or an environmental laboratory accredited by NABL or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.
- Preparation of EMP comprising remediation plan and natural and community resource augmentation plan or responding to the ecological damage assessed and economic benefits derived due to violation.
- The remediation plan and the natural and community resource augmentation plan to be prepared as an independent chapter in the ELA report by the accredited consultants.
- Details of development of greenbelt as per the Report of the Joint Committee constituted by the Hon'ble NGT, Chennai.
- Compliance of Order dated 10.02.2022 in O.A. No.180 of 2021 (SZ) of the Hon'ble NGT, Chennai.

Apart from the above, the SEIAA has directed the Project Proponent to stop construction activity forthwith and to comply with the terms of provisions of the Gazette Notification S.O. No. 804 (E) dated 14.03.2017; S.O.1030 (E), dated 08.03.2018; and O.M. dated 07.07.2021 issued by the MoEF&CC w.r.t. Standard Operating Procedure (SoP) for identification and handling of violation cases under EIA Notification, 2006.



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e) Thereafter, the MoEF&CC vide its letter dated 09.06.2023, has requested the SEIAA Telangana to provide the compliance report on the instant matter and to confirm the current status of the project. In response to the said letter, the SEIAA Telangana has submitted a report on 26.06.2023 stating that “...*the proponent is yet to submit the draft EIA report, along with compliance of the Hon’ble NGT order, to the Telangana State Pollution Control Board for conducting Environmental Public Hearing.*”

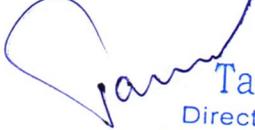
(The copy of the letter dated 09.06.2023 and Report dated 26.06.2023 has been annexed in the Partial Compliance Affidavit filed by the Ministry on 01.11.2023.)

f) Further, it is also pertinent to mention that vide Notification dated 30.07.2019 read with amended to the said Notification dated 29.07.2022, the SEIAA Telangana was dissolved on 30.07.2023. However, vide Notification dated 11.03.2024 issued by the Ministry, the SEIAA-Telangana has constituted. Accordingly, Project Proponent shall apply to SEAC/SEIAA for appraisal and consideration of proposal of Environment Clearance.

(Copy of the Notification dated 30.07.2019 read with amended to the said Notification dated 29.07.2022 and the O.M. dated 27.09.2022 has been annexed in the Partial Compliance Affidavit filed by the Ministry on 01.11.2023.

Copy of Notification dated 11.03.2024 issued by the Ministry is annexed as **Annexure - 2)**

g) That the MoEF&CC, vide letter dated 14.09.2023, has directed its Sub-Office of MoEF&CC at Hyderabad to conduct site inspection of the project in question. The site inspection was conducted on 21.09.2023 and the site


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inspection report was sent to the MoEF&CC on 26.10.2023. The observations and recommendations during site visit are reproduced hereunder:

“...i. No construction work was witnessed at the project site on the day of visit. Inspection was conducted in spite of raining.

ii. The water started accumulating in the reservoir due to runoff received from the catchment area of the reservoir resulting the raising of water levels.

iii. As per the reports of Member Secretary, GRMB (as mentioned at paragraph 9 of the report) and Special Chief Secretary, Irrigation and CAD, Govt of Telangana (as indicated at paragraph 11 of the report) and based on the photographic evidence (paragraph 15 of the report), Project Proponent has made construction activity post Hon'ble NGT judgement dated 10.02.2022, wherein PP would have taken prior permission of Hon'ble NGT.

iv. As per the satellite images dated, 21.06.2021 (Prior to Hon'ble NGT Order dated 10.02.2022); 13.02.2022 (during/after the period of Hon'ble NGT Order dated 10.02.2022); 25.02.2022; 30.12.2022; 13.01.2023; 04.03.2023; 02.04.2023; and 08.06.2023, it is evident that significant construction i.e., 70 to 80% of the Gouravelly Reservoir was completed by the PP prior to the Hon'ble NGT Order dated 10.02.2022.

v. Upon further analysis of the satellite's images provided by NRSC, it is observed that PP has made significant progress in the construction



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of Gouravelly reservoir during the period 04.03.2023 to 08.06.2023, which accounts almost completion of the project.

vi. In view of above, it is evident that the PP continues to violate the EIA Notification, 2006 even after restraining order of Hon'ble NGT dated 10.02.2022.

18. In view of above, PP may be directed to complete the Public Hearing at the earliest and may place the EIA/EMP before the EAC committee of MoEF&CC, New Delhi as SEIAA /SEAC of Telangana got has expired in July 2023 and is yet to be reconstituted..."

h) Based on the above, the MoEF&CC, vide letter dated 14.09.2023, has requested the Telangana State Pollution Control Board (hereinafter referred to as "TSPCB") to confirm if credible action was taken against the Project Proponent, as per the directions of the SEIAA, Telangana vide ToR Letter dated 15.02.2023.

In this regard, at Para no. 12 and 13 of the Site Inspection report dated 26.10.2023 received from Sub-Office of MoEF&CC at Hyderabad, it has been provided that the Special Chief Secretary, ES&T Department vide letter dated 02.05.2023 has directed Member Secretary, TSPCB to initiate credible action on the violation by Project Proponent for taking legal action under Section 15 of the Environment (Protection) Act, 1986 for the period from which the violation has taken place.

Accordingly, Member Secretary, TSPCB vide letter dated 05.07.2023 has directed the Environment Engineer, Regional Office, Sangareddy-II to ensure immediate stoppage of construction work and take necessary action on violation of EIA Notification, 2006 against the proponent. The


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Environmental Engineer, Regional Officer, TSPCB has requested the Ld. Advocate vide letter dated 12.09.2023 to file case before First Class Judicial Magistrate Court against the Project Proponent. The Ld. Advocate has filed the criminal complaint on 13.09.2023 in the court of the Hon'ble Judicial First-Class Magistrate at Husnabad, Siddipet District.

The Project Proponent has pleaded guilty and accordingly, the Hon'ble Judicial First-Class Magistrate at Husnabad, Siddipet District vide order dated 02.02.2024 has convicted the PP u/sec 241 of CrPC for the offence punishable u/sec 19 of EP Act, 1986 wherein fine of Rs 50,000 was imposed with imprisonment for one week. In view of the above, it has been confirmed that the credible action against the Project proponent has been taken by the TSPCB.

(The copy of the Letter dated 14.09.2023 to the Sub-office of MoEF&CC, Site Inspection Report dated 26.10.2023 and the letters dated 02.05.2023, 05.07.2023, 12.09.2023 and 13.09.2023 regarding 'Credible action taken by the TSPCB has been annexed in the Partial Compliance Affidavit filed by the Ministry on 01.11.2023.)

The copy of the order dated 02.02.2024 passed by the Hon'ble Judicial First-Class Magistrate at Husnabad, Siddipet District is annexed as **Annexure 3**.

- II. **Regarding the directions of the Hon'ble Tribunal vide order dated 10.02.2022 that "4. If the project proponent makes an application for including the change of scope and apply for Environmental Clearance (EC), the same should not be granted by way of an amendment for existing EC and the entire process will have to be reassessed"-**

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It is submitted that the Project Proponent applied for expansion of Gouravelli Reservoir by way of submitting a fresh proposal (No. SIA/TG/RIV/409365/2022) on 06.12.2022 titled as "expansion of Gouravelli reservoir, from 1.410 TMC to 8.23 TMC" before the SEIAA in compliance of the aforesaid order seeking ToR for conducting EIA study, under the provisions of EIA Notification, 2006, as amended under violation category. Therefore, the said direction has been complied.

III. **Regarding the directions of the Hon'ble Tribunal vide order dated 10.02.2022 that "5. Ministry of Environment, Forests and Climate Change (MoEF&CC) is also at liberty to conduct further enquiry regarding the nature of damage caused and also the cost required for restoration of damage caused to the environment and reassess the compensation to be recovered from the State of Telangana. 6. The Ministry of Environment, Forests and Climate Change (MoEF&CC) is directed to complete the process of the enquiry as early as possible at any rate within a period of four months and submit the further action taken report before this Tribunal after the expiry of four months has to be fixed by this Tribunal."**

i. It is submitted that the Hon'ble Tribunal directed that the MoEF&CC is at liberty to conduct further enquiry regarding:

- Nature of damage caused
- Cost required for restoration of damage caused to the environment and
- Reassess the compensation.



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- ii. Further, it is significant to note that, in the aforesaid order dated 10.02.2022 the Hon'ble Tribunal has permitted the Project Proponent to apply for the grant of EC which is to be re-assessed afresh. The wordings in this regard were *"If the project proponent makes an application for including the change of scope and apply for Environmental Clearance (EC), the same should not be granted by way of an amendment for existing EC and the entire process will have to be reassessed"*. Hence the process of re-assessment of the project is through the channel of SoP dated 07.07.2021 issued under the provisions of the EIA Notification, 2006.
- iii. The MoEF&CC had issued the Standard Operating Procedure (SoP) for identification and handling of violation cases under EIA Notification, 2006 mentioned vide OM dated 07.07.2021. The SoP, for consideration of violation cases, involves two components:

[a] Ecological Damage assessment and restoration: Assessment of environmental / ecological damage with respect to air, water, noise, soil/land, flora & fauna, occupation health and other environmental attributes and preparation of Remediation plan.

[b] Penalty on the basis of Polluter Pay Principle

The copy of the Standard Operating Procedure (SoP) vide O.M. dated 07.07.2021 and 28.01.2022 is annexed as **Annexure 4**.

However, at this stage, it is also worthwhile to mention here that Hon'ble Supreme Court vide order dated 02.01.2024 in the matter W.P. (C) No. 1394/2023 titled as Vanashakti vs Union of India has



stayed the operation of the OM dated 07.07.2021 read with OM dated 28.01.2022.

The copy of the order dated 02.01.2024 passed by the Hon'ble Supreme Court is annexed as **Annexure 5**.

- iv. As per information available, the proposal for obtaining fresh EC, based on ToR granted under violation category with Damage Assessment/Environment Impact Assessment (EIA) report, is yet to be submitted by Project Proponent for examination/appraisal by the SEAC (Constitution of SEIAA-Telangana vide notification dated 11th March, 2024). Further, in this regard the Project Proponent vide letter dated 01.03.2024 has stated that the EIA/EMP report along with damage assessment study as well as the Public Hearing report, will be uploaded on PARIVESH portal shortly.

