

**Status report based on the directions given by Hon'ble NGT (SZ) vide Orders dated 07.07.2021 and 02.09.2021 in the matter of O.A No. 62 of 2020**

Vide Orders dated 24.12.2020 and 01.03.2021 in OA. No. 62 of 2020 Hon'ble NGT (SZ) has directed the State Environmental Impact Assessment Authority (SEIAA)-Tamil Nadu and Ministry of Environment, Forests and Climate Change (MoEF & CC), Integrated Regional Office, Chennai are also to submit the independent reports regarding the violations alleged for the non-compliance of EIA Notification 2006 as well as Bio Medical Waste Management (BMW) Rules, 2016 and other environmental laws. Accordingly, the areas in question were inspected by the Integrated Regional Office of Ministry of Environment, Forest and Climate Change at Chennai on 07.05.2021 and field the Independent report to the Hon'ble NGT. Thereafter, the Hon'ble NGT (SZ) vide order dated 7.7.2021 has directed MoEF&CC to submit further action taken report on or before 11.08.2021. Further, the matter has been adjourned on 02.09.2021 and directed to submit the action taken report on or before 24.09.2021.

It is pertinent to mention here that, the MoEF&CC, New Delhi had issued an O.M. Vide F. No. 22-221/2020-IA.III dated 7.7.2021 on Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble NGT in O.A. No, 34/2020 and the same is circulated to all the regulating authorities including SEIAA/SEACs of all States. In view of the above and since the violation observed is under the category B (Building and Construction projects greater than 20000 sq.mtrs and less than 150000 sq. mtrs of build-up area falls in Category B, which require prior Environmental Clearance from SEIAA), the Integrated Regional Office of MoEF&CC, Chennai has requested SEIAA vide letter dated 4.8.2021 to comply the Order of Hon'ble NGT in line with the OM No. 22-221/2020-IA.III dated 7.7.2021 of the Ministry on Standard Operating Procedure (SOP) for identification and

handling of violation cases and intimate the action taken against the violators to this office (copy of the said letter is enclosed as Annexure-I).

Thereafter, subsequent remainders have also been sent to SEIAA vide letters dated on 24.08.2021 & 24.09.2021 (Copies enclosed as Annexure-II & III). The response in this regard is still awaited. On receipt of the reply/action taken report from the SEIAA, the same will be submitted to the Hon'ble NGT.

It is submitted that the IRO, MoEF&CC, Chennai is not entrusted with powers under Section 5 of Environment (Protection) Act.

*C. Palpandi*  
(Dr. C. Palpandi)  
Scientist 'D'

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सत्यमेव जयते

भारतसरकार  
GOVERNMENT OF INDIA

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय



MINISTRY OF ENVIRONMENT, FORESTS & CLIMATE CHANGE

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F.No: EP/12.7/NGT(SZ)/01/2021/TN/ 699

Dated 4.8.2021

To,  
The Member Secretary,  
SEIAA, Tamil Nadu  
No 1, Panagal Maligai Building, 3rd Floor,  
Jeenis Road, Saidapet, Chennai - 600015

**Sub:** OA No.62 of 2020 in the matter of Environmental Protection & Anti Pollution Group Trust Vs Union of India & Ors. Before Hon'ble National Green Tribunal (SZ), Chennai-regarding

**Ref:** Hon'ble National Green Tribunal (SZ) Order dated 7.7.2021 in OA No.62 of 2020

Sir,

With reference to above mentioned subject, the Hon'ble National Green Tribunal (SZ) vide Order dated 7.7.2021 in OA No.62 of 2020 following remarks were made while considering the Independent reports submitted by the Ministry of Environment, Forests and Climate Change, Integrated Regional Office, Chennai.

