

IN THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 109 of 2023

IN THE MATTER OF: -

Pralhad Tukaram Gawande & Anr.

... Applicants

Versus

State of Maharashtra and Others

... Respondent(s)

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Place: New Delhi

Filed by:

Dated

Advocate for MoEF&CC

Mob. No.

Email Id:

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE**

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**ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**

MOST RESPECTFULLY SHOWETH:

I, Dr. Purushottam Sakhare, S/o Shri Ramdas Sakhare, aged about 56 years, working as Scientist "E" in the Regional Office of the Ministry of Environment, Forest and Climate Change (hereinafter referred to as 'Ministry'), having an office in Nagpur, do hereby solemnly affirm on oath and state as under:

1. It is submitted that I am duly authorized by the Competent Authority in the Ministry, New Delhi to file this Affidavit on behalf of the Respondent

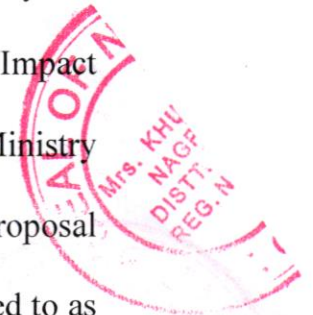


No. 2 herein, i.e. the Ministry of Environment, Forest & Climate Change (hereinafter referred to as 'Ministry').

2. It is submitted that the present Application has been filed challenging the E-Tender Notice, bearing No. 01 for 2023-2024 dated 18.04.2023 issued by the Project authorities for the purpose of commencement of construction of Lower Penganga Irrigation Project at Yavatmal in Maharashtra, on account of violation of Environment Impact Assessment Notification, 2006 (hereinafter referred to as 'EIA Notification, 2006') as the validity of the Environmental Clearance (hereinafter referred to as 'EC') dated 17.05.2007 expired on 16.05.2017. In this regard, the applicant has prayed to revoke the aforesaid E-tender notice and direct the Project Proponent to not start any construction without obtaining fresh EC as mandated by the EIA Notification, 2006.

BACKGROUND OF THE PROJECT

3. It is submitted that the proposal for grant of EC was submitted by the Project authorities, after preparation of the Environment Impact Assessment Report and completion of Public hearing, to the Ministry prior to the implementation of the EIA Notification, 2006. The proposal was considered by Expert Appraisal Committee (hereinafter referred to as



'EAC') in its meeting held on 21.02.2007 and reconsidered on 22.03.2007. Based on the recommendation of EAC, this Ministry vide letter no. J-12011/68/2006-IA.I dated 17.05.2007 issued EC to Lower Penganga Irrigation Project located in the district of Yavatmal of Maharashtra, for Maharashtra portion, under the provisions of the EIA Notification, 2006.

Copy of the EC Letter dated 17.05.2007 is annexed as **Annexure R-1**.

4. It is submitted that vide EC dated 17.05.2007, the Ministry stipulated a condition at S.No. 8 (Part B General Conditions), which has been reproduced hereunder:

"This clearance letter is valid for a period of five years from the date of issue of this letter for commencement of construction work."

It is also pertinent to mention here that the Ministry vide Notification dated 21.08.2013 clarified that in the Notification dated 04.05.1994, the expression "for a period of five years", shall mean "for a period of five years for commencement of the construction or operation and not five years from commencement of the construction or operation".

Copy of the Notification dated 21.08.2013 is annexed as **Annexure R-2**.



5. It is submitted that the Superintending Engineer, Yavatmal Irrigation Circle, Yavatmal, Government of Maharashtra vide letter no. 4193/YIC/T-6/LPP/ECC/2012 of dated 18.06.2012 sought clarification regarding the validity of EC. In this regard, the Ministry issued a Corrigendum vide letter dated 27.09.2013 of the EC dated 17.05.2007 whereby the EC condition at S. No. 8 (Part B General Conditions) was replaced with the following:

“The environmental clearance is valid for a period of 10 years from the date of issue of this letter for commissioning of the project.”