The copy of the letter dated 01.03.2024 is annexed as **Annexure 6**.

- v. Further, as per the procedure of grant of EC, the nature of damage, calculation of cost required for restoration of damage caused to the environment and reassess the compensation is covered under Ecological Damage assessment vis-à-vis for re-assessment of this project under the ambit of EIA Notification, 2006 which can be done only through the applicable provisions under the SoP dated 07.07.2021. In this regard, it significant to clarify that the statement in the previous Partial Compliance Affidavit filed by the Ministry on 01.11.2023 that *a final compliance status report would be filed after the grant of the Environmental Clearance to the project under the violation category* may not be construed as a guarantee for according

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EC to the said Project but may be treated as an expression of the intent to file compliance status report as per the outcome of the appraisal of the Project carried out by the concerned Expert Appraisal Committee (EAC) which can be carried out only after the vacation of stay of the order of Hon'ble Supreme Court dated 2.1.24 whereby the operation of the SOP dated 7.7.2021 read with OM dated 28.1.2022 has been stayed by Hon'ble Supreme Court.

3. In light of the aforementioned facts of the matter, the reply affidavit may kindly be taken on record.
4. It is submitted that the Hon'ble Tribunal may pass appropriate order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.



Deponent

Tarun Kathula
 Director/Scientist 'F' (C)
 Integrated Regional Office,
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 Aranya Bhavan, Hyderabad, Telangana-500 004.

VERIFICATION

I, the above-named deponent do hereby solemnly affirm and state that the contents of the aforesaid are true and correct to my personal knowledge and have been derived from the official records maintained by the Respondent. No part of it is false nor has anything material been concealed therefrom.

Verified at Hyderabad on this 13th day of March, 2024



Deponent

Tarun Kathula
 Director/Scientist 'F' (C)
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भारत का राजपत्र The Gazette of India

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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 1795]
No. 1795]

नई दिल्ली, बुधवार, अप्रैल 20, 2022/चैत्र 30, 1944
NEW DELHI, WEDNESDAY, APRIL 20, 2022/CHAITRA 30, 1944

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 20 अप्रैल, 2022

का.आ. 1886(अ).—केंद्रीय सरकार पर्यावरण और वन विभाग के पूर्ववर्ती मंत्रालय में पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उप-धारा (1) और उप-धारा (2) के खंड (v) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण समाघात निर्धारण अधिसूचना, 2006 (जिसे इसमें इसके पश्चात ईआईए अधिसूचना, 2006 कहा गया है), परियोजनाओं की कतिपय प्रवर्ग के लिए पूर्व पर्यावरणीय मंजूरी आज्ञापक बनाने के लिए, संख्या का.आ.1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की है।

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण (एसईआईए) का गठन प्रवर्ग ख के अधीन सभी प्रस्तावों के लिए पर्यावरण मंजूरी (ईसी) पर विचार और अनुदान के लिए प्रत्यायोजित शक्तियों का प्रयोग करने हेतु राज्य स्तर पर ईआईए अधिसूचना, 2006 के कार्यान्वयन के लिए पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उप-धारा (3) के अधीन किया गया है;

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण ने पर्यावरण मंजूरी मूल्यांकन प्रक्रिया में पिछले पंद्रह वर्षों में पर्याप्त अनुभव प्राप्त किया है और राज्य स्तर पर पर्यावरण मंजूरी प्रस्तावों के कुशल और पारदर्शी निपटान के लिए परिवेश पोर्टल के माध्यम से पूरी तरह से ऑनलाइन कर दिया गया है;

और केंद्रीय सरकार राज्य स्तर पर मंजूरी की प्रसुविधा के लिए पर्यावरण मंजूरी प्रक्रिया को और विकेंद्रीकृत करना आवश्यक समझती है;

और आज की तारीख में, सुरक्षा भागीदारी के महत्वपूर्ण तत्वों के साथ राष्ट्रीय रक्षा और सामरिक महत्व से संबंधित प्रवर्ग ख की परियोजनाओं का राज्य स्तर पर भी मूल्यांकन किया जा रहा है, जिसे केंद्रीय सरकार राष्ट्रीय सुरक्षा चिंताओं को ध्यान में रखते हुए केंद्रीय रूप से मूल्यांकन करना आवश्यक समझती है;

अतः अब, केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त नियमों के नियम 5 के उप-नियम (3) के खंड (क) के अधीन नोटिस की अपेक्षा को समाप्त करने के पश्चात्, लोकहित में भारत सरकार की तत्कालीन पर्यावरण एवं वन मंत्रालय की अधिसूचना संख्यांक का.आ. 1533(अ), तारीख 14 सितम्बर, 2006, की अधिसूचना में निम्नलिखित और संशोधन करती है अर्थात्:-

उक्त अधिसूचना में-

(1) पैरा 4 में, उप-पैरा (iii) क) के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

(iii) क) राष्ट्रीय रक्षा या सामरिक या सुरक्षा महत्व से संबंधित हैं या जिन्हें केंद्रीय सरकार द्वारा संकटकाल जैसे महामारी, प्राकृतिक आपदाओं जैसी अत्यावश्यकताओं के कारण ऐसी प्रवर्ग 'ख' परियोजनाओं को अधिसूचित किया गया है या राष्ट्रीय कार्यक्रमों या स्कीमों या मिशन या ऐसी परियोजनाओं के अधीन पर्यावरण के अनुकूल क्रियाकलापों का संवर्धन करने के लिए जो इस अधिसूचना में यथा अधिकथित समय-सीमा से अधिक विलंबित हैं और समय-समय पर इस संबंध में यथा-अधिकथित मानदंडों को पूरा करती हैं, उन्हें केंद्रीय स्तर पर प्रवर्ग 'ख' परियोजनाओं के रूप में विचार किया जाएगा;

(2) अनुसूची में, -

(i) मद 1(क) के सामने, -

(क) स्तंभ (3) में, -

(क) गैर-कोयला खनन पट्टे के संबंध में "> 100 हेक्टेयर खनन पट्टा क्षेत्र" के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

"कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में >250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) ">150 हेक्टेयर" प्रतीक, अंक और अक्षर के स्थान पर, "> 500 हेक्टेयर" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) स्तंभ (4) में, -

(क) गैर-कोयला खनन के संबंध में <100 हेक्टेयर खनन पट्टा क्षेत्र के स्थान पर,

पट्टा", निम्नलिखित रखा जाएगा, अर्थात्: -

"लघु खनिज खनन पट्टों के संबंध में सभी खनन पट्टा क्षेत्र और कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में <250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) "<150 हेक्टेयर" के प्रतीकों, अंकों और अक्षरों के स्थान पर "<500 हेक्टेयर" के प्रतीक, अंक और अक्षर रखे जाएंगे;

(ii) मद 1(ग) के सामने, -

(क) स्तंभ (3) में, -

(क) क्रम संख्या (i) में, "> 50 मेगावाट, प्रतीकों, अंकों और अक्षरों के स्थान पर "> 100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) और उससे संबंधित प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, -

(क) क्रम संख्या (i) में, "<50 मेगावाट" प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) में, -

(I) "और <50,000 हेक्टेयर" शब्द, प्रतीक और अंक का लोप किया जाएगा;

(II) बिंदु (ग) में सारणी में, "से <50,000" शब्द, प्रतीक और अंक का लोप किया जाएगा; ।

(ग) स्तंभ (5) में, क्रम संख्या (ii) के पश्चात, निम्नलिखित क्रम संख्या अंतःस्थापित किया जाएगा, अर्थात् :-

"(iii) अंतर-राज्यीय मुद्दों से संबंधित सिंचाई परियोजनाओं का मूल्यांकन केंद्रीय स्तर पर श्रेणी में परिवर्तन के बिना किया जाएगा।";

(iii) मद 1(घ) के सामने,-

(क) स्तंभ (3) में, "> 50 मेगावाट" प्रतीकों, अंकों और अक्षरों के स्थान पर, "> 100 मेगावाट" प्रतीकों, अंकों और अक्षरों को रखा जाएगा;

(ख) स्तंभ (4) में, "<50 मेगावाट" प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(iv) मद 2(क) के सामने, -

(क) स्तंभ (3) में, ">1" प्रतीकों और अंक के स्थान पर, ">2.5" प्रतीकों और अंक को रखा जाएगा;

(ख) स्तंभ (4) में, "<1" प्रतीकों और अंक के स्थान पर, "< 2.5" प्रतीक और अंक रखे जाएंगे;

(ग) स्तंभ (5) में, विद्यमान पैरा के पश्चात, निम्नलिखित पैरा अंतःस्थापित किया जाएगा, अर्थात्: -

"खनन पट्टा क्षेत्र के भीतर स्थित धुलाई मशीनों के साथ एकीकृत कोयला खनन परियोजनाओं को कोयला खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार केंद्रीय स्तर या राज्य स्तर पर, यथास्थिति, विचार किया जाना जारी रहेगा।";

(v) मद 2 (ख) के सामने, -

(क) स्तंभ (3) में, विद्यमान प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, "<0.5 मिलियन टीपीए का उत्पादन" प्रतीक, अंक, शब्द और अक्षर के स्थान पर, "सभी खनिज परिष्करण परियोजना, परिष्करण की प्रक्रिया पर ध्यान दिए बिना" शब्द रखे जाएंगे;

(ग) स्तंभ (5) में, विद्यमान पैरा के पश्चात, निम्नलिखित पैरा रखा जाएगा,

अर्थात्: -

"भीतर स्थित लाभकारी संयंत्रों के साथ एकीकृत खनन परियोजनाएं खनन पट्टा क्षेत्र पर केन्द्रीय स्तर पर विचार किया जाता रहेगा या यथास्थिति, राज्य स्तर, खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार।";

(vi) मद 7 (क) के सामने,-

(क) स्तंभ (3) में, "सभी परियोजनाओं" शब्दों के स्थान पर "सभी नई परियोजनाएं" शब्द रखे जाएंगे;