1. When certain type of violations were noted which goes to the root of the matter itself and projecting the violations of EIA Notification, 2006 etc., it is for the Ministry of Environmental, Forests and Climate Change (MoEF & CC) to come with proper action taken report before this Tribunal.
2. The Tamil Nadu Pollution Control Board (TNPCB) can only take action, if there is any violation of environmental or non compliance of condition imposed in the consent or the authorisation granted by them and not in respect of proceedings with construction without obtaining any prior environmental Clearance etc.,

Meanwhile the Ministry of Environment, Forests and Climate Change, New Delhi had issued an OM Vide F.No. 22-221/2020-IA.III dated 7.7.2021 on 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 and the same is circulated to all the

DESPATCHED

Date: 04/08/2021

By

By email & SF

regulating authorities including SEIAAs/SEACs of all states. (Copies of the Order dated 7.7.2021 of Hon'ble NGT and OM dated 7.7.2021 of the Ministry on Standard Operating Procedure (SOP) are enclosed as Annexure A and B)

In view of the above and since the violation observed is under the Category B (Building and Construction projects greater than 20000 sq. mtrs and less than 150000 sq. mtrs of built-up area falls in Category B, which requires prior Environmental Clearance from State Environment Impact Assessment Authority), I am directed to request you to comply the Order of Hon'ble National Green Tribunal (SZ) Order dated 7.7.2021 in OA No.62 of 2020 in line with the OM No. 22-221/2020-IA.III dated 7.7.2021 of the Ministry on Standard Operating Procedure (SOP) for Identification and handling of violation cases and intimate the action taken against the violators to this office so that the Action Taken Report can be submitted before the Hon'ble National Green Tribunal (SZ) in time.

Yours faithfully,

*C. Palpandi*  
4/8/2021  
(Dr.C.Palpandi)  
Scientist'C'

Encl: as above.

Copy to: Dr.Dharmendra Kumar Gupta, Director-IA-III(Infra), Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi-110003

**Item No.04:**

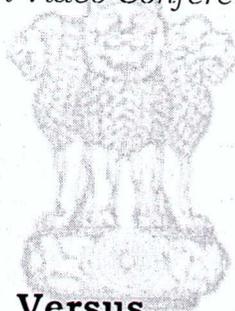
**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

**Original Application No. 62 of 2020 (SZ)**

*(Through Video Conference)*

**IN THE MATTER OF**

Environment Protection and  
ANTI Pollution Group Trust



...Applicant(s)

**Versus**

Union of India and others.

...Respondent(s)

**Date of hearing: 07.07.2021.**

**CORAM:**

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

**HON'BLE MR. DR. K. SATYAGOPAL, EXPERT MEMBER**

**For Applicant(s):** Mrs. Rita Chandrasekar

**For Respondent(s):** Mrs. Me. Saraswathy for R1 & R5  
Dr. D. Shanmuganathan for R2, R3 and R4  
Mr. Karthikeyan represented  
M/s. AAV Partners for R6  
Mr. C. Kasirjan through  
Ms. Ashwini for R7

**ORDER**

1. As per order dated 01.03.2021, this Tribunal had considered the action taken report submitted by the Tamil Nadu Pollution Control

Board (TNPCB) dated 19.02.2021 and received on 23.02.2021 which was extracted in Para (6) of the order. It is also mentioned in the order that the Tamil Nadu Pollution Control Board (TNPCB) cannot take action against the erring units for proceeding with the project without getting environmental clearance and the State Environment Impact Assessment Authority (SEIAA) alone will take action and directed the Ministry of Environment, Forests and Climate Change (MoEF & CC) and the State Environment Impact Assessment Authority (SEIAA) to file their statement regarding the nature of action taken by them against the erring Medical Colleges, which had constructed without Environmental Clearance before the next hearing date.

2. The party respondents are also wanted for some time for filing their statements as well. So the matter was posted to 26.03.2021 for that purpose. Thereafter the matter was adjourned from time to time by successive notifications and lastly the matter was adjourned to today as per notification dated 07.06.2021.
3. When the matter came up for hearing today through Video Conference, Mrs. Rita Chandrasekar represented the applicant as a counsel intending to assist this Tribunal in the cause raised in the application. Mrs. Me. Saraswathy represented respondents 1 and 5, Dr. D. Shanmuganathan represented respondents 2, 3 and 4, Mr. Karthikeyan represented M/s. AAV Partners counsel for 6<sup>th</sup>

respondent and Sri. C. Kasirajan through Ms. D. Ashwini represented 7<sup>th</sup> respondent. So, service is complete.