Copy of the Corrigendum vide letter dated 27.09.2013 is annexed as **Annexure R-3.**

6. It is submitted that in response to the instant application, the Ministry filed a response before this Hon'ble Tribunal vide affidavit dated 05.02.2024 stating that the validity of aforesaid EC expired on 16.05.2017 as the Ministry has communicated to Project authorities vide its Corrigendum letter dated 27.09.2013, that the EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project. Therefore, the Project authorities may be directed not to initiate any construction activity without a valid EC and



further, submit a fresh proposal for obtaining EC, under the provisions of the EIA Notification, 2006 as amended.

SUBMISSIONS REGARDING CIRCULARS DATED 13.10.2006 AND 08.12.2006

7. It is submitted that there were certain cases which were pending for consideration for grant of EC at the time when EIA Notification, 2006 came into existence. To deal with such cases, the Ministry issued interim operational guidelines vide Circulars dated 13.10.2006 and 08.12.2006 subsequently.
8. That the Circular dated 13.10.2006 states the terms and conditions for consideration of such pending cases under the provisions of the EIA Notification, 2006. It is worthwhile to mention that the proposal for grant of EC to the project in question was considered in accordance with the clarification given under clause 2.1.1(i) of the Circular dated 13.10.2006 read with EIA Notification, 2006. The relevant extract in this regard is provided hereunder:

“2.1 Applications for EIA Appraisal were pending with MOEF as on 14

September 2006:



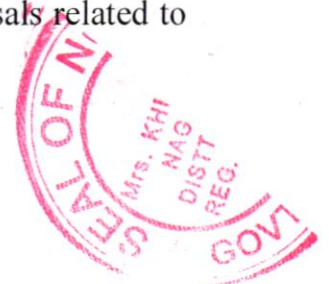
2.1.1 Activity requires EIA Appraisal as per Schedule of EIA 2006:

There are several sub cases:

(i) EIA has already been prepared, and PH conducted as per EIA 1994: The EIA would be evaluated by the Expert Appraisal Committee (EAC), without insistence on the submission of FORM I/IA required under EIA 2006. In case the EIA document is considered complete and accurate, the EC would consider the same, together with the PH proceedings, even if PH is not required under EIA 2006, and furnish its recommendations. In case the EIA document is considered incomplete and/or inaccurate, the EAC would specify ALL the additional Terms of Reference (TORs) to be undertaken by the project sponsor. In case PH is required under EIA 2006, the proceedings of the PH conducted as per EIA 1994 would be considered along with the EIA by the EAC, which would provide its recommendations."

Copy of the Circular dated 13.10.2006 is annexed as **Annexure R-4**.

9. Thereafter, vide Circular dated 08.12.2006 the Ministry issued interim operational guidelines for dealing with such pending proposals related to River Valley & Hydro-electric power projects.



COMPLIANCE OF THE ORDER DATED 19.09.2024 PASSED BY THIS HON'BLE TRIBUNAL (WZ)

10. That, vide order dated 19.09.2024, the Hon'ble Tribunal has sought clarification regarding the issuance of Circular dated 08.12.2006. The relevant extract in this regard is reproduced below:

"...6. We would also like to have clarification from respondent No.2 – MoEF&CC, which is being represented today by learned counsel Mr. Pushkal Mishra as to whether the Circular dated 08.12.2006 has been issued by them as per which, in the case in hand, the provisions of EIA Notification, 1994 will be applicable or those of EIA Notification, 2006 will be applicable..."

11. That in this regard, it is submitted that at Para no. iii of the Circular dated 08.12.2006 issued by the Ministry, it is mentioned that –

".....In respect of cases where site clearance has not been accorded but which were pending with the Ministry prior to 14th September, 2006 Notification; site clearance is not required and all such cases have to be processed as per EIA Notification, 2006....."

