

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

APPEAL No. 67 of 2021

IN THE MATTER OF:

B. Anjinamma,

Sy. No.55, Region: East Kodipalli Village,
Kalyanadurg (M), Anantapuram District,
Andhra Pradesh

... APPELLANT

-VS-

The Member Secretary,
State Level Environment Impact Assessment Authority (SEIAA)
S.No.33-26-14D/2, Near Sunrise Hospital,
Pushpa Hotel Centre, Chalamavari Street,
Kasturibaipet,
Vijayawada – 520 010. & 1 Others.

... RESPONDENTS

COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

Date-05-.12.2021



**M/S MADHURI DONTI REDDY
ADVOCATE**

**STANDING COUNCIL FOR GOVERNMENT OF
ANDHRA PRADESH**

**A.P. POLLUTION CONTROL BOARD
T.T.D. SUPREME COURT OF INDIA**

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COUNSEL FOR 1ST RESPONDENT

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

Date: 27.11.2021


Member Secretary
State Environment Impact
Assessment Authority,
Govt. of Andhra Pradesh

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1 The Member Secretary,

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S.No.33-26-14D/2, Near Sunrise Hospital,
Pushpa Hotel Centre, Chalamavari Street,
Kasturibaipet,
Vijayawada – 520 010

2. UNION OF INDIA

Rep. by its Secretary to Government
Ministry of Environment and
Forests & Climate Change
Indira ParyawaranBhawan, JorBagh Road,
Lodi Colony, New Delhi-110003,
secy-moef@nic.in,
Tel: 011 23011317

... RESPONDENTS

COUNTER AFFIDAVIT FILED BY THE 1st RESPONDENT

I, Pasala Venkata Chalapathi Rao Son of Pasala Laxmaiah, Hindu, aged about 53 years, holding the post of Member Secretary, State Environmental Impact Assessment Authority (SEIAA,) Andhra Pradesh do hereby solemnly affirm and sincerely state as follows:

1. I am the deponent herein and as such I am well acquainted with the facts of the case.

2. This respondent denies each and every averment made in the affidavit filed in support of the application as false and incorrect except those that are specifically admitted herein in this counter affidavit.


Member Secretary
State Environment Impact
Assessment Authority,
Govt. of Andhra Pradesh

3. With regard to the averment made in Paragraph 1, 2 and 3 of the affidavit is denied as false. It is submitted that the proponent applied for EC on 01.10.2018 and the application was returned on 03.10.2018 to proponent to apply at DEIAA as it was competent Authority for processing of minor mineral application having mining area less than 5.0 Ha. Vide MoEF&CC Notification S.O.No.141 €, dated 15th January 2016 (copy attached).

4. It is submitted that the appellant B.Anjinamma, bearing survey No.55 Region : East Kodipalli Village ,Kalyanadurg (M),Anantapuamu District has applied for EC on 21.01.2021 to produce **Road Metal and Building Stone - 37620 Tons/Annum .**

5. It is submitted that the issue was placed in the SEAC meeting held on 22.07.2021. The Committee observed that the project proposal is for mining **Road Metal & Building Stone** in an area of **2.480 Ha.** With a proposed production quantity of **Road Metal and Building Stone - 37620 Tons/Annum** with a condition that the total production during a scheme should be limited to the approved quantity as per Mining scheme/ plan. The proposed project falls under Item No. 1(a) of the schedule of the EIA Notification 2006 and its amendments thereof - (i). Mining of minerals (<100 ha of mining lease area in respect of non-coal mine lease).The project proponent and their consultant M/s. Global Environment & Mining Services., have attended the meeting.

6. It is submitted that the committee noted that this an existing mine involving violation of EIA Notification, 2006. This is an existing mine, the project proponent has applied their application after the window period i.e., after 13th April, 2018. The committee noted vide MoEF& CC Office Memorandum – F.No. 22-10/2019 –IA.III, dated: 09.09.2019 clarified on the processing of proposals involving violation of EIA Notification. The Committee after examining the project proposals, presentations, MoEF&CC' Notifications & OMs and detailed deliberations, recommended **to Reject** this project proposal as the project proponent filed the application after closure of violation window period.