4. The 1<sup>st</sup> respondent has filed a reply-affidavit which is not in fact helpful for this Tribunal to decide this issue as they have only reiterated the statutory provisions regarding the necessity for obtaining Environmental Clearance and other authorisations and the regulating authorities and also reiterating the responsibility of regulating authorities to implement the same. When certain type of violations were noted which goes to the root of the matter itself and projecting the violations of EIA Notification, 2006 etc., it is for the Ministry of Environmental, Forests and Climate Change (MoEF & CC) to come with proper action taken report before this Tribunal.
5. The Tamil Nadu Pollution Control Board (TNPCB) can only take action, if there is any violation of environmental or non compliance of conditions imposed in the consent or the authorisation granted by them and not in respect of proceedings with construction without obtaining any prior environmental Clearance etc., and if there is any violation of non-implementation of Solid Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 etc, then, that also can be gone into by the Tamil Nadu Pollution Control Board (TNPCB).
6. We have received an independent report from the Ministry of Environment, Forests and Climate Change (MoEF & CC), Integrated

Regional Office of Chennai dated nil, e-filed on 30.06.2021 and received on 06.07.2021 which reads as follows:-

***Inspection Report based on the direction given by Hon'ble NGT (SZ)  
vide Order dated 24.12.2020 in OA. No. 62 of 2020***

***Back ground***

*Vide Orders dated 24.12.2020 and 01.03.2021 in OA. No. 62 of 2020 Hon'ble NGT (SZ) has directed the State Environmental Impact Assessment Authority (SEIAA) and Ministry of Environment, Forests and Climate Change (MoEF & CC), Integrated Regional Office, Chennai are also to submit the independent reports regarding the violations alleged for the non-compliance of EIA Notification 2006 as well as Bio Medical Waste Management (BMW) Rules, 2016 and other environmental laws (Copy of the Order is at Annexure-I).*

*The allegation in the application was regarding the non compliance of Bio Medical Waste Management Rules, 2016 by Medical and Dental Colleges which are operating in Salem District without requisite Environmental Clearance/Consent to Establish/Consent to Operate.*

***Report of the MoEF & CC, Integrated Regional Office, Chennai***

*Under the provisions of the EIA Notification, 2006, Environment Clearance for Building and Construction Projects is covered under entry 8 (a) of the Schedule to the EIA Notification, 2006. The entry 8(a) of the Schedule of EIA Notification 2006 as follows:*

***Building and Construction projects greater than 20000 sq. mtrs and less than 150000 sq. mtrs of built-up area falls in Category B, which requires prior Environmental Clearance from State Environment Impact Assessment Authority and greater than 150000 sq. mtrs of built-up area falls in Category A which requires prior Environmental Clearance from Central Government.***

*Thereafter vide Gazette Notification No. S.O. 3252 (E) dated 22.12.2014, the Ministry of Environment, Forest and Climate Change has exempted the School, College and Hostel for educational institution from obtaining prior Environment Clearance under the provisions of the EIA Notification, 2006 subject to Sustainable Environmental*

*Management. Vide F. No.19-2/2013-IA-III. The Ministry clarified that in case of medical universities/institutes the component of Hospitals will continue to require prior Environment Clearance.*

*Bio Medical Waste Management Rules, 2016 shall apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle bio medical waste in any form including hospitals, nursing homes, clinics dispensaries, veterinary institutions, animal houses, pathological laboratories, blood banks, Ayush hospitals, clinical establishments, research or educational institutions, health camps, medical or surgical camps, vaccination camps, blood donation camps, first aid rooms of schools, forensic laboratories and research labs.*