(ख) स्तंभ (4) में, निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात्: -

"सभी विस्तार परियोजनाएं, जिनमें हवाई पट्टियां भी सम्मिलित हैं, जो वाणिज्यिक उपयोग के लिए हैं।"

[फा. सं. आईए 3-22/10/2022-आईए. III]

डॉ. सुजीत कुमार बाजपेयी, संयुक्त सचिव

टिप्पण : मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड III, उप-खंड (ii), संख्या का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की गई थी और अधिसूचना संख्या का.आ. 1807(अ), तारीख 12 अप्रैल, 2022 द्वारा अंतिम संशोधन किया गया था।

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

New Delhi, the 20th April, 2022

S.O. 1886(E).—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006), vide number S.O.1533 (E), dated the 14th September, 2006 for mandating prior environmental clearance for certain category of projects;

And whereas, the State Environment Impact Assessment Authorities (SEIAAs) have been constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for implementation of the EIA Notification, 2006 at State level for exercising delegated powers to consider and grant Environmental Clearance (EC) for all proposals under Category B;

And whereas, the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process and the process at the State level has also been made completely online through the PARIVESH portal for efficient and transparent disposal of EC proposals;

And whereas, the Central Government deems it necessary to further decentralise the EC process for facilitating clearances at State level;

And whereas, as on date, category 'B' projects, relating to national defence and strategic importance with significant element of security involvement are also being appraised at the State level which, the Central Government deems it necessary to be appraised centrally taking into account national security concerns;

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 (29 of 1986), read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, hereby makes the following further amendments in the notification of the Government of India, in the erstwhile Ministry of Environment and Forests, number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

(1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely:-

(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;

(2) in the Schedule,-

(i) against item 1(a),-

(a) in column (3),-

(A) for ">100 ha. of mining lease area in respect of non-coal mining lease", the following shall be substituted, namely:-

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),-

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely:-

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters “ ≤ 150 ha”, the symbols, figures and letters “ ≤ 500 ha” shall be substituted;

(ii) against item 1(c),—

(a) in column (3),—

(A) in serial number (i), for the symbols, figures and letters “ ≥ 50 MW”, the symbols, figures and letters “ ≥ 100 MW” shall be substituted;

(B) serial number (ii) and the entries relating thereto shall be omitted;

(b) in column (4),—

(A) in serial number (i), for the symbol, figures and letters “ < 50 MW”, the symbol, figures and letters “ < 100 MW” shall be substituted;

(B) in serial number (ii),—

(I) the word, symbol and figures “and $< 50,000$ ha.” shall be omitted;

(II) in point (c) in the table, the word, symbol and figures “to $< 50,000$ ” shall be omitted;

(c) in column (5), after serial number (ii), the following serial number shall be inserted, namely:—

“(iii) Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category.”;

(iii) against item 1(d),—

(a) in column (3), for the symbols, figures and letters “ ≥ 50 MW”, the symbols, figures and letters “ ≥ 100 MW” shall be substituted;

(b) in column (4), for the symbol, figures and letters “ < 50 MW”, the symbol, figures and letters “ < 100 MW” shall be substituted;

(iv) against item 2(a),—

(a) in column (3), for the symbols and figure “ ≥ 1 ”, the symbols and figures “ ≥ 2.5 ” shall be substituted;

(b) in column (4), for the symbols and figure “ < 1 ”, the symbols and figures “ < 2.5 ” shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:—

“Integrated coal mining projects with washeries located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for coal mining projects.”;

(v) against item 2 (b),—

(a) in column (3), the existing entries shall be omitted;

(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;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:—

“Integrated mining projects with beneficiation plants located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for mining projects.”;

(vi) against item 7 (a),—

(a) in column (3), for the words “All projects”, the words “All new projects” shall be substituted;

(b) in column (4), the following shall be inserted, namely:—

“All expansions projects, including airstrips, which are for commercial use.”.

[F. No. IA3-22/10/2022-IA.III]

Dr. SUJIT KUMAR BAJPAYEE, Jt. Secy.

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section III, sub-section (ii), vide, number S.O. 1533(E), dated the 14th September, 2006 and was last amended, vide, the notification number S.O. 1807(E), dated the 12th April, 2022.



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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
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अधिसूचना

नई दिल्ली, 11 मार्च, 2024

का.आ. 1201(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना का.आ. सं. 1533(अ), तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात् उक्त अधिसूचना कहा गया है) के अनुसरण में तेलगाना के लिए राज्य स्तर पर्यावरण समाघात निर्धारण प्राधिकरण (जिसे इसमें इसके पश्चात् प्राधिकरण कहा गया है) का गठन करती है, जिसमें निम्नलिखित सदस्य होंगे, अर्थात्:-

- डॉ. गौरवाराम सविता
प्लॉट नं. 45, बंजारा ग्रीन कालोनी, रोड नं. 12,
बंजारा हिल्स, हैदराबाद 500034, तेलंगाना
अध्यक्ष;
- श्री स्वर्गम श्रीनिवास, आईएफएस (सेवानिवृत्त),
भूतपूर्व प्रधान मुख्य वन संरक्षक,
प्लॉट नं. 152/153, साई बाबा आफिसर्स कालोनी,
सैनिकपुरी सिकंदराबाद - 500094, तेलंगाना।
सदस्य;

3. विशेष सचिव, पर्यावरण, सदस्य-सचिव।
वन और प्रौद्योगिकी विभाग,
तेलंगाणा सरकार
2. प्राधिकरण के अध्यक्ष और सदस्य, राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए पद धारण करेंगे।
3. प्राधिकरण, ऐसी शक्तियों का प्रयोग करेगा और ऐसी प्रक्रिया का अनुसरण करेगा जो उक्त अधिसूचना में यथा विनिर्दिष्ट हैं।
4. प्राधिकरण, अपने विनिश्चय तेलंगाणा राज्य के लिए पैरा 5 के अधीन गठित राज्य स्तर विशेषज्ञ अंकन समिति की सिफारिशों के आधार पर करेगा।
5. केन्द्रीय सरकार, प्राधिकरण की सहायता के प्रयोजन के लिए तेलंगाणा राज्य सरकार के परामर्श से राज्य स्तर विशेषज्ञ अंकन समिति (जिसे इसमें इसके पश्चात् समिति कहा गया है) का गठन करती है जिसमें निम्नलिखित व्यक्ति होंगे, अर्थात्:-
- (i) डॉ. एम. राम गोपाल रेड्डी, -अध्यक्ष;
फ्लैट नं. 304, ई44, वैष्णवी सिरी संपदा अपार्टमेंट्स,
मधुरानगर, हैदराबाद, तेलंगाणा-500038.
- (ii) डॉ दिनेश कुमार भरतराज, सदस्य;
प्लैट नं. 66, एच. नं. 17-8/ए, बेरप्पागड्डा,
धरमपुरी कालोनी, उप्पल – 500039.
- (iii) डॉ. ए. बेंकट राजशेखर, सदस्य;
एच. नं. 2-2-1136/10/4, फ्लैट नं. 201,
श्रीनीलायम अपार्टमेंट, नल्लाकुंता,
हैदराबाद -500044, तेलंगाणा राज्य
- (iv) डॉ. सोलिपुरम् बेंकट रेड्डी सदस्य;
प्लैट नं. 9, फेस-2, वसंत वैली, वाइटफील्ड्स
कोंडापुर, सरलिंगमपल्ली, आर.आर. डिस्ट्रिक्ट-500084
- (v) डॉ सरिता सज्जा सदस्य;
1-10-29/188/738, श्री नीलायम, कापरा,
सिकंदराबाद -500062.
- (vi) डॉ. शेक बाशा सदस्य;
मुख्य वैज्ञानिक और अध्यक्ष सीएसआईआर-एनईआईआरआई, हैदराबाद जोनल सेंटर
आईआईसीटी कैंपस, हैदराबाद, 500007

- (vii) डॉ. के. मृत्युंजय रेड्डी सदस्य;
एच. नं. 7-66/2/235, प्रशांकी हिल्स,
सेरिलिंगमपल्लि, म्यूनिसिपैलिटी,
हैदराबाद – 500104.
- (viii) डॉ. सिरीश सारिदे सदस्य;
बी-301, सिविल इंजीनियरिंग विभाग,
आईआईटी हैदराबाद ।
- (ix) डॉ. के. एल. राधिका सदस्य;
सिविल इंजीनियरिंग विभाग, यूनिवर्सिटी कालेज आफ इंजीनियरिंग (ए) ओस्मानिया
यूनिवर्सिटी,
हैदराबाद तेलंगाना राज्य 500007
- (x) डॉ. ए. सबिता रानी सदस्य;
प्रो. ए. सबिता रानी, अध्यक्ष, बोर्ड आफ स्टडीज इन बॉटनी, डिपार्टमेंट ऑफ
बॉटनी, यूसीएस, ओस्मानिया यूनिवर्सिटी, हैदराबाद – 500007, तेलंगाना राज्य
- (xi) डॉ. के.एल.एन. रेड्डी, सदस्य;
वेसेल्ला विलाज, #9, नीयर चिराक पब्लिक स्कूल,
श्रीराम नगर, कोंडापुर, हैदराबाद- 500084, तेलंगाना
- (xii) प्रो. गाडे दयाकर सदस्य;
एच. नं. 2-6-24, बिसाइड आर एंड बी गेस्ट हाउस,
हनमकोंडा मंडल, हनमकोंडा डिस्ट्रिक्ट ।
- (xiii) डॉ. पोलिसेट्टी वेंकटेश्वर राव सदस्य;
प्रोफेसर, जल और पर्यावरण डिविजन,
सिविल इंजीनियरिंग विभाग, एनआईटी वारंगल,
तेलंगाना-506004
- (xiv) प्रो. भुक्का राजम सदस्य;
प्रोफेसर, कैमिकल इंजीनियरिंग विभाग, यूनिवर्सिटी कालेज आफ टेक्नालाजी, ओस्मानिया
यूनिवर्सिटी, हैदराबाद-500007,
तेलंगाना ।
- (xv) संयुक्त मुख्य पर्यावरण इंजीनियर, तेलंगाना राज्य प्रदूषण नियंत्रण बोर्ड सदस्य सचिव।

