

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE, CHENNAI**

**Appeal No. 93 of 2017 (SZ)**

Ajayaghosh.....APPELLANT

VS

State Environment Impact Assessment Authority and others.....RESPONDENTS

**BRIEF REPLY TO THE ARGUMENT NOTES OF THE APPELLANT SUBMITTED BY  
COUNSEL FOR THE RESPONDENTS 4 AND 5**

**Counsel for the Respondents 4 and 5**

**P.B.SAHASRANAMAN**

**SAI SATHYAJITH**

**ADVOCATES**

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1. The appeal was heard and judgement reserved on 27-10-2020. Thereafter this respondent was served with an argument note dated 28-10-2020 submitted by Adv. Harish Vasudevan, Counsel for the appellant. The respondents have the following to the reply to the arguments submitted by the appellants' counsel.

**I-Maintainability and Limitation: -**

2. The appeal is barred by limitation. The Environment Clearance for the project was granted on 20-3-2017 and the fact was published in newspapers on 17-4-2017 making it clear that the details are available in the website of the SEIAA and the project proponent. The appeal is thus ought to have been filed on or before 17-5-2017. The present appeal is one filed only on 22-12-2017, ie, 188 days after the permitted period. Even the appellant herein has approached the High Court only on 20-10-2017. Thus, the time taken for pursuing the writ petition cannot be taken as a ground for condoning the delay in filing the appeal and hence the appeal is time barred and is to be dismissed on that score alone.



## **II-Delisted Project**

3. The time limit prescribed by EIA notification is not mandatory and is only a guideline. If the contention of the appellant is to be accepted, then all the clearances issued so far in this country has to be set aside. The SEIAA in its 54th meeting specifically noted that “before the recommendations to delist could be placed before the SEIAA the proponent submitted the clarifications sought by SEAC” and “..as of now the reason for the recommendation is non-existent as the reply has been obtained.” It may be noted that, no proponent can assume EC to be granted, in case his project is recommended for EC by SEAC, but not granted by SEIAA in the stipulated time. If the appellant’s argument is to be accepted , a proponent can assume grant of EC if recommended by SEAC but not granted by SEIAA in stipulated time. Similarly, SEAC can only recommend a project for delisting to SEIAA. However, the final authority for the same rests only with SEIAA. SEIAA decision is generally based on SEAC's recommendation but they are not bound by it. They may choose to either uphold or reject SEAC recommendation.

## **III-Bad/Improper appraisal:**

4. The Environment Clearance for the project is one issued after due verification of all details and on following of all the required procedures. Project has been appraised by SEAC after considering all Environmental Concerns, as evident from the Minutes of SEAC's 33rd, 36th, 53rd, 55th and 60th meetings
5. The project was considered and duly appraised by SEAC in its 33rd meeting (2/3.09.2014) and Site was visited by SEAC sub-committee on 11.10.2014. The project was considered again in the 36th SEAC meeting (31.10.2014) when it was deferred for want of additional information. Project was also deliberated upon in the 53rd (25/26.02.2016) meeting, 55th (10/11/20.05.2016) meeting of SEAC. Based on decision by SEIAA in its 54th meeting held on 21.06.2016, SEAC again considered the project in its 60th meeting held on 28/29.07.2016 and the project