**Observation:**

*As directed the area in question was inspected by Dr.C.Palpandi, Scientist 'C', Integrated Regional office of Ministry of Environment, Forest and Climate Change at Chennai on 7.5.2021 (Some of the photos taken during site visit is at Annexure-II). During the visit it is noticed that there are 8 Medical/Dental Colleges Buildings in Salem Districts and out of 8 only 2 projects were required to get prior Environmental Clearance from SEIAA, since the Construction area of these 2 projects are greater than 20000 sq. mtrs and less than 150000 sq. mtrs of built-up area.*

*Out of the total 8 projects 6 building are in need of getting clearance/permission under Bio Medical Waste Management Rules, 2016. The rest 2 projects do not require Environmental Clearances and clearances/permissions under Bio Medical Waste Management Rules, 2016 since these 2 buildings are used for educational purposes.*

**The present status of the 8 Buildings are as below in Table:**

| <i>S.No</i> | <i>Name of facility</i>                     | <i>Built up area/status of EC</i>    | <i>Present Status</i>                       | <i>Status of BMW Authorisation</i>           | <i>Action taken</i>                          |
|-------------|---|--------------------------------------|---|--|--|
| <i>1.</i>   | <i>M/s Vinayaka Mission Super Specialty</i> | <i>Greater than 20000 Sq.M.(1367</i> | <i>Presently ToR has been obtained from</i> | <i>BMW Authorization is required but not</i> | <i>TNPCB filed a complaint under Section</i> |

|    |  |  |  |   |   |
|----|--|--|--|---|---|
|    | Hospital,<br>Sankari Main<br>Road, Veerapandi,<br>Salem-<br>636308                     | 00 Sq.M.)<br><br>Prior EC is required but not obtained by the project proponent.                                 | SEIAA under violation category and waiting for Consent order from TNPCB can only be obtained after getting EC.     | obtained since consent from TNPCB was not given due to the non obtainment of prior EC.    | 200 of CPR for offence under Section 15 & 16 of EPA Act, 1986 before the Hon'ble Judicial Magistrate Court, Salem                                       |
| 2. | M/s Annapoorana Medical College Hospital, Sankari Main Road, Veerapandi, Salem-636308. | Greater than 20000 Sq.M (103374.17 Sq.M.)<br><br>Prior EC is required but not obtained by the project proponent. | Presently EC has been obtained from SEIAA under violation category after remittance of Environmental Compensation. | BMW Authorization is required but not obtained since consent from TNPCB was not obtained. | TNPCB filed a complaint under Section 200 of CPR for offence under Section 15 & 16 of EPA Act, 1986 before the Hon'ble Judicial Magistrate Court, Salem |
| 3. | M/s Vinayaka Mission Sankaracharya Dental College Veerapandi, Salem-636308             | Less than 20000 Sq.M<br><br>Prior EC not required  | EC not required. Consent from TNPCB obtained   | BMW Authorization obtained  | Nil   |

|    |  |   |   |   |      |
|----|--|---|---|---|------|
| 4. | M/s Penang International Dental College/ Vinagaya Mission Research Foundation Veerapandi, Salem-636308.          | Less than 20000 Sq.M<br>Prior EC not required | EC not required.<br>Consent from TNPCB obtained | BMW Authorization is not required since it is an educational/academic institution and no bio medical waste is generating. | Nil. |
| 5. | M/s Vinayaka Mission Homeopathic Medical College Veerapandi, Salem-636308  | Less than 20000 Sq.M<br>Prior EC not required | EC not required.<br>Consent from TNPCB obtained | BMW Authorization obtained  | Nil  |
| 6. | M/s Sivaraj Homeopathic Medical College and Research Institute Thumbathulipatt y, Perumampatty P.O, Salem 636307 | Less than 20000 Sq.M<br>Prior EC not required | EC not required.<br>Consent from TNPCB obtained | BMW Authorization obtained  | Nil. |
| 7. | M/s Sivaraj Siddha Medical College, Thumbathulipatt y, Perumampatty P.O, Salem 636307                            | Less than 20000 Sq.M<br>Prior EC not          | EC not required.<br>Consent from TNPCB          | BMW Authorization obtained  | Nil  |