6. समिति के अध्यक्ष और सदस्य, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए पद धारण करेंगे ।

7. हितों के टकराव से बचने के लिए-

(i) प्राधिकरण और समिति के अध्यक्ष और सदस्य-

(क) यह घोषित करेंगे कि वे किस परामर्श संगठन और परियोजना के प्रस्तावक से भी जुड़े हैं;

(ख) किसी परियोजना के लिए पर्यावरणीय समाघात निर्धारण और पर्यावरण प्रबंधन योजना की तैयारी के लिए कोई परामर्श या सहयोग नहीं लेंगे, जिनका उनके कार्यकाल के दौरान प्राधिकरण और समिति द्वारा मूल्यांकन किया गया; तथा

(ii) यदि पिछले पांच वर्षों में, समिति के अध्यक्ष या किसी भी सदस्य ने किसी परियोजना प्रस्तावक के लिए परामर्श सेवाएं प्रदान की हैं या पर्यावरणीय समाघात निर्धारण अध्ययन आयोजित किया है, तो ऐसे समर्थकों द्वारा प्रस्तावित किसी भी परियोजना के मूल्यांकन की प्रक्रिया में समिति की बैठक से बचेंगे।

8. समिति, ऐसी शक्तियों का प्रयोग करेगी और ऐसी प्रक्रियाओं का पालन करेगी जो उक्त अधिसूचना में विनिर्दिष्ट हैं।

9. समिति सामूहिक उत्तरदायित्व के सिद्धांत पर काम करेगी और अध्यक्ष प्रत्येक मामले में सर्वसम्मति पर पहुंचने का प्रयास करेगा और यदि सर्वसम्मति पर नहीं पहुंचा जा सकता है तो बहुमत का मत अभिभावी होगा।

10. (i) तेलगाना राज्य सरकार, प्राधिकरण और समिति के लिए सचिवालय के रूप में कार्य करने के लिए किसी अभिकरण को अधिसूचित करेगी

(ii) सचिवालय, वित्तीय और संभार तंत्र संबंधी सहायता, जिसके अंतर्गत वास-सुविधा, परिवहन और उक्त अधिसूचना के अधीन उनके कृत्यों की बाबत अन्य सुविधाएं भी हैं, उपलब्ध कराएगा।

11. प्राधिकरण तथा समिति के अध्यक्ष और सदस्यों की बैठक की फीस, यात्रा भत्ता और मंहगाई भत्ता तेलगाना राज्य सरकार के सुसंगत नियमों के उपबंधों के अनुसार संदत्त किया जाएगा।

[फा. सं. आईए3-13/2/2022-आई.ए. III]

डॉ. सुजीत कुमार बाजपेयी, संयुक्त सचिव

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 11th March, 2024

S.O. 1201(E).—In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of the notification of the Government of India in the *erstwhile* Ministry of Environment and Forests, number S.O. 1533(E), dated the 14th September, 2006 (hereinafter referred to as the said notification), the Central Government hereby constitutes the State Level Environment Impact Assessment Authority for Telangana (hereinafter referred to as the Authority) comprising of the following persons, namely: -

(i) Dr. Gowravaram Sabitha Chairman;

Plot No. 45, Banjara Green Colony, Road NO. 12, Banjara Hills, Hyderabad
500034, Telangana

(ii) Sri. Swargam Srinivas, IFS (Retd.) Member;

Ex. Principal Chief Conservator of Forest,
Plot No. 152/153, Sai baba officers Colony,
Sainikpuri Secunderabad – 500094, Telangana.

(iii) Special Secretary, Environment, Member -Secretary.
Forests, Science and Technology Department,
Government of Telangana.

2. The Chairman and Members of the Authority shall hold office for a period of three years from the date of publication of this notification in the Official Gazette.

3. The Authority shall exercise such powers and follow such procedures as specified in the said notification.

4. The Authority shall take its decision on the recommendations of the State Level Expert Appraisal Committee constituted under paragraph 5 for the State of Telangana.

5. The Central Government, in consultation with the State Government of Telangana, for the purposes of assisting the Authority, hereby constitutes the State Level Expert Appraisal Committee (hereinafter referred to as the Committee), comprising of the following persons, namely: -

- (i) Dr. M. Ram Gopal Reddy Chairman;
Flat No. 304, E44, Vaishnavi Siri sampadaapts,
Madhuranagar, Hyderabad, Telangana-500038.
- (ii) Dr. Dinesh Kumar Bharatraj Member;
Plot No. 66, H. No. 17-8/A, Berappagadda, Darampuri
Colony, Uppal – 500039.
- (iii) Dr. A. Venkata Rajashekhar Member;
H.No.- 2-2-1136/10/4, Flat. No. 201, Srinilayam
Appartment, Nallakunta, Hyderabad – 500044, Telangana State
- (iv) Dr. Solipuram Venkat Reddy Member;
Plot No 9, Phase-II, Vasanta Valley, whitefields
Kondapur, Serlingampally, R.R District-500084
- (v) Dr. Sarita Sajja Member;
1-10-29/188/738, Sri Nilayam, Kapra,
Secunderabad – 500062.
- (vi) Dr. Shaik Basha Member;
Chief Scientist and Head
CSIR-NEERI, Hyderabad Zonal Centre IICT
Campus, Hyderabad,500 007
- (vii) Dr. K Mruthyunjaya Reddy Member;
H.No.7-66/2/235, Prashanth Hills, Raidurg Village,
Serilingampally, Municipality, Hyderabad –500 104.
- (viii) Dr. Sireesh Saride Member;
B-301,Department of Civil Engineering, IIT Hyderabad.
- (ix) Dr. K.L. Radhika Member;
Department of Civil Engineering University College of
Engineering (A) Osmania University, Hyderabad Telangana State
500 007
- (x) Dr. A. Sabitha Rani Member;
Professor A. Sabitha Rani, Chairperson, Board of Studies in
Botany, Dept. of Botany, UCS, Osmania University, Hyderabad –
500007, TS
- (xi) Dr.K.L.N. Reddy. Member;
Vessella Villas,#9, Near Chirac Public School, Sriram Nagar,

Kondapur, Hyderabad – 500084,
Telangana.

- (xii) Prof. Gade Dayakar Member;
H.No.2-6-24, Beside R & B Guest House,
Hanamkonda Mandal, Hanamkonda District.
- (xiii) Dr. Polisetty Venkateswara Rao Member;
Professor, Water and Environment Division,
Department of Civil Engineering, NIT Warngal,
Telangana-506 004
- (xiv) Prof. Bhukya Rajam Member;
Professor, Department of Chemical Engineering, University
College of Technology, Osmania University, Hyderabad – 500007,
Telangana.
- (xv) Joint Chief Environmental Engineer, Telangana State Pollution Control Board Member- Secretary.
6. The Chairman and Members of the Committee, shall hold office for a period of three years from the date of publication of this notification in the Official Gazette.
7. In order to avoid any conflict of interest,-
- (i) the Chairman and Members of the Authority, and the Committee shall-
- (a) declare to which consulting organisation they have been associated with and also the project proponents;
- (b) not undertake any consultation or associate with regard to preparation of Environment Impact Assessment and Environment Management Plan for project, which is to be decided by the Authority, or to be appraised by the Committee during their tenure; and
- (ii) In the preceding five years, if the Chairman or any Member of the Committee has provided consultancy services or conducted Environment Impact Assessment studies for any project proponent, they shall recuse themselves from the meetings of the Committee from the process of appraisal of any project proposed by such proponents.
8. The Committee shall exercise such powers and follow such procedures as specified in the said notification.
9. The Committee shall function on the principle of collective responsibility and the Chairman shall endeavour to reach consensus in each case, and if they fail to reach consensus, the views of the majority shall prevail.
10. (i) The State Government of Telangana shall specify an agency to act as secretariat of the Authority, and the Committee.
- (ii) The secretariat shall provide financial and logistic support including accommodation, transportation and such other facilities in respect of their functions under the said notification.
11. The sitting fees, travelling allowances and dearness allowances to the Chairman and Members of the Authority, and the Committee, shall be paid in accordance with the provisions of relevant rules, of the State Government of Telangana.

[F. No. IA3-13/2/2022-IA.III]

Dr. SUJIT KUMAR BAJPAYEE, Jt. Secy.



సిద్దిపేట జిల్లా న్యాయస్థానం

District Court Siddipet

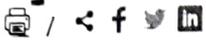
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Case Status : Search by Case Number

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FIR Number

Party Name

Advocate Name

Case Code

Act

Case Type

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Jr. Civil Courts, Husnabad

In The Court Of : Prl. Junior Civil Judge

CNR Number : TSSD050021392023

Case Number : CC/0000536/2023

Date : 02-02-2024

Telangana State Pollution Control Board, Rep. By the Environmental Engineer, Sri Kumar Pathak **Versus** Indiramma Flood Flow Canal Project Rep. engineer B. Shankar

Daily Status

Business	Nature of Disposal	Disposal Date
The accused is present and he is identified and the case copies of this case are furnished to the accused as required under section 207 Cr.P.C. The accused reported that, he want to admit his guilt. The accused prayed this Court to take lenient view in imposing	ADMISSION OF CLAIM	02-02-2024

Business

punishment and prayed this Court to impose only fine. The admission of the accused appears to be voluntarily. The accused is examined under Section 239 of Cr.P.C., for the offence punishable U/Sec. 19 of the Environment (Protection) Act, 1986. The substance of the examination is read over and explained to him in Telugu language, for which accused pleaded guilt and stated that, he is committed mistake and he has not involved in any other cases and prayed this Court to take lenient view in imposing punishment and prayed this Court to impose only fine. Heard. The accused about the quantum of sentence and he prayed the Court to take lenient view in imposing punishment and prayed this Court to impose only fine. In view of the facts and circumstances of the case, the accused is convicted U/Sec. 241 Cr.P.C for the offence Punishable U/Sec. 19 of the Environment(Protection) Act, 1986 and he is sentenced to pay a fine of Rs. 50,000/- (Rupees fifty thousand only) for the said offence. In default, to undergo simple imprisonment for one week for the said offence. The bail bonds of the accused if any shall stand canceled and the sureties are discharged. No property.

Pr. n.