The copy of the Circular dated 08.12.2006 is annexed as **Annexure R-5**.



12. That in this regard, it is pertinent to mention that as per the records available with the Ministry, no site clearance was accorded to the project in question. It is further submitted that the Environment Impact Assessment Report was prepared, Public hearing was conducted and the project in question was under consideration by the Ministry, prior to the implementation of the EIA Notification, 2006. Therefore, the Para iii of the Circular dated 08.12.2006 applies squarely on the project in question.

SUBMISSIONS ON THE ADDITIONAL AFFIDAVIT FILED BY THE PROJECT AUTHORITIES

13. Further, it is submitted that, vide order dated 19.09.2024, the Hon'ble Tribunal observed that the Project authorities have not placed the site clearance on record and allowed for submission of details of the grant of site clearance along with relevant document/(s).

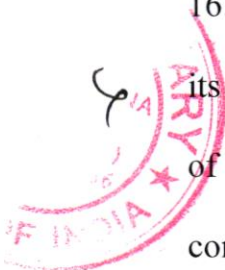
In compliance to the aforementioned order, the Project authorities filed an affidavit dated 01.10.2024. However, on perusal of the contents of their affidavit, it was observed that site clearance was not annexed. The project authorities have grounded their argument on deliberate misapplication of the contents of the Para i of the Circular dated 08.12.2006.



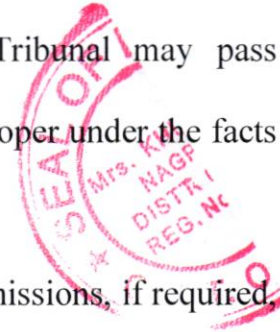
Moreover, the Project authorities have annexed a letter dated 17.02.2007 as Exhibit-II in the aforementioned affidavit, which is a plain request made by the Project authorities to the Ministry to consider the project in question under EIA Notification, 1994. In this regard, it is vehemently denied that a request for consideration of the project in question as per EIA Notification, 1994 tantamount to grant of Site clearance or EC to the project in question.

14. That after thorough examination of the project details and in light of the clarification provided under Clause 2.1.1(i) of the Circular dated 13.10.2006 as well as Para (iii) of the Circular dated 08.12.2006, the Ministry has granted EC to the project in question under EIA Notification, 2006 without according Site Clearance. Therefore, the contention of the Project authorities, that the grant of EC as per the provisions of EIA Notification, 2006 mentioned in the EC letter dated 17.05.2007 is merely a typo graphical error, is strongly denied.

Further, it is reiterated that the validity of the said EC stands expired on 16.05.2017 as the Ministry has communicated to Project authorities vide its Corrigendum letter dated 27.09.2013, that the EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project.



15. In view of the aforesaid, it is also respectfully reiterated that, the Project authorities may be directed not to initiate any construction activity without a valid EC and further, submit a fresh proposal for obtaining EC, under the provisions of the EIA Notification, 2006 as amended.
16. It is submitted that the present additional affidavit may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.
17. That the Ministry seeks leave to make additional submissions, if required during the course of the proceedings.



DEPONENT

(डॉ. पी. आर. साखरे)
(Dr. P. R. Sakhare)

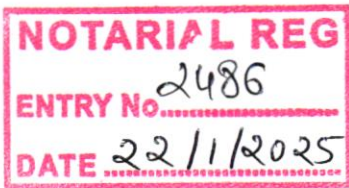
वैज्ञानिक 'ई' / Scientist 'E'

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय, नागपुर- ४४०००९
Regional Office, Nagpur-440009

VERIFICATION

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

Verified at Nagpur on this 22nd day of January, 2025



Dr. F. R. Sakhare

DEPONENT

(डॉ. पी. आर. साखरे)
(Dr. F. R. Sakhare)
वैज्ञानिक 'ई' / Scientist 'E'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय, नागपुर - 440009
Regional Office, Nagpur-440009



SWORN BEFORE ME ON THIS 22nd
DAY OF Jan. 20, 25 AT NAGPUR BY
SHRI / SMT. / Ku Dr. Parashottam Sakhare
R/o NAGPUR WHO HAS BEEN IDENTIFIED BY
SHRI / SMT. Adv. Anandhaji Roy
ADVOCATE, NAGPUR.