|    |   | <i>required</i>                                       | <i>obtained</i>   |  |            |
|----|---|---|---|--|------------|
| 8. | <i>M/s Naturopathy and Yoga Medical College Thumbathulipattiy, Perumampatty P.O, Salem 636307</i> | <i>Less than 20000 Sq.M<br/>Prior EC not required</i> | <i>EC not required.<br/>Consent from TNPCB obtained</i> | <i>BMW Authorization is not required since it is an educational/academic institution and no bio medical waste is generating.</i> | <i>Nil</i> |

*It is found that the 6 facility/building which does not require prior Environmental Clearance have taken all the necessary approvals from authorities and 2 institutions Vz. M/s Vinayaka Mission Super Specialty Hospital and M/s Annapoorana Medical College Hospital both having Built up areas of more than 20000 Sq.M have not obtained Prior EC from SEIAA as per EIA Notification 2006 under EP Act, 1986 and have not taken consent under the Water Act, 1974 and Air Act, 1981 and clearances/permissions under Bio Medical Waste Management Rules, 2016 from the Tamil Nadu Pollution Control Board. The prescribed authority for implementation of the provisions of these rules shall be the State Pollution Control Boards in respect of States and Pollution Control Committees in respect of Union territories.*

*The 2 institutions Viz. M/s Vinayaka Mission Super Specialty Hospital and M/s Annapoorana Medical College Hospital had applied for Environmental Clearance under violation category and in line with MoEF Notification S.O. 804(E) dated 14.03.2017 and S.O. 1030(E) dated 08.03.2018.*

*M/s Vinayaka Mission Super Specialty Hospital obtained ToR on 23.11.2020 based on their Application submitted to SEIAA dated 16.10.14 and appraise letter dated 26.02.2020. (Copy of the ToR is at Annexure-III).*

*M/s Annapoorana Medical College Hospital Obtained ToR on 06.11.2019 and EC on 27.04.2021 based on their Application submitted to SEIAA dated 13.09.17 (Copy of the EC is at Annexure-IV)*

**As per MoEFCC Notification S.O. 1030(E) dated 08.03.2018:**

*The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee 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 run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.”;*

*In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe 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, and 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 the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.”;*

*The Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, as the case may be, shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.”;*

The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by the Expert Appraisal Committee for category A projects or by the State or Union territory level Expert Appraisal Committee for category B projects, as the case may be, and finalised by the concerned Regulatory Authority, and the bank guarantee shall be deposited prior to the grant of environmental clearance and released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after recommendation by regional office of the Ministry, Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee and approval of the Regulatory Authority.”

**Conclusion:**

It is found that only 2 Institutions namely M/s Annapoorana Medical College Hospital and M/s Vinayaka Mission Super Specialty Hospital did not take necessary approvals like Prior EC, Consent and BMW Authorization.

In this regard the Tamil Nadu State Pollution Control Board has filed complaint under Section 200 of Criminal Procedure Code for offence under Section 15 & 16 of EPA Act, 1986 before the Hon'ble Judicial Magistrate Court, Salem against M/s Vinayaka Mission Super Specialty Hospital on 01.10.2014 (CNR.TNSA040015092014) and M/s Annapoorana Medical College Hospital on 15.02.2021 (CNR.TNSA040006162021). Case details are furnished at Annexure-V and VI.