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Last Updated: **Feb 12, 2024**

F. No. 22-21/2020-IA.III [E 138949]

Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003

Dated 28th January, 2022**OFFICE MEMORANDUM**

Sub.: Observation of Hon'ble Supreme Court with reference to the SoP dated 7th July 2021 for identification and handling of violation cases under EIA Notification 2006 – reg.

The Ministry issued a Standard Operating Procedure dated 7th July 2021 bearing the file number 22-21/2020-IA.III, for identification and handling of violation cases under EIA Notification 2006 in compliance to order of the Hon'ble National Green Tribunal in Appeal No. 34/2020 (WZ) titled Tanaji B. Gambhire Vs Chief Secretary, Government of Maharashtra. The copy of the SoP is enclosed for ready reference.

2. The SoP was challenged in the Madurai Bench of the High Court of Madras in the matter W.P.(MD) No. 11757 of 2021 titled Fatima Vs Union of India and was interim stayed vide order dated 15th July 2021.

3. Recently, in the Order dated 09th December 2021 in the matter of Civil Appeal Nos. 7576-7577 of 2021 in Electrosteel Steels Limited Vs Union of India and Ors., the Hon'ble Supreme Court of India has *inter-alia* observed the following:

"93. *The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7th July, 2021.*"

4. The copy of the order which is self-explanatory is enclosed herewith for necessary action.

5. This is issued with the approval of the competent authority.


(A K Agrawal)
Director

Encl: As above.

To

1. Chairperson/ Member Secretaries of all Expert Appraisal Committees
2. Chairperson/Member Secretaries of all SEIAAs/SEACs
3. All Officers of IA Division

Copy for information to

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to AS (TK)/JS (SKB)
5. Website, MoEF&CC /Guard file

F. No. 22-21/2020-IA.III

Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira ParyavaranBhawan
Jor Bagh Road, Aliganj
New Delhi - 110003
sujit.baju@gov.in

Date: 7th July, 2021**Office Memorandum**

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been

pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014).** The salient extracts of the judgements are as under:

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.**"*

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating

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*pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.***

“29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms.”

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon’ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

*Held: “(...) an EC will come into force **not earlier than the date of its grant.**”*

Issue 3: ‘Principles of Proportionality’ – to be applied:

Hon’ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

*Held: “(...) **this Court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality**”*

**Issue 4: ‘Polluter pays’ principle &
&**

Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon’ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

*a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ...** 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.....*

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b) **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.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally 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".

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said 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.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to close its operation
2.	If prior EC is available for existing/old unit	Order to revert the activity/production to permissible limits.
3.	If prior EC was not required for earlier production level but is now required	Restrict the activity/production to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

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form/configuration/features then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. 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 & Community Resource Augmentation Plan.**

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. For new projects:

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

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b. For expansion projects:

- i. **Where operation/production with expanded capacity has not commenced:**
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

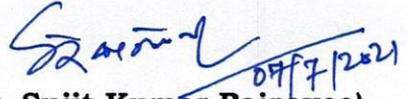
With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior



Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
 - iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.
14. This is issued with the approval of the Competent Authority.


(Dr. Sujit Kumar Bajpayee)
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 7576-7577 OF 2021
[Arising out of SLP (C.) Nos. 11226-11227 of 2020]

Electrosteel Steels LimitedPetitioner (s)

Versus

Union of India and Ors. Etc.Respondent (s)

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. These Appeals are against an order dated 16th September 2020 passed by a Single Bench of the High Court of Jharkhand in W.P. (C) No.1873 of 2018 and W.P. (C) No. 4850 of 2018, discontinuing the interim orders earlier passed by the High Court, allowing the Appellant to operate its unit under the supervisory regulatory control of the Respondent - Jharkhand State Pollution Control Board, hereinafter referred to as "JSPCB", which had been in force for over two years.

3. The Appellant owns and runs a 1.5 MTPA integrated steel plant in Bokaro District in Jharkhand. The said steel plant in Bokaro, which

employs 3,000 regular employees and 7000 contractual employees, produced steel worth Rs.4,200 crores in the financial year 2019-20.

4. The Appellant claims that about 30,000 persons other than those actually employed by the steel plant as regular or contractual employees depend on the steel plant for their livelihood.

5. Corporate Insolvency Resolution Process (CIRP) had commenced against the Appellant under the Insolvency and Bankruptcy Code 2016. As successful Resolution Applicant, Vedanta Ltd. took over the Appellant on or about 4th June 2018 upon payment of Rs.5,320 crores for discharge of its debts.

6. Pollution and consequential deterioration of environment has been assuming alarming proportions, and has become a cause of universal concern. Fumes, smoke, emission of green house gases by use of motors and machines and operation of mills, factories and plants cause environmental degradation.

7. Under the aegis of the United Nations discussions and deliberations have been held to protect and improve environment and prevent pollution.

8. In 1972, the United Nations Conference on the Human Environment was convened in Stockholm to work out ways and means to protect and improve the environment. In course of deliberations, it was felt that there was need to enact law to tackle environmental pollution. India

participated in the conference and strongly voiced environmental concerns.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "*the 1986 Act*", has been enacted as a consequence of decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972.

10. The statement of objects and reasons for enactment of the 1986 Act declares that the Act has been prompted by concern over environment, that has grown the world over, since the sixties.

11. Sub-Section (1) of Section 3 of the 1986 Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

12. Sub-section (2) of Section 3 of the 1986 Act enables the Central Government to take, *inter alia*, the following measures:

"(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of

environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

13. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

“The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

14. Subject to the provisions of the 1986 Act, the Central Government has power under sub-section (1) of section 3 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 environmental pollution.

15. Section 5 of the 1986 Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the 1986 Act, the Central Government may, in exercise of its powers and performance of its functions under the 1986 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.

16. In exercise of powers conferred by Sub-Section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 the Central Government issued the Environmental Impact Assessment Notification dated 27th January 1994 directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernisation of any activity or a new project listed in Schedule I of the Notification shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government in accordance with the procedure specified in the Notification.

17. Under Clause (2)(I) of the said Notification, any person who desires to undertake any new project listed in Schedule I is required to submit an application to the Secretary, Ministry of Environment and Forests (MoEF), New Delhi in the pro forma specified in Schedule II, accompanied by a project report which is to include the EIA (Environmental Impact Assessment) Report /Environment Management Plan (EMP) prepared in accordance with the guidelines issued by MoEF. Another Environmental Impact Notification was issued in 2006, for grant of Terms and Environmental Clearance *inter alia* for projects which had started work on site.

18. The EIA Report submitted with the application of the project proponent is to be evaluated and assessed by the Impact Assessment Agency (IAA), that is MoEF, and if deemed necessary, it may consult a Committee of Experts constituted in the manner prescribed in Schedule III. The Committee of Experts shall have full right of entry and inspection of the site. The Impact Assessment Agency is to prepare a set of recommendations based on technical assessment of documents and data, furnished by the project proponent, supplemented by data collected during visits to sites, interaction with the affected population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which EC is given shall, subject to public interest, be made available to the parties concerned or environmental groups on request. The IAA may solicit comments of the public within the specified period by arranging public hearings for that purpose. The public shall, subject to public interest, be provided access, to the summary of the EIA Report/Environment Management Plan (EMP). The clearance granted for commencement of the construction or operation of the plant, is to be valid for five years. Clause IV of the Environmental Impact Assessment Notification provides for the monitoring of the implementation of the conditions of EC and/or the recommendations and conditions laid down by IAA.

19. A minor amendment was made to the said Environmental Impact Assessment Notification dated 27th January 1994, by a Notification dated 10th April 1997, which prescribes a detailed procedure for public hearing.

20. By a notification being S.O. 327(E), dated 10th April 2001, published in the Gazette of India, Extra., Pt.II, Sec.3(ii), dated 12th April 2001, the Central Government has delegated the powers vested in it under Section 5 of the 1986 Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority for the violations of the standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986 subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.

21. On or about 8th January 2007, the Appellant applied to the Ministry of Environment, Forest and Climate Change, Government of India, hereinafter referred to as "MoEF&CC" for grant of EC to establish 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District.

22. In its application, the Appellant stated that 1350 acres of land were required for establishing the said plant at the Mauza South Parbatpur of Chandankiyari Block of Bokaro District and that no forest land was involved in the project.

23. By a letter No. F.No.J-11011/137/2006-1A-II (i) dated 21st February 2008, the Appellant was granted EC. After obtaining EC, the Appellant applied to the JSPCB, for grant of 'Consent to Establish' (CTE) under the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as the Air Pollution Act, and Water (Prevention and Control of Pollution) Act 1974, hereinafter referred to as the Water Pollution Act.

24. On 5th May 2008, the JSPCB granted CTE to the Appellant to establish the 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District. The CTE was granted on the basis of the EC granted by the MoEF&CC.

25. The CTE was extended from time to time till 4th May 2011. Even though CTE was granted to the Appellant to establish a steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District, the Appellant established steel plant in Mauza Bhagabandh in the Chas Block in Bokaro District, 5.3 Kms away from the site for which EC and CTE had been granted.

26. A Circular No.J-11013/41/2006-1A.2(i) dated 22nd January, 2010 was issued by the Ministry of Environment and Forest (MoEF) of the Government of India which provided as follows:

"Instances have come to the notice of this Ministry wherein the project proponents have changed the project site after the said project has been granted environmental clearance or after the public hearing has been held. The project proponents have approached this Ministry to revalidate the environmental clearance so granted without undergoing afresh the procedure prescribed for obtaining environmental clearance. The matter has been considered in the ministry. The change in project site would lead to change in project affected people as well as the

change in study area and the impact zone. As such the Environment Impact Assessment Report and Public Hearing conducted for a particular location cannot be taken valid for the changed location.

Accordingly, it has been decided that any shift in project site location after holding of public hearing will be deemed to be a new proposal and will be appraised afresh as per the procedure prescribed under EIA Notification 2006 provided the respective Expert Appraisal Committee is satisfied that the shift is so minor as to have no change in EIA/EMP, duly recorded in the minutes and prior approval of advisor (In-charge)/SEIAA for Category 'A'/Category 'B' projects respectively is obtained for not holding the public hearing for the changed location afresh.

This issues with the approval of the Competent Authority.”