Anandhaji Roy
NOTARY
GOVT. OF INDIA
Nagpur (M.S.) INDIA



संख्या :
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 टैलेक्स :
 Telex : W-65185 DOE IN
 फ़ैक्स : 4360676

भारत सरकार
 पर्यावरण एवं वन मंत्रालय
 GOVERNMENT OF INDIA
 MINISTRY OF ENVIRONMENT & FORESTS
 पर्यावरण भवन, सी. जी. ओ. कॉम्प्लेक्स
 PARYAVARAN BHAVAN, C.G.O. COMPLEX
 लोधी रोड, नई दिल्ली-110003
 LODHI ROAD, NEW DELHI-110003

No.J.12011/68/2006-1A.1

17.05.2007

The Superintending Engineer
 Yavatmal Irrigation Circle
 Yavatmal
 Maharashtra

Sub: Lower Penganga Irrigation Project-in the District of Yavatmal of Maharashtra –
 Environmental Clearance. – regarding..

Sir,

This has reference to your letters No.CJ41/T-8/LPP/Environment/06 dated 30.11.2006 and 6.1.2007 on the above mentioned subject.

2. The above referred proposal was considered by the Expert Appraisal Committee for River Valley & Hydroelectric projects in its meeting held on 21st February, 2007 and reconsidered on 22 March, 2007. This project was accorded environmental clearance during 1984. However, no construction work has been started till date. The project envisages construction of a 35.63 m high earthen dam with central gated masonry spillway at about 2 km upstream of Tadsali village in Yavatmal district across Penganga river. The project will irrigate 1,40,818 ha in Maharashtra and 19,232 ha in Adilabad district of Andhra Pradesh. As Public hearing was held only for Maharashtra on 25.04.2006 the proposal for irrigation in Andhra Pradesh was not considered by the Expert Appraisal Committee. In addition to irrigation, 4 MW power also likely to be generated. Total land requirement for the project is 18,826 ha which include 17184 ha private land, 898 ha. of forest land and 644 ha Government land. The project will affect 46 villages, out of which 32 villages will be fully affected and 14 villages partially affected. The number of project affected families is 8136. The maximum and minimum distance of canal alignment from the boundary of Tipeshwar Wildlife Sanctuary is about 17.50 km and 2 km respectively. The total estimated cost is about Rs.1402.43 Crores.

3. The Ministry of Environment and Forests hereby accords environmental clearance only for Maharashtra portion, as per the provisions of Environmental Impact Assessment Notification 2006, subject to strict compliance of the terms and conditions as follows:

Part A: Specific Conditions

- (i) Catchment Area Treatment Plan as has been proposed should be completed in five years. The plan is given below :

(I) BIOLOGICAL MEASURES	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Development and maintenance of nursery (L.S)	1	1	1	1	1	1
Plantation of degraded forest land	30 ha	40 ha	30 ha	-	-	100 ha

19

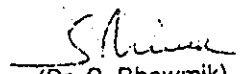
		30 ha	40 ha	100ha	70 ha	100 ha
Maintenance of plantations	-	4	4	-	-	10
Road side plantation (Km)	2	4	4	-	-	10
Maintenance of Road side plantation up to 5 th year (Km)	-	2	6	10	10	10
Vegetative Check Dam (Nos)	60	60	60	60	60	300
(II) ENGINEERING MEASURES						
CAT Office establishment and maintenance (Year)	1	1	1	1	1	5
Barbed wire fencing for protection (KM)	40	40	30	-	-	110
Gully plugging (Nos)	200	100	100	100	-	500
Providing wire crate (Nos)	200	180	120	-	-	500
Stream bank protection (Nos)	40	40	40	40	40	200
Stone masonry check Dam (Cuin)	50	100	50	50	-	250
Maintenance of protection works up to 5 th Year	1	1	1	1	1	5