6. was recommended for EC. It is sufficiently clear from the above fact that prior to the 60th SEAC meeting held on 28/29.07.2016, the SEAC had considered the project in its 33rd, 36th, 53rd and 55th meetings, apart from site visit conducted on 11.10.2014. In the interim, the matter was also considered by SEIAA in its 54th meeting. The decision made in the 60th meeting was based on documents submitted by proponent as part of compliance to conditions raised in the earlier meetings. Hence, the time taken by the SEAC for the 60th meeting cannot be considered in isolation.
7. Further the case referred by the Appellant 'Utkarsh Mandal vs. Union of India' is specific to mining projects in Goa, where the EAC apparently cleared 410 mining cases over a period of six months. The NGT held that too many cases seem to have been cleared in a short time and in its view, no more than five cases could be cleared in a day. It directed the MoEF to consider the same seriously. It may however be noted that there has not been any notification/circular/OM from the MoEF&CC to limit the number of cases appraised by SEAC till date. In the above referred case, it was also noted by the Court that, the Chairperson of the EAC (Mines) which had cleared the proposal for grant of EIA clearance was at the relevant time himself a Director of four mining companies, which impaired the fairness and credibility of its decision. Such type of cases cannot in no way be taken in to consideration and be compared with the present matter.
8. The SEAC minutes of 33rd meeting make it abundantly clear that though the committee had mentioned that only two basement floors are permissible based on-site conditions, the Structural Engineer of the project informed that project would have sufficient supporting structures and mechanical ventilation to address the concerns raised by the committee. Details as requested by committee regarding the same were furnished on 22.04.2016. This has been recorded in the EC letter issued by SEIAA.
9. The distance restriction imposed on construction is applicable only to National Park and Wildlife Sanctuaries and not Community reserve. The distance from Community Reserve to the project area is more than 4 kms.



#### **IV-Deliberate suppression of materials facts in Form-1**

10. It is not disputed that KCZMA has issued a letter regarding non-applicability of CRZ based on proposal submitted by us. As the latest CZMP places the project site in CRZ II instead of CRZ III, the project site ceases to be in No Development Zone (NDZ). Form 1 submitted as part of application will reveal that we had explicitly mentioned that CRZ Notification (2011) was applicable to the project. Please refer Form 1, Para I- Basic Information. This proves that there was no deliberate concealment of facts.
11. While the *Kadalundi Vallikkunnu Community* reserve has not been explicitly mentioned in Form 1, Kadalundi Bird sanctuary (not notified) has been mentioned at a distance of 9 Km from the project site. As per Wildlife Institute of India, Community Reserves are buffer zones to connectors and migration corridors between existing or proposed protected areas. As per Kerala State Council for Science, Technology & Environment, Kadalundi estuary hosts several water birds, including migratory species, and hence the estuary has been declared a community reserve. It is evident that in the Form 1, that we have acknowledged the environmental sensitivity of the concerned area by mentioning it in the relevant paragraph in Form 1. Hence this cannot be termed as concealment at all.
12. The MoEF&CC (erstwhile MoEF) has due processes to grant Wildlife & Forest Clearances for projects which fall in the eco-sensitive zones of National Park and Wildlife sanctuaries. These clearances take into consideration the nature of the project and their possible effect on wildlife. However, MoEF&CC has categorically ruled out the applicability of such clearances to our projects vide letter dated 14.01.2020 attached as annexure.
13. The case referred to by the Appellant as "Hanuman Laxman Aroskar & Union of India" is in connection with a Category A - AIRPORT project having large environment impact and is not applicable to a project like the present one which is coming under Category B.



### **V-Height of the Building**

14. It is not correct to state that the impact of the project has to be studied with respect to the Kadalundy protected area. The MoEF&CC (erstwhile MoEF) has due processes to grant Wildlife & Forest Clearances for projects which fall in the eco-sensitive zones of National Park and Wildlife sanctuaries. MoEF&CC has categorically ruled out the applicability of such clearances to our projects vide letter dated 14.01.2020 attached as annexure.
15. The area referred by the Appellant as the Built up area i.e. 59,528.41 sq.m is actually the plinth area, which includes parking and service area, whereas the sanctioned area is only 43,390.27 Sq M(FAR area).
16. Reports demonstrating compliance to conditions mentioned in EC are submitted to MoEF&CC/ SEIAA / KSPCB on a half-yearly basis as per conditions mentioned in EC. SEIAA decided not to delist our project in its 54th meeting held on 21.06.2016 on being satisfied with the documentation submitted by the project proponent.

### **VI-Irreversible Damage already Done**

17. There is no damage to the ecology or the appellant on account of the project and any right of the appellant is not affected by the proposed constructions. There is clear application of mind by the SEAC while considering the project proposal. The appraisal done is after verification of all the records properly and all the procedures prescribed by law had been followed while issuing the Environment clearance for the project.

Therefore it is prayed that the appeal be dismissed with the costs of these respondents.



Counsel for the Respondents 4 and 5