The present status of violations by these 2 Institutions are as follows:

**M/s Annapoorana Medical College Hospital**

After the due procedures as mentioned in MoEF Notification S.O. 804(E) dated 04.03.2017 and S.O. 1030(E) dated 08.03.2018 M/s Annapoorana Medical College Hospital has obtained Environmental Clearance vide SEIAA

TN/F.No.7143/EC/8(a)/760/2021 dated 27.04.2021 under violation category. During the site visit the project authority informed that in receipt of the EC, they had applied for consent from TNPCB under Water Act, 1974 and Air Act, 1981 which is required for obtaining authorization under Bio Medical Waste Management Rules, 2016. M/s Annapoorana Medical College Hospital has paid an amount of Rs.61.10 Lakhs under CER to EMAT, Department of Environment

on 05.8.2020 and Bank guarantee of Rs. 118.41 lakhs towards remediation plan and Natural Community Resource Augmentation plan on 6.8.2020.

**2. M/s Vinayaka Mission Super Speciality Hospital.**

After the due procedures as mentioned in MoEF Notification S.O. 804(E) dated 04.03.2017 and S.O. 1030(E) dated 08.03.2018 M/s Vinayaka Mission Super Speciality Hospital has obtained Terms of Reference from SEIAA vide SEIAA TN/F.No.3064/Violation/ToR-823/2020 dated 23.11.2020.

They have not mentioned about the environmental compensation, if any, imposed and recovered while considering the violation case under the notification referred to by them.

7. It is only mentioned in the report that the Tamil Nadu Pollution Control Board has filed a complaint under Environment (Protection) Act, 1986 before the Judicial Magistrate Court, Salem against M/s. Vinayaka Mission Super Speciality Hospital and M/s. Annapoorana Medical College, Hospital, Sankari Main Road, Veerapandi, Salem District.
8. As regards the other Institutions are concerned, it is not mentioned as to when these authorisations were obtained etc. They have also mentioned that certain Institutions do not require authorisation under Bio-Medical Waste Management Rules, 2016. But they have not given any details regarding the nature of activities that are being carried on by them and whether there is any possibility of generation of Medical Waste or other wastes for which permission is required has not been mentioned, except making sweeping statement stating no Bio-Medical Waste is generated by them.

9. The Tamil Nadu Pollution Control Board (TNPCB) is also directed to file a detailed report regarding the nature of activities that are being carried out in respect of Institutions where the Ministry of Environmental Forests and Climate Change (MoEF &CC) said that authorisation under the Bio-Medical Waste Management Rules, 2016 is not required.
10. The Tamil Nadu Pollution Control Board (TNPCB) is also directed to come with the report as to when these authorisations were obtained by them whether it is pursuant to the directions given by the Principal Bench of National Green Tribunal in one of the matters pending before that Bench in respect of implementation of Bio-Medical Waste Management Rules, 2016 in Pan India basis and if that be the case whether those directions were strictly complied with by the Tamil Nadu Pollution Control Board (TNPCB) in respect of issuance of authorisation as required under said rules and in compliance with the directions issued by the Principal Bench of National Green Tribunal.
11. The applicant is also at liberty to file their objections, if any, to the report submitted by the Ministry of Environment, Forests and Climate Change (MoEF & CC), Integrated Regional Office, Chennai and also to the affidavit filed by the Ministry of Environment, Forests and Climate Change (MoEF & CC)
12. The above officials are directed to submit their further action taken

report in view of the above observations made on or before **11.08.2021** by e-filing in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF along with necessary hardcopies to be produced as per rules.

13. The Registry is directed to communicate this order to the official respondents including Regional Office of Ministry of Environment, Forests and Climate Change (MoEF &CC), through e-mail immediately, so as to enable them to comply with the direction.
14. For appearance of parties and for consideration of further action report, post on **11.08.2021**.

Sd/--

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

Sd/--

.....E.M.  
(Dr. K. Satyagopal)

O.A. No.62/2020  
07.07.2021, Sr.

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

Government of India

Ministry of Environment, Forest and Climate Change  
Impact Assessment Division

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Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj  
New Delhi - 110003  
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Date: 7<sup>th</sup> 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 14<sup>th</sup> 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:

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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 <b>close</b> its operation   |
| 2.     | If prior EC is available for existing/old unit                                | Order to <b>revert the activity/production to permissible limits.</b>                     |
| 3.     | If prior EC was not required for earlier production level but is now required | <b>Restrict the activity/production</b> 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:**

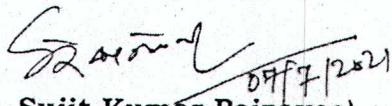
With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (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

*Sd/-*

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).