- (ii) Forest Clearance to be obtained for acquiring 988 hectares forest land & submit it to this Ministry.
- (iii) Consolidation and compilation of the muck should be carried-out in the muck dump sites and the dump sites should be above high flood level.
- (iv) A study of site specific earthquake design parameters is mandatory for large dams. The result of the site specific design parameters needs to be approved by the NCSDE, CWC, New Delhi. The approved design earthquake parameter shall be used for final design.
- (v) Water user association/ Co-operative and involvement of the whole community for disciplined use of available waters should be formed.
- (vi) Any other clearance from any other organization if required should be obtained.
- (vii) Occurrence of stagnant pools/slow moving water channels during construction and operation of the project providing breeding source for vector mosquitoes and other parasites. The river should be properly channelised so that no small pools and poodies are allowed to be formed. Even after taking precaution, due to unforeseen situations, breeding of mosquito and resultant malaria or mosquito borne diseases can increase. If such a situation arises, it will be the responsibility of project authorities to take all steps i.e. residual insecticidal spray in all the project area and surrounding 3 km. area keeping the flight range of mosquitoes in consideration
- (viii) Command area development plan as proposed in the letter dated 14.3.2007 should be followed.

Part-B: General Conditions

- (i) Adequate free fuel arrangement should be made for the labour force engaged in the construction work at project cost so that indiscriminate felling of trees is prevented.
- (ii) Fuel depot may be opened at the site to provide the fuel (kerosene/wood/LPG). Medical facilities as well as recreational facilities should also be provided to the labourers.

- (iii) All the labourers to be engaged for construction works should be thoroughly examined by health personnel and adequately treated before issuing them work permit.
- (iv) Restoration of construction area including dumping site of excavated materials should be ensured by leveling, filling up of burrow pits, landscaping etc. The area should be properly treated with suitable plantation.
- (v) Adequate financial provision should be made in the total budget of the project for implementation of the above suggested safeguard measures.
- (vi) A Multidisciplinary committee should be constituted in consultation with the Ministry with ecologists, environmental scientists, conservationists, and experienced administrators etc. to oversee the effective implementation of the suggested safeguard measures.
- (vii) The MOEF would also refer to the Standing Committee of the National Board for Wildlife under Section 5(b) and 5(c)(ii) of the Wildlife (Protection) Act, the cases where environmental clearance has already been granted where activities are within 10 km zone.
- (viii) Six monthly monitoring reports should be submitted to the Ministry and its Regional Office, Bhopal for review.
4. Officials from Regional Office MOEF, Bhopal who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities and documents/data by the project proponent during their inspection.
5. The responsibility of implementation of environmental safeguards rests fully with the Vidarbha Irrigation Development Corporation Ltd. and Government of Maharashtra.
6. In case of change in the scope of the project, project would require a fresh appraisal.
7. The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary and to take action including revoking of the clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time-bound and satisfactory manner.
8. This clearance letter is valid for a period of five years from the date of issue of this letter for commencement of construction work.
9. A copy of the clearance letter will be marked to concerned Panchayat / local NGO, if any, from whom any suggestion/ representation has been received while processing the proposal.
10. State Pollution Control Board / Committee should display a copy of the clearance letter at the Regional Office, District Industries Center and Collector's office/ Tehsildar's office for 30 days.
11. The project proponent should advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned informing that the project has been accorded environmental clearance and copies of clearance letters are available with the State Pollution Control Board / Committee and may also be seen at Website of the Ministry of Environment and Forests at [http:// www.envfor.nic.in](http://www.envfor.nic.in)


(Dr. S. Bhowmik)
Additional Director

Copy to:

1. The Secretary, Ministry of Water Resources, Shram Shakti, Bhawan, Rafi Marg, New Delhi-110001.
2. The Adviser (I & CAD), Planning Commission, Yojna Bhawan, New Delhi - 110001.
3. Secretary (Energy & Power), Government of Maharashtra, Mumbai.
4. The Member Secretary, Maharashtra State Pollution Control Board, Mumbai
5. The Chief Engineer, Project Appraisal Directorate, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi-110066.
6. The Secretary (Irrigation), Government of Andhra Pradesh, Secretariat, Hyderabad- 500 022
7. The Regional Office, Ministry of Environment & Forests, Bhopal.
8. E.I. Division, Ministry of Environment & Forests, New Delhi-110003.
9. Guard file.

—sd—
(Dr. S. Bhowmik)
Additional Director



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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No. 1956]

NEW DELHI, THURSDAY, AUGUST 22, 2013/SHRAVANA 31, 1935

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 21 अगस्त, 2013

का.आ. 2555(अ).—पर्यावरण (संरक्षण) नियम, 1986 की नियम 5 के उपनियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) के अधीन जारी भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना संख्यांक का.आ. 60 (अ), तारीख 27 जनवरी, 1994 (जिसे इसमें इसके पश्चात् अधिसूचना कहा गया है) द्वारा केंद्रीय सरकार ने जब तक कि उस सरकार द्वारा पर्यावरण संबंधी अनापत्ति मंजूरी न दे दी गई हो तब तक किसी परियोजना के आरंभ किए जाने वाले क्रियाकलाप या नई परियोजना के संबंध में विस्तार और आधुनिकीकरण के संबंध में कतिपय रूप से निर्बंधित और प्रति-नेध अधिरोपित करती है।

2. और, उपरोक्त उक्त अधिसूचना को अधिसूचना संख्यांक का.आ. 356 (अ), तारीख 4 मई, 1994 द्वारा और संशोधित किया गया था और उक्त अधिसूचना के पैरा 2 के (iii) के खंड (ग) यह उपबंध करता है कि -

“दी गई अनापत्ति, संनिर्माण या संक्रिया के प्रारंभ होने से पांच वर्षों की अवधि के लिए विधिमाम्य होगी”।

3. और केंद्रीय सरकार का आशय यह रहा है और सदैव यह रहा है कि पर्यावरण संबंधी अनापत्ति की विधिमाम्यता, संनिर्माण या प्रचालन के प्रारंभ “के लिए” पांच वर्षों है और न कि संनिर्माण या प्रचालन के आरंभ से पांच वर्षों के लिए है।

4. और, उक्त अधिसूचना का. आ. 60, तारीख 27 जनवरी, 1994 और उसके पश्चात्पूर्वी संशोधन भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना संख्यांक का. आ. 1533 (अ) तारीख 14 सितंबर, 2006 द्वारा अधिक्रान्त किए गए थे। उक्त अधिसूचना का पैरा 9 अन्य बातों के साथ-साथ यह अनुबद्ध करता है कि संनिर्माण परियोजनाएं जिसको पूर्व पर्यावरण संबंधी अनापत्ति के लिए आवेदन भेजा जाता है, के मामले में परियोजना या क्रियाकलाप द्वारा उत्पादन, प्रचालन के आरंभ करने को पूर्व पर्यावरण संबंधी अनापत्ति मंजूर की जाती है।

5. और किसी परियोजना या क्रियाकलाप के लिए नदी घाटी परियोजनाओं की दशा में दस वर्षों की अवधि के लिए विशेष-ज्ञ आकलन समिति या संबंधित राज्य स्तर विशेष-ज्ञ आकलन समिति द्वारा यथा प्रकलित परियोजना की अवधि खनन परियोजनाओं के लिए अधिकतम तीस वर्षों के लिए और अन्य सभी अन्य परियोजनाओं और क्रियाकलापों की दशा में पांच वर्षों होगी और इस प्रकार केंद्रीय सरकार का आशय पूर्ण रूप से यह संप्रेषित था कि पर्यावरण संबंधी अनापत्ति की विधिमाम्यता संनिर्माण या प्रचालन “के लिए” थी न कि संनिर्माण या प्रचालन के प्रारंभ “होने से” थी।