7. It is submitted that the issue was placed before the SEIAA in its meeting held on **13.08.2021**. The SEIAA agreed with the recommendations of the SEAC, A.P to reject the proposal. Accordingly the application was rejected vide order dated **26.08.2021**. The MoEF&CC, GoI, New Delhi issued the Standard operating Procedure (SoP) for identification and handling of violation cases under EIA Notification 2006 vide Office Memorandum dated 7th July, 2021.

The MoEF&CC, GoI, New Delhi issued the Standard operating Procedure (SoP) for identification and handling of violation cases under EIA Notification 2006 vide Office Memorandum dated 7th July, 2021. Subsequently, the Madurai Bench of Madras High Court, Tamil Nadu in WP(MD) No.11757 of 2021 and WMP(MD) No. 9241 of 2021 on 15th July, 2021

issued Order “The Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is admitted and there shall be an order of interim stay..”

8. With regard to the averments made in paragraphs 4 and 5 of the affidavit is not related to this respondent and hence there is no remark.

9. With regard to the averment made in paragraphs 6,7 and 8 of the affidavit is denied as false. It is submitted that the MoEF&CC has issued notification to file all violation cases at MoEF&CC during the period 14.03.2017 to 13.09.2017. Later on the MoEF&CC issued OM to file all B-Category projects at SEIAA,AP during the period 14.03.2018 to 13.04.2018. The OMs were displayed in PARVIESH website. The proponent applied for EC on 01.10.2018 and the application was returned to proponent to apply at DEIAA as it was competent Authority for processing of minor mineral application having mining area less than 5.0 Ha. Vide MoEF&CC Notification S.O.No.141 €, dated 15th January 2016 (copy attached).

10. With regard to the averment made in paragraphs (a) of the Grounds is denied as false. It is submitted that the proponent applied for EC on 01.10.2018 and the application was returned on

03.10.2018 to proponent to apply at DEIAA as it was competent Authority for processing of minor mineral application having mining area less than 5.0 Ha. Vide MoEF&CC Notification S.O.No.141 €, dated 15th January 2016.

11. With regard to the averment made in paragraphs (b) of the Grounds is denied as false. It is submitted that the The MoEF&CC, GoI, New Delhi issued the Standard operating Procedure (SoP) for identification and handling of violation cases under EIA Notification 2006 vide Office Memorandum dated 7th July, 2021. The MoEF&CC, GoI, New Delhi issued the Standard operating Procedure (SoP) for identification and handling of violation cases under EIA Notification 2006 vide Office Memorandum dated 7th July, 2021. Subsequently, the Madurai Bench of Madras High Court, Tamil Nadu in WP(MD) No.11757 of 2021 and WMP(MD) No. 9241 of 2021 on 15th July, 2021 issued Order ***“The Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is admitted and there shall be an order of interim stay.*”**

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


Member Secretary
State Environment Impact
Assessment Authority,
Govt. of Andhra Pradesh

In the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to pass appropriate orders in the above Appeal No.67 of the 2021 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

Solemnly affirmed at, Vijayawada
Andhra Pradesh on this the
27th day of November 2021 and
Signed his name in presence

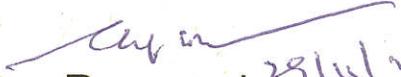
BEFORE ME

ADVOCATE, Vijayawada

VERIFICATION

I, Pasala Venkata Chalapathi Rao Son of Pasala Laxmaiah , Aged about 53 years, Occ:do hereby verify that the contents of Paras of Counter Affidavit are based on record and information are true to the best of my knowledge and belief.

Hence, verified on the 27th day of November at Vijayawada


Deponent 29/11/21
Member Secretary
State Environment Impact
Assessment Authority,
Govt. of Andhra Pradesh

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 सत्यमेव जयते	<p>State Level Environment Impact Assessment Authority (SEIAA) Andhra Pradesh Ministry of Environment, Forests & Climate Change Government of India D.No.33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre, Chalamavari Street, Kasturibaipet, Vijayawada-520010. REGD.POST WITH ACK.DUE</p>
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Order No. SEIAA/AP/ANT/MIN/1/2021/2789/163.24&160.20 590 **Dt-26.08.2021**

Sub: SEIAA, A.P. – 2.480 Ha Road Metal & Building Stone of Smt. B. Anjinamma at Sy. No.55 Region : East Kodipalli Village, Kalyanadurg (M), Anantapuramu District, Andhra Pradesh - Reject - Reg.