भारतसरकार  
GOVERNMENT OF INDIA



पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय

MINISTRY OF ENVIRONMENT, FORESTS & CLIMATE CHANGE

Integrated Regional Office (South Eastern Zone),  
1st floor, Additional Office Block for GPOA, Shastri Bhawan,  
Haddows Road, Nungambakkam, Chennai - 600006,, Tel. 044-222041,  
E-mail: [ro.moefccc@gov.in](mailto:ro.moefccc@gov.in) / [roefccc@gmail.com](mailto:roefccc@gmail.com)

पर्यावरण

Dated 24.8.2021

F.No: EP/12.7/NGT(SZ)/01/2021/TN/

To,  
The Member Secretary,  
SEIAA, Tamil Nadu  
No 1, Panagal Maligai Building, 3 rd Floor,  
Jeenis Road, Saidapet, Chennai - 600015

**Sub:** OA No.62 of 2020 in the matter of Environmental Protection & Anti Pollution Group Trust Vs Union of India & Ors. Before Hon'ble National Green Tribunal (SZ), Chennai-regarding

**Ref:** Hon'ble National Green Tribunal (SZ) Order dated 7.7.2021 in OA No.62 of 2020

Sir,

With reference to above mentioned subject and in continuation of earlier letter having even number dated 4.8.2021, I am directed to enquire the progress made so far since the matter is coming for hearing on 2.9.2021.

In view of this it is requested to send the action taken report to this office so that the same can be submitted before the Hon'ble National Green Tribunal.

Yours faithfully,

*C. Dharmendra*  
24/8/2021  
(Dr.C.Palpandi)  
Scientist 'C'

Encl: as above.

Copy to: Dr.Dharmendra Kumar Gupta, Director-IA-III(Infra), Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi-110003



सत्यमेव जयते

भारतसरकार  
GOVERNMENT OF INDIA  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
MINISTRY OF ENVIRONMENT, FORESTS & CLIMATE  
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Integrated Regional Office (South Eastern Zone),  
1<sup>st</sup> floor, Additional Office Block for GPOA,  
Shastri Bhawan, Haddows Road, Nungambakkam,  
Chennai – 600 006

Reminder-IIMOST IMPORTANT COURT MATTER

E.P./12.1/NGT(SZ)/01/2021/TN/

Dated: 24.09.2021

To

**The Member Secretary**  
SEIAA-Tamil Nadu  
No1, Panagal Maligai Building, 3<sup>rd</sup> Floor  
Jeenis Road, Saidapet, Chennai-600 015

**Subject: OA No. 62 of 2020 in the matter of Environmental Protection & Anti-Pollution Group Trust Vs Union of India & Ors before Hon'ble National Green Tribunal (SZ), Chennai-Regarding.**

**Reference: Letter No. E.P./12.1/NGT(SZ)/01/2021/TN/ dated 04.08.2021 & (ii) 24.08.2021 of IRO, MoEF&CC, Chennai**

Sir,

Reference is invited to the letters dated 04.08.2021 and 24.08.2021 of this Integrated Regional Office (**copy of the letters are enclosed**) addressed to the SEIAA-Tamil Nadu on the above mentioned subject, wherein it was requested to submit action taken report in the compliance with the direction of Hon'ble NGT in the Order dated 07.07.2021. **Response in this regard is still awaited.** The above matter has been next listed on 01.10.2021.

In view of the above, the undersigned has been directed to request you to expedite and submit a copy of action taken report to this office to enable us to submit the same before the Hon'ble NGT and avoid any further adverse Orders.

This issues with the approval of the Competent Authority.

**Encl: as above.**

Yours faithfully,

*C. Palpandi*  
24/9/2021  
(Dr. C. Palpandi)  
Scientist 'D'