6. और, शंकर रघुनाथ जोग और अन्य बनाम तलालुकर एंड सन्स प्राइवेट लिमिटेड और अन्य के मामले में रिट याचिका संख्या, 2011 का 6 में तारीख 12 अगस्त, 2011 के आदेश में गोवा स्थित बंबई उच्च न्यायालय ने उक्त अधिसूचना और उसके संशोधनों का निर्वचन करते समय यह अभिनिर्धारित किया है कि पर्यावरण और वन मंत्रालय द्वारा मंजूर की गई पर्यावरण संबंधी अनापत्ति की विधिमाम्यता खनन परियोजनाओं के प्रचालन या परियोजना के विस्तार के प्रारंभ की तारीख से पांच वर्षों की अवधि के लिए है।

7. और, पर्यावरण और वन मंत्रालय ने तारीख 12 अगस्त, 2011 के आदेश के विरुद्ध भारत संघ शंकर रघुनाथ जोग के मामले में विशेष-इजाजत याचिका (सी सी 20925/2012) की है और इस बीच अधिसूचना संख्यांक का.आ. 356 (अ), तारीख 4 मई, 1994 की अधिसूचना के पैरा 2 के उप-पैरा (iii) के खंड (ग) के विनय में स्प-टीकारक अधिसूचना जारी की जानी है।

8. और, केंद्रीय सरकार ने अधिसूचना संख्यांक का.आ. 356 (अ), तारीख 4 मई, 1994 के अधीन चल रही हजारों परियोजनाओं के संबंध में जारी की गई पर्यावरण संबंधी अनापत्ति की विधिमान्यता पर बंबई उच्च न्यायालय के ऊपर वर्णित आदेश द्वारा संनिर्माण या प्रचालन के प्रारंभ की तारीख से केवल पांच वर्ष की पर्यावरण संबंधी अनापत्ति की विधिमान्यता का निर्वचन करने के कारण प्रकट हुई असंगत स्थिति और पारिणामिक प्रतिप्रभाव को दूर करने के लिए स्प-टीकरण जारी करने का विनिश्चय किया है।

9. अतः अब, केंद्रीय सरकार पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उपनियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 और धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (xiv) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए भारत के राजपत्र, असाधारण, भाग 2, खंड 3, उप-खंड (ii), तारीख 4 मई, 1994 में प्रकाशित भारत सरकार के पर्यावरण और वन मंत्रालय की अधिसूचना संख्यांक का. आ. 356(अ) तारीख 4 मई, 1994 में यह स्प-ट करती है कि "से पांच वर्ष की अवधि के लिए" पद से "संनिर्माण या प्रचालन के प्रारंभ के लिए पांच वर्ष की अवधि के लिए और न कि संनिर्माण या प्रचालन के प्रारंभ से पांच वर्ष" अभिप्रेत होगा।

[फा. सं. एल-11011/12/2011-आईए-II(एम) पार्टI]

अजय त्यागी, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 21st August, 2013.

S.O. 2555(E).— Whereas by notification of the Government of India in the Ministry of Environment and Forests vide number S.O. 60(E), dated the 27th January, 1994 (hereinafter referred to as the said notification), issued under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government imposed certain restrictions and prohibitions on the expansion and modernisation of any activity or the undertaking of any project unless environmental clearance has been granted by that Government.

2. And whereas the above said notification was further amended vide notification number S.O. 356(E), dated the 4th May, 1994. Clause (c) of sub-paragraph (III) of paragraph (2) of the said notification provides that—

"the clearance granted shall be valid for a period of five years from commencement of the construction or operation".