Ref: Your Application received on 21.01.2021.

In the reference 1st cited, you have submitted an application through online on 21.01.2021(SIA/AP/MIN/194186/2021), seeking Environmental Clearance for the **2.480 Ha Road Metal & Building Stone** in the name of **Smt. B. Anjinamma**, at **Sy. No. 55 Region : East Kodipalli Village, Kalyanadurg (M), Anantapuramu District, Andhra Pradesh**, to produce **Road Metal and Building Stone - 37620 Tons/Annum**. The capital cost of the project is Rs.60.0 Lakhs.

The issue was examined by the SEAC in its meeting held 22.07.2021. The Committee observed the following:

Category : B1 (Violation)

The project proposal is for mining **Road Metal & Building Stone** in an area of **2.480 Ha** with a proposed production quantity of **Road Metal and Building Stone - 37620 Tons/Annum** with a condition that the total production during a scheme should be limited to the approved quantity as per Mining scheme/ plan. The proposed project falls under Item No. 1(a) of the schedule of the EIA Notification 2006 and its amendments thereof - (i). Mining of minerals (<100 ha of mining lease area in respect of non-coal mine lease). The project proponent and their consultant M/s. Global Environment & Mining Services., have attended the meeting. The committee noted that this is an existing mine involving violation of EIA Notification, 2006. This is an existing mine, the project proponent has applied their application after the window period i.e., after 13th April, 2018. The committee noted vide MoEF & CC Office Memorandum – F.No. 22-10/2019 –IA.III, dated: 09.09.2019 clarified on the processing of proposals involving violation of EIA Notification. The Committee after examining the project proposals, presentations, MoEF & CC' Notifications & OMs and detailed deliberations, recommended to **Reject** this project proposal as the project proponent filed the application for closure of violation window period.

Prey

The issue was placed before the SEIAA in its meeting held on **13.08.2021**. The SEIAA agreed with the recommendations of the SEAC, A.P to Reject the proposal.

In view of the above, your EC application is **REJECTED**. No mining / construction / expansion or developmental work shall be carried out without obtaining Environmental Clearance as per the provisions laid under E(P) Act, 1986 and EIA notification 2006 dt.14.09.2006 and its amendments thereof.

Any appeal against this order shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Sd/-	Sd/-	Sd/-
MEMBER SECRETARY,	MEMBER,	CHAIRMAN,
SEIAA, A.P.	SEIAA, A.P.	SEIAA, A.P.

To

Smt. B. Anjinamma
W/o Sri. B.C. Govindappa,
H.No. : 10-A/315,
Behind Vegetable Market,
Kalyanadurg (Town & Mandal)
Anantapuramu District,
Andhra Pradesh

//T.C.F.B.O//

P. Murali Sreenivasulu Reddy
SENIOR ENVIRONMENTAL ENGINEER (EC)

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:

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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 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**

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:

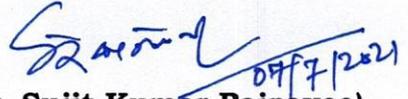
With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment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



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Fifteenth day of July Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice T.S.SIVAGNANAM
and
The Hon`ble Mrs.Justice S.ANANTHI

WP(MD) No.11757 of 2021

and

WMP(MD) No. 9241 of 2021

FATIMA

... PETITIONERER

Vs

THE UNION OF INDIA
REP BY ITS SECRETARY TO THE GOVERNMENT,
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE ,
PARYAVARAN BHAWAN, JOR BAGH,
NEW DELHI - 110003. ... RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a writ of Certiorari calling for the records of the respondent culminating in Office memorandum dated 07/07/2021 bearing number F.No.22-21/2020-IA.III, Quash the same.