27. By a communication being Reference No.1142 dated 4th May 2010, the District DFO (District Forest Officer) Bokaro requested JSPCB to take action against the Appellant for setting up its integrated steel plant on forest land in Mauza Bhagabandh of Chas Block of Bokaro District, in violation of the Forest Conservation Act 1980 and Indian Forest Act 1927. The DFO, Bokaro reported encroachment of 220.88 acres of notified forest land by the Appellant to JSPCB.

28. It appears that cases had been initiated against the officials of the Appellant under the Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Bihar Public Land Encroachment Act, 1955 which have been quashed by the Jharkhand High Court, by an order dated 25th January 2011.

29. On or about 23rd September 2010 the Appellant applied for Consent to Operate (CTO) under the Air Pollution Act and the Water Pollution Act for its 350 m³ blast furnace. Later on 9th September 2011, the Appellant applied for CTO in respect of its entire plant.

30. By a letter dated 2nd December 2011, addressed to the Appellant, the MoEF confirmed that the lay out of the Appellant's 3 MTPA Integrated Steel Plant was well within the Environment Impact Area and that the affected people had the opportunity to participate in a public hearing.

31. By letter dated 18th May 2012, the JSPCB reported encroachment by the Appellant upon forest land and alleged violation by the Appellant of the Forest Conservation Act, 1980 to the MoEF&CC, New Delhi. The MoEF&CC was also informed of the unauthorized shifting of the integrated steel plant from Mauza South Parbatpur of Chandankiyari Block of Bokaro District to Mauza Bhagabandh of Chas Block of Bokaro District in violation of the conditions of Environment Clearance granted by the MoEC&CC.

32. Pursuant to the report of JSPCB, MoEF&CC issued a Show Cause Notice dated 6th June 2012 to the Appellant under Section 5 of the 1986 Act. The Appellant submitted its reply to the Show Cause Notice on 20th June 2012.

33. On 10th September 2012, the Appellant once again applied to JSPCB for CTO for one year under the Water Pollution Act and Air Pollution Act. According to the Appellant, several reminders were sent to MoEF&CC requesting MoEF&CC to intimate JSPCB of the outcome of the Show Cause

Notice issued to the Appellant. However, JSPCB has not been informed of the decision of MoEF&CC.

34. The Appellant filed a Writ Petition being W.P. No.2247/2012 in the Jharkhand High Court for orders on JSPCB to grant the Appellant CTO. The said writ petition was disposed of by an order dated 5th November 2012, the operative part whereof is set out hereinbelow:-

“Respondent 1& 2 to consider the petitioner’s application and as assured by them, if so required, give an opportunity of hearing to the petitioners and after taking into consideration the facts and provisions of law and the related decisions, shall dispose of the petitioner’s application within five weeks from the date of receipt/production of a copy of this order.”

35. On or about 27th November 2013, the application of the Appellant for CTO was rejected on the ground that the Appellant had shifted the site of its steel Plant and had encroached upon forest land in violation of the Forest Conservation Act, 1980. The operative part of the order dated 27th November 2013 reads:-

“at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of Pollution) Act, 1974 by “refusing” the CTO to the unit for the reason aforesaid.”

36. The Appellant filed an application for contempt being Contempt Case (C) No.939 of 2013 in W.P.(C) No.2247 of 2012 in the Jharkhand High Court. Pursuant to an order dated 29th November 2013 in the Contempt Petition, the JSPCB disposed of the applications for grant of CTO to the Appellant.

37. By a letter dated 17th April 2013, the MoEF&CC had called for a status report from the State of Jharkhand in respect of forest land encroached by the Appellant. The Forest Department submitted a report to the MoEF&CC on 13th May, 2014.

38. Thereafter, by a letter dated 20th October 2014, the MoEF&CC, New Delhi directed the Department of Forest, Environment and Climate Change, Government of Jharkhand to take action against the Appellant for violating the provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980. In compliance with the aforesaid order, JSPCB directed the Appellant to close down its plant under Section 31(A) of the Air Pollution Act and Section 33(A) of Water Pollution Act.

39. By a Memo No.521 dated 6th February 2015, the Department of Forest, Environment and Climate Change, Government of Jharkhand directed the DGP, Jharkhand, Ranchi and the Deputy Commissioner, Bokaro to take action against the Appellant in the light of the letter dated 20th October, 2014 of the MoEF&CC, Government of India and to submit an action taken report.

40. The aforesaid order of JSPCB was challenged by the Appellant by filing a Writ Petition being WP(C) No.2033 of 2015 in the Jharkhand High Court. By an order dated 5th February 2016 the High Court set aside the order of the JSPCB holding that the same had been passed in violation of principles of natural justice. The High Court however, held that JSPCB

would be at liberty to pass an order in accordance with law after giving the Appellant an opportunity of hearing.

41. Thereafter, a show cause notice dated 25th April 2016, was issued to the Appellant. The Appellant replied to the show cause notice on 28th September 2016, contending that the Appellant had not set up its plant on any forest land and that all pollution control measures had been taken. However, the Principal Chief Conservator of Forests (PCCF), Jharkhand had by a communication No.2966 dated 8th August 2016 informed JSPCB that the Appellant had encroached forest land. Thereafter JSPCB once again called upon the Appellant to show cause in the light of information provided by the PCCF, Jharkhand. The Appellant by a letter dated 28th September 2016 reiterated that there was no forest land in the plant premises.

42. JSPCB passed an order No.B-319 dated 13th February 2017 disposing of the show cause notice in the light of the direction dated 5th February 2016 of the Jharkhand High Court and the applications for CTO. JSPCB granted CTO to the Appellant which was valid till 31st December, 2017.

43. The MoEF&CC and the State Environment Impact Assessment Authorities had, in the meanwhile been receiving proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of Reference and Environmental Clearance for projects which had started the work on site, expanded the production beyond the limit of

environmental clearance or changed the product mix without obtaining prior environmental clearance.

44. The MoEF&CC deemed it necessary that all entities not complying with the environmental regulation under Environment Impact Assessment Notification, 2006, be brought to comply with the environmental laws in expedient manner, for the purpose of protecting and improving the quality of the environment and reducing environmental pollution.

45. The MoEF&CC deemed 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 would be more damaging to the environment.

46. In furtherance of this objective, the Government of India deemed it essential to establish a process for appraisal of cases of violation of norms, and prescribing such adequate environmental safeguards that would deter violation of the provisions of Environment Impact Assessment Notification, 2006 and ensure that damage to environment was adequately compensated for.

47. In ***Indian Council for Enviro-Legal Action and Ors. v. Union of India and Ors.***¹, the Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting the

1. (1996) 3 SCC 212

environment. This Court affirmed that the power of the Central Government under Section 3 of the 1986 Act was wide and included 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 could also be looked into from the principle “polluter pays.”

48. In exercise of power under Section 3(1) and Section 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification being S.O. 804(E) dated 14th March 2017 which provides for grant of ex post facto EC for project proponents who have commenced, continued or completed a project without obtaining EC under the 1986 Act or the EIA notification issued under it.

49. Paragraphs 3, 4 and 5 of the said notification, read as follows :

“(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."

50. On or about 24th August 2017, the Appellant applied for CTO for five years. On 13th November 2017, JSPCB issued a Show Cause Notice to the Appellant pointing out alleged contraventions of the conditions of Consent to Operate (CTO) earlier granted to the Appellant. The Appellant was called upon to show cause whether conditions of the CTO had been contravened while the application of the Appellant for CTO for five year was pending.

51. On 23rd November 2017, the Appellant submitted its online reply to the Show Cause Notice showing compliance of the conditions of the CTO.

52. By a communication No.2105 dated 18th December 2017 JSPCB requested MoEF&CC to inform JSPCB of the decision on the show cause notice issued to the Appellant under Section 5 of the 1986 Act for

revocation of the EC for non compliance of the conditions for grant of EC for the integrated plant at Parbatpur, Jharkhand.

53. Aggrieved by the failure of JSPCB to issue/renew the CTO to the Appellant, pursuant to its application made on 24th August 2017, the Appellant filed a writ petition being W.P.(C) No. 1873 of 2018 in the Jharkhand High Court on or about 12th April 2018 seeking directions on the JSPCB to issue CTO to the Appellant.

54. By an order dated 16th July 2018, the High Court directed the JSPCB to take a final decision on the application of renewal/grant of CTO filed by the Appellant on 24th August 2017 within the time stipulated in the said order.

55. The High Court further passed an interim order directing that the Appellant be allowed to operate its unit under the supervisory and regulatory control of the JSPCB, who might carry out periodical check as to adherence by the Appellant of pollution control laws.

56. JSPCB passed an order dated 21st August, 2018, rejecting at that stage the request of the Appellant for CTO, subject to the decision of MoEF&CC on the show cause notice issued to the appellant. The operative part of the said order is set out hereinbelow:

“at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of pollution) Act, 1974 by “refusing” the CTO to the unit for the reason aforesaid.”

57. The Appellant, thereafter approached the High Court with a prayer for amendment of Writ Petition No.1873 of 2018. By an order dated 25th August 2018, the High Court allowed the application for amendment of the Writ Petition and directed the respondent to file their response to the amended writ petition. The High Court further directed:-

“10. So far as interim relief is concerned, this court finds that the order passed by the respondent-Jharkhand State Pollution Control Board dated 23.08.2018 appears to be directly dependent on the final decision which is yet to be taken by the Ministry of Environment, Forest & Climate Change on the show cause issued to the petitioner as back as in the year 2012. As per the submission made by the counsel appearing on behalf of Union of India, they are shortly going to take a final decision in the matter after hearing the petitioner. Accordingly the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board is hereby stayed till 27.09.2018 and the interim order dated 16.07.2018 is hereby extended till 27.09.2018.

11. So far as decision of the Ministry of Environment, Forest & Climate Change are concerned, considering the fact that the unit of the petitioner is running unit and large number of employees are working in this unit of the petitioner, this court consider it appropriate that the issue regarding the environmental clearance of the petitioner should be decided at the earliest.