Prayer in WMP(MD). 9241/ 2021 :

To stay the operation of the impugned office memorandum issued by the respondent dated 07/07/2021 bearing number F.No.22-21/2020/--IA.III, pending disposal of the writ petition and thus render justice.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.YOGESHWARAN, Advocate for the petitioner the court made the following order:-

This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.

2.We have heard Mr.A.Yogeshwaran, learned counsel appearing for the writ petitioner and Mr.L.Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.



3.The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, *ultra vires* the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme Court, while interpreting Article 21 and Article 48-A of the Constitution of India.

4.Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P.No.11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of *ex-post facto* approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.

5.Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of **Alembic Pharmaceuticals Ltd. vs Rohit Prajapati, 2020 SCC Online SC 347** and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of **S.P.Muthuraman vs. Union of India & Another, 2015 SCC Online NGT 169**.

6.Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting *post facto* clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD).No.8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7.The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in **Alembic Pharmaceuticals Ltd (cited supra)**, and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be



taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8.Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9.Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed of the writ petition.

10.Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a *prima facie* case for entertaining the writ petition. Accordingly, the writ petition is **admitted** and there shall be an order of interim stay. सत्यमेव जयते

11. List the matter after twelve weeks.

sd/-
15/07/2021
/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



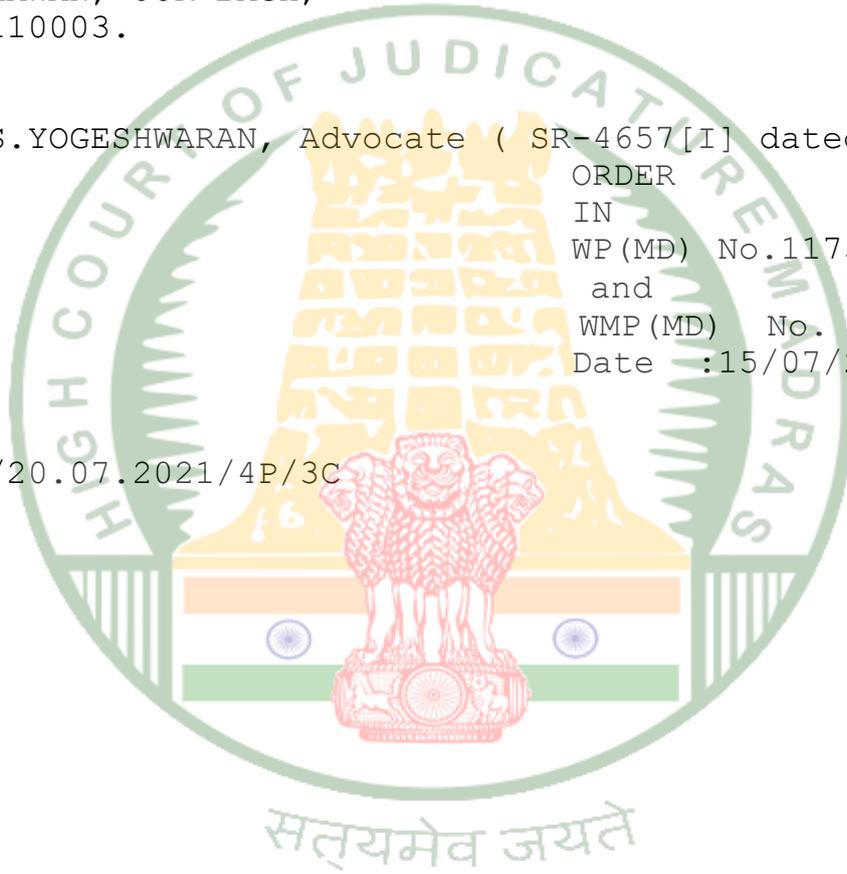
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned

TO

THE UNION OF INDIA
REP BY ITS SECRETARY TO THE GOVERNMENT,
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE ,
PARYAVARAN BHAWAN, JOR BAGH,
NEW DELHI - 110003.

+1 CC to Mr.S.YOGESHWARAN, Advocate (SR-4657[I] dated 16/07/2021)
ORDER
IN
WP(MD) No.11757 of 2021
and
WMP(MD) No. 9241 of 2021
Date :15/07/2021

PKN
RT/VR/SAR-II/20.07.2021/4P/3C



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