12. It is further observed that it is open to the petitioner to approach the Union of India with their proposal/ application for regularization of the alleged violation, without prejudice to their rights (including right, title, interest, possession and nature of property of the petitioner) and advance submissions before the respondent authority of Union of India pursuant to the show cause notice issued to them dated 6.6.2012 and the appropriate authority may, if possible, simultaneously consider the aforesaid application of the petitioner for regularization along with the show cause reply of the petitioner such that entire dispute is decided and the petitioner may also have a clarity about the fate of its unit. The decision which is to be taken by the Union of India be brought on record by either of the parties by filing supplementary affidavit latest by 25.09.2018.

13. I.A. No. 7610 of 2018 and I.A No. 7613 OF 2018 are hereby disposed of.

14.It is made clear that this court has not gone into the merits of the claim of the petitioner and it will be open to the respondent no 3 to take decision as per law.”

58. By the aforesaid order dated 25th August 2018, the High Court directed MoEF to take a decision on the application of the Appellant for EC as also a decision regarding violation by the Appellant of the provisions of EC by encroachment upon forest land by shifting the location of the plant.

59. On 31st August 2018, MoEF&CC issued a show cause notice No. F.No. J-11011/137/2006-1A Pt.II (i) dated 31st August 2018 to the Appellant for violating the provisions of the EC by shifting the location of its plant and encroaching upon forest land.

60. The Respondent No.1 was also accorded personal hearing on 10th September 2018. On 12th September 2018 Mr. Gyanesh Bharti who presided over the personal hearing was transferred from MoEF&CC.

61. On 20th September 2018 the Respondent No.1 issued an order bearing No.F.No.J-11011/137/2006-IA.II(I) revoking the EC of the Appellant on the ground that the Appellant had encroached upon 220 acres of forest land and had shifted the location of its plant from Parbatpur to Bhagabandh, violating the conditions stipulated in the EC.

62. The Appellant filed Writ petition being W.P. (C) No.4850 of 2018 in the Jharkhand High Court challenging the revocation of the EC granted to the Appellant.

63. On 27th September 2018 the High Court passed an interim order staying the operation, implementation and execution of the impugned order dated 20th September 2018. The Court prima facie found that the impugned order, passed in violation of principles of natural justice, had serious repercussions on the unit of the Appellant which was a running unit, and had caused prejudice to the Appellant.

64. On 4th October 2018, the Appellant applied for ex post facto Forest Clearance (FC) without prejudice to its rights and contentions. On 27th November 2019 the Appellant applied for a “revised” EC without prejudice to its rights and contentions. In the meanwhile, the Interim order passed by the High Court on 27th September 2018 was extended from time to time. Such extensions were granted on 10.10.2018, 5.11.2018, 11.12.2018, 8.1.2019, 23.1.2019, 16.5.2019, 25.7.2019 and 17.10.2019.

65. On 17th December 2019, MoEF&CC passed an order according ex post facto in principle approval for the forest diversion/clearance proposal of the Appellant. The operative part of the said order reads:-

“After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee and approval of the same by the competent authority of the MoEF&CC, New Delhi, the Central Government hereby accords ex-post facto ‘in-principle’ approval under Section -2 of the Forest (Conservation) Act, 1980 for diversion of 184.23 ha of forest land (174.39 ha encroached (ex-post facto) and 9.84 ha virgin land) in favour of M/s Electrosteel Steels Limited in the State of Jharkhand subject to fulfilment of following conditions:-

(i) Legal status of the diverted forest land shall remain unchanged;...”

66. By an order dated 26th February 2020, the Jharkhand High Court directed that the pendency of W.P. (C) No. 4850 of 2018 and W.P. (C) No.1873 of 2018 would not come in the way of consideration by the MoEF&CC of grant or refusal of restoration of EC and it would be open to the Ministry to take appropriate decision in accordance with law. The interim orders in force were extended.

67. Thereafter by a letter dated 2nd March 2020, the Appellant requested MoEF&CC to consider the application of the Appellant for revised EC. In the meanwhile, the interim orders passed by the High Court were further extended. The interim orders were extended by orders passed on 26.2.2020, 7.4.2020 and 29.5.2020.

68. The Writ Petition was called for hearing on 19th June 2020 whereupon it was submitted on behalf of the Respondent No.1 that the revised EC application of the Appellant would be placed before the Expert Appraisal Committee (EAC) for consideration on merit and Violation Committee would decide on the action to be taken against the Appellant for violation of Environment (Protection) Act, 1986.

69. On 6th August 2020 and 7th August 2020, the case of the Appellant was placed before the EAC at its 35th meeting. The Appellant was invited to present its proposal online before the Committee.

70. After detailed deliberation, the EAC appraised the proposal on merits and recommended issuance of Standard Terms of Reference along with Specific Terms of Reference for undertaking Environmental Impact Assessment (EIA) and preparation of Environment Management Plan (EMP). The EAC noted that the plant was a running unit and the EC was subject to the conditions imposed in the Terms of Reference.

71. On 4th September 2020, the Jharkhand High Court extended the interim orders till 8th September 2020 while awaiting response from the Respondents. On 8th September 2020, the High Court reserved orders on the extension of interim orders dated 16th July 2018 and 27th September 2018 while listing the writ petitions for final hearing on 16th September 2020.

72. On 15th September 2020, the Respondent No.1 filed an affidavit stating that it had no objection to extension of the interim orders considering that the steel plant employed a large workforce. At the hearing on 16th September 2020 JSPCB also consented to extension of the interim order. However, the High Court passed the impugned order dated 16th September 2021 dis-continuing the earlier interim orders on, *inter alia*, the following grounds:

- (i) The Expert Appraisal Committee of the MoEF&CC had, after detailed deliberations, found that the Appellant had been in violation of the EIA Notification 2006 and general condition no. (ii) of the EC dated 21.02.2008.
- (ii) The MoEF&CC had while issuing ToR for grant of EC recommended action against the Appellant under Section 19 of

the 1986 Act for past violations. Extension of the interim orders would amount to staying action.

- (iii) In ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Others***², this Court had deprecated ex post facto Ecs but passed certain directions in exercise of powers under Article 142 of the Constitution.

73. By an Office Memorandum, being F.No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for Identification and Handing of violation cases under EIA Notification 2006.

74. The said Office Memorandum, *inter alia*, reads:

“The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/ or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that “(...) for past violations, the concerned authorities are

free to take appropriate action in accordance with polluter pays principle, following due process”.

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that “ ... **a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country”.**

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the list of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.”

75. The Standard Operating Procedure formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in ***Alembic Pharmaceuticals*** (supra).

76. In terms of the Standard Operating Procedure, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

77. By an interim order passed on 15th July 2021 in WP(MD) 11757 of 2021 in ***Fatima vs. Union of India***, the Madurai Bench of Madras High Court has stayed the operation of the Standard Operating Procedure.

78. By an order dated 25th August 2021, MoEF&CC rejected the application of the Appellant for the time being. The application has, in effect, been kept in abeyance.

79. The MoEF apparently did not take any decision on the application of the Appellant for EC, since the Standard Operating Procedure issued by it has been stayed by the Madurai Bench of Madras High Court, by the said order dated 15th July 2021, citing the judgment of this Court in ***Alembic Pharmaceuticals*** (supra).

80. The Appellant has filed an application being I.A No.125221 of 2021 in this appeal seeking directions on the Respondent No.1 to process the Appellant's application dated 5th August 2020 for revised EC.

81. There can be no doubt that the need to comply with the requirement to obtain Environment Clearance is non-negotiable. A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.

82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the

environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

85. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*³ (“Lafarge”) reported in (2011) 7 SCC 338:

“119. The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring

3. (2011) 7 SCC 338

exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well- recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."

86. In ***Alembic Pharmaceuticals*** (supra) this Court observed:-

"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

87. *In Alembic Pharmaceuticals* (supra), this Court deprecated ex-post facto clearances, but this Court did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure. This court proceeded to observe and held:-

44. *The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index⁴ report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution⁵. In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures⁶ of pollution in the Ankleshwar area. The CEPI scores for 2013⁷ and 2018⁸ were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.*

45. *Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three*

4. "CEPI"

5. CEPI score - 88.50

6. CEPI score - 85.75

7. CEPI score - 80.93

8. CEPI score - 80.21

*industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to the notice of this Court in Goa Foundation (I) v. Union of India⁹. Fourth, though in the context of the facts of the case, this Court in Lafarge Umiam Mining Private Limited v. Union of India¹⁰ ("Lafarge") has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In **Lafarge**, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. "*

(Emphasis supplied)

46. After advertng to the decision in **Lafarge**, another Bench of three learned judges of this Court in *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai*¹¹, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday Umesh Lalit speaking for the Bench held thus:

"19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper."

47. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant's unit and instead held thus:

"20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken

9. (2005) 11 SCC 559

10. (2011) 7 SCC 338

11. (2016) 9 SCC 300

*and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. **However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.** If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. **In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today.**"*

(Emphasis supplied)

48. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.

49. *In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016.”*

87. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in *Alembic Pharmaceuticals (supra)*. This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

88. We are of the view that the High Court erred in passing the impugned order, vacating interim orders which had been in force for two years. The impugned order is not in conformity with the principle of proportionality. This is not a case where the steel plant was started without environmental clearance or consent of JSPCB. The Appellant had applied for and obtained environmental clearance to set up an integrated steel plant (3MTPA) on 1350 acres of land at Mauza South Parbatpur, as observed above. Environmental Clearance had been granted on 21st

February 2008 and Consent to Operate had been granted by JSPCB on 5th May 2008.

89. The Appellant established its steel plant in Mauza Bhagaband, 5.3 kms away from the site for which EC and CTE had been granted. It is the contention of the Appellant that the shift is minor and makes no change in the EIA/EMP on the basis of which EC has been granted. The shift did not require fresh public hearing in terms of the Circular dated 22nd January 2010 of the MoEF.

90. As aforesaid, by a letter dated 2.12.2011 addressed to the Appellant, the MoEF confirmed that the steel plant of the Appellant was within the Environment Impact Area and the affected people had the opportunity to air their views in a public hearing. The question is whether the Petitioner was required to obtain fresh prior clearance for shifting or was covered by the exemption under the said Notification dated 22nd January 2010.

91. The Appellant has all along asserted that no part of the premises of the integrated steel plant is in any forest. As such there was no violation of the Indian Forest Act, 1927 or the Forest Conservation Act, 1980. The MoEF had also confirmed that the steel plant in question was well within the Environment Impact Area and the affected people had the opportunity in a public hearing. Be that as it may, whether the shifting of the site has really made any difference from the environmental impact angle requires consideration by the appropriate authority/forum.

92. In any case, the Appellant has duly applied for ex post facto forest clearance approval without prejudice to its rights and contentions that its steel plant is not on forest land and also applied for revised EC. On 17th December 2019, MoEF&CC accorded ex post facto in principle approval to the forest clearance proposal on the recommendations of the Forest Advisory Committee. The application for revised clearance is pending consideration. No final decision has however been taken, ostensibly in view of the interim order passed by the Madras High Court staying the operation of the Standard Operation Procedures issued vide Memorandum dated 7th July 2021.

93. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7th July, 2021.

94. In passing the impugned order the High Court overlooked the consequences of closure of an integrated steel plant with a work force of 300 regular and 700 contractual workers. The High Court also failed to appreciate that the judgment of this Court in ***Alembic Pharmaceuticals*** (supra) was distinguishable on facts. Furthermore, continuance of the interim orders allowing operation of an industrial establishment or even the grant of revised EC to the industrial establishment cannot stand in

the way of action against that establishment for contraventions, including the imposition of penalty, on the principle 'polluter pays'. The scope and effect of Section 32A of the IBC is a different issue. This Court need not examine into the question of whether penal action can be initiated against the Appellant or, whether compensation can be recovered from the Appellant, at this stage. The issue may be decided by the appropriate authority at the appropriate stage when it adjudicates an action for penalization of the Appellant or recovery of compensation from the Appellant. The application of the Appellant for revised EC, CTO etc. shall be considered strictly in accordance with environmental norms.

95. The appeals are allowed. The impugned order is set aside. The Respondent No.1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.

.....J.
[Indira Banerjee]

.....J.
[J.K. Maheshwari]

**New Delhi;
December 9, 2021**

ITEM NO.23

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 1394/2023

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION
ORDERS/DIRECTIONS)

and

IA

No.257416/2023-APPROPRIATE

Date : 02-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Vanshdeep Dalmia, AOR
Ms. Anisha Jian, Adv.
Ms. Tanya Shrivastava, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. Issue notice returnable in four weeks.
2. Until further orders, there shall be stay of operation of the Office Memoranda dated 7th July, 2021 and 28th January, 2022 issued by the Ministry of Environment, Forest and Climate Change.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(BEENA JOLLY)
COURT MASTER (NSH)

Signature Not Verified

Digitally signed by
ASHA SUNDRIYAL
Date: 2024.01.05
16:37:29 IST
Reason: 

**GOVERNMENT OF TELANGANA
IRRIGATION & CAD DEPARTMENT**

From

Sri B.Shankar, B.E.,M.B.A.,
Engineer-In-Chief (Irrigation),
I&CADD, LMD Colony,
Karimnagar- District,
Telangana- State,

To

The Member Secretary and Additional
Director, IA (River Valley and Hydro),
MoEF&CC,
New Delhi.

Lr.No.ENC/Irrigation/KRMR/TS/T1/503**Date: 01.03.2024****Sir,**

Sub:- I & CAD Dept., - OA No.180 of 2021 filed before NGT, Chennai- Flood Flow Canal Project from SRSP with Expansion of Gouravelly Reservoir from 1.410 TMC to 8.230 TMC at Akkannapet Mandal, Siddipet District - Request- Reg.

Ref:- 1. O.A.No.180/2021 filed by Sri Baddam Raji Reddy before Hon'ble National Green Tribunal, Chennai.
2. SEIAA, Telangana State Order No.SEIAA/TS/OL/SDPT-37/2022, Dt.15.02.2023.

With reference to the subject cited, it is to submit that Flood Flow Canal (FFC) project (originally cleared in the 64th TAC of CWC, Dt 30.03.1996) is envisaged irrigation facility to an area of 2.20 lakh acres in the drought-prone areas of Telangana region duly diverting about 20 TMC of surplus water from Sri Rama Sagar Project during the floods. Gouravelly Reservoir is one of the Reservoirs in Flood Flow Canal project originally proposed with storage capacity of 1.410 TMC. And Environmental Clearance for FFC project was accorded by the MoEF, New Delhi vide Lr. No.J-12011/26/2000-IA-I, Dt.14.05.2003.

Further, after formation of Telangana State, Government has taken up Reengineering of Irrigation projects for effective utilization of water allocations made to the state. The Government has enhanced the Gouravelly Reservoir capacity from 1.410 TMC to 8.230 TMC as it is bestowed with advantages such as Geographical advantage of site at which reservoir was proposed, No forest land involved, No notified ecologically sensitive areas and wildlife ecosystems falling in the submergence, minimal submergence of lands for the increased storage capacity and minimum number of families displacement.

In view of the above, the submerging villagers of Gouravelly Reservoir have filed a case OA No.180 of 2021 before the Hon'ble NGT (SZ), Chennai on the ground that the Irrigation & CAD Department of State of Telangana, under Re-Engineering Proposal, issued orders for expansion of Gouravelly Reservoir, situated in Siddipet District, from 1.410 TMC to 8.23 TMC without obtaining prior environmental clearance from the Ministry.

Further, the final hearing on OA No.180 of 2021 was held on 10.02.2022 and the National Green tribunal has disposed the case with the certain observations and directions. Few directions related to Environmental Clearance are as below.

- *Since Ministry of Environment, Forest and Climate Change (MoEF &CC) has come to the conclusion on the basis of the material collected by them that the present project requires further environmental clearance, the state of Telangana is restrained from proceeding with the project further till the proceedings initiated by the Ministry of Environment, Forest and Climate Change (MoEF &CC) is completed.*
- *If the project proponent makes an application for including the change of scope and apply for Environmental Clearance (EC) the same should not be granted by way of an amendment for existing EC and the entire process will have to be reassessed afresh as has been observed by the Hon'ble Apex Court in (Key stone Relators vs Anil V. Tharthare (2020) 2 SCC 66.*
- *Ministry of Environment, Forest and Climate Change (MoEF &CC) is directed to complete the process of enquiry as early as possible at any rate within a period of four months and submit further action taken report before this Tribunal after expiry of four months has to be fixed by the Tribunal.*

Accordingly, as per the NGT orders, the MoEF &CC, New Delhi has conducted 29th EAC meeting on EIA of River Valley and Hydro Electric projects on 15.06.2022 through video conference. In the minutes of meeting, the EAC has suggested the Project Proponent to submit the proposal afresh at PARIVESH portal for Terms of Reference (ToR) under violation category.

In order to get the Environmental Clearance as suggested by the EAC, the Irrigation &CAD department has entrusted this work to M/s EPTRI, Hyderabad. The EPTRI has submitted the Form-1 for FFC from SRSP with expansion of Gouravelli Reservoir in PARIVESH website under category A on 02-09-2022.

However, after examination of the proposal by EAC, on 07.09.2022 Essential Details Sought (EDS) was raised stating the following.

“As per provisions of the Gazette Notification S.O.1886 (E), Dt.20.04.2022 all the irrigation projects having culturable command area more than 2000 hectares are category B project. Irrigation projects involving Inter State issues shall be appraised at central level without change in category. General condition of EIA notification 2006 as amended shall apply. Please examine the proposal in light of the above provision and submit the application to the appropriate authority i.e. MoEF/SEIAA”.

Accordingly, the Proposals of Terms of Reference (ToR) in respect of Flood Flow Canal (FFC) Project from Sri Ram Sagar Project (SRSP) were resubmitted to State Level Environment Impact Assessment Authority (SEIAA) on 06-12-2022 through PARIVESH Portal.

Subsequently, the State Expert Appraisal Committee (SEAC) in its 210th meeting of Terms of Reference (ToR) held on 3rd January 2023, approved the Terms of Reference (ToR) for Flood Flow Canal (FFC) Project from Sri Ram Sagar Project (SRSP) with expansion of Gouravelly Reservoir from 1.41 to 8.23 TMC for preparation of EIA & EMP Report as per standard ToR of MOEF&CC of GOI vide Order No.SEIAA/TS/OL/SDPT-37/2022, Dt.15.02.2023.

Further, in the Specific Terms of Reference issued by the SEIAA, Telangana, it was instructed to assess the ecological damage with respect to air, water, land & other environmental attributes, collection and analysis of data shall be done by an environmental laboratory notified under the Environmental Protection act, 1986.

In this regard, it is to submit that the consultant M/s EPTRI has collected the base line data of three seasons to assess the ecological damage and public hearing is also completed. Now, based on ToR granted under violation category with Damage Assessment, the Environment Impact Assessment (EIA)/EMP report along with damage assessment study as well as the Public Hearing report, will be uploaded on PARIVESH portal shortly to further the examination/appraisal by the EAC/SEAC in order to ensure the compliance of the order of the Hon'ble Tribunal.

Already, a Joint Committee represented by IRO, MoEF&CC, Godavari River Management Board and Central Water Commission, Integrated Regional

Office, Hyderabad constituted by the National Green Tribunal (SZ), Chennai has conducted the site visit and filed its report, Dt: 29.09.2021 before the Hon'ble Tribunal on Dt: 25.11.2021. The Joint Committee assessed the environmental compensation as Rs.2,05,31,250 for violation committed in proceeding with the project against the environmental Laws, which is enclosed herewith.

Further, in the EIA/EMP report, a separate chapter for the Remediation Plan and Community Resource Augmentation Plan is being prepared based on the damage assessment report as per the ToR in addition to the amount assessed by the Joint Committee. The provisions of EIA Notifications, 2006, and its applicable amendments shall be followed for obtaining environmental clearance as per the order of Hon'ble NGT dated 10.02.2022.

Hence, the Member Secretary/Additional Director, IA (River Valley and Hydro), MoEF&CC, New Delhi, is kindly requested to appraise the proposal before the EAC upon submission of EIA/EMP report of the subject work for issuance of final Environmental Clearance.

Encl: As Above.

Yours faithfully,


01/03/2024
Engineer-in-Chief (Irrigation),
LMD Colony, Karimnagar.