3. And whereas the intent of the Central Government has been and has always been that the validity of the environmental clearance is five years "for" commencement of the construction or operation and not that the environment clearance is only for five years "from" the commencement of construction or operation.

4. And whereas the said notification S.O. 60(E), dated the 27th January, 1994 and subsequent amendments thereto were superseded by the Government of India in the Ministry of Environment and Forests vide notification number S.O. 1533(E), dated the 14th September, 2006. Para 9 of the said notification, inter alia, stipulates that prior environmental clearance is granted to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects to which the application for prior environmental clearance refers.

5. And whereas the prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects, project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects

and activities and as such conveying the intent of the Central Government all through that the validity of the environment clearance was "for" construction or operation and not "from" commencement of the construction or operation.

6. And whereas the High Court of Bombay, at Goa in its order dated the 12th August, 2011 in Writ Petition no. 6 of 2011 in the matter of Shankar Raghunath Jog and Ors. vs. Talaulicar and Sons Pvt. Ltd. and Ors. while interpreting the provisions of the said notification and amendments thereof has held that the validity of the Environmental Clearance granted by the Ministry of Environment and Forests is for a period of five years from the date of the commencement of the operation of the mining projects or expansion of the project.

7. And whereas the Ministry of Environment and Forests has preferred a Special Leave Petition (cc 20925/2012)- in the matter of Union of India vs. Shankar Raghunath Jog and Anr. against the order dated the 12th August, 2011 and meanwhile to issue a clarificatory notification with respect to clause (c) of sub-paragraph (III) of paragraph (2) of notification number S.O. 356 (E), dated the 4th May, 1994.

8. And whereas the Central Government has decided to issue a clarification in order to remove the anomalous situation emerged due to the interpretation held by the aforementioned order of the High Court of Bombay in construing the validity of the Environmental clearance merely five years from the date of the commencement of the construction or operation and consequential repercussions on the validity of environment clearance issued to several thousand ongoing projects under notification number S.O. 356 (E), dated the 4th May, 1994.

9. Now, therefore, in exercise of the powers conferred under sub-section (1) and clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with sub-rule (4) of Rule 5 of the Environment (Protection) Rules, 1986 the Central Government hereby clarifies that in the notification of the Government of India in the Ministry of Environment and Forests, vide number S.O. 356 (E), dated the 4th May, 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 4th May, 1994 the expression "for a period of five years", shall mean "for a period of five years for commencement of the construction or operation and not five years from commencement of the construction or operation".

[F. No. L-11011/12/2011-IA-II(M)-Part)]

AJAYTYAGI, Jt. Secy.

No. J-12011/68/2006-IA.I
Government of India
Ministry of Environment & Forests
[IA.I - Division]

Parvavaran Bhavan
CGO. Complex, Lodi Road
New Delhi - 110 003

Dated 27th September, 2013

CORRIGENDUM

Subject: Lower Penganga Irrigation Project in District Yavatmal of Maharashtra by M/s. Yavatmal Irrigation Circle, Yavatmal, Government of Maharashtra - Validity of Environmental Clearance (EC) - regarding

This has reference to the letter no. 4193/YIC/T-6/LPP/ECC/2012 of Superintending Engineer, Yavatmal Irrigation Circle, Yavatmal, Government of Maharashtra dated 18.6.2012 regarding the validity of environmental clearance with regard to the above project. As per Para-8 of the EC of even number dated 17.5.2007, the validity was mentioned as 5 years for commencement of construction work. In this context, the following amendment in para-8 of the EC of even number dated 17.5.2007, is hereby made:

The environmental clearance is valid for a period of 10 years from the date of issue of this letter for commissioning of the project

instead of

The environmental clearance is valid for a period of 5 years from the date of issue of this letter for commencement of construction work

2. All other terms and conditions of the Environmental Clearance Letter no. J-12011/68/2006-IA.I dated 17.5.2007 remains unchanged.
3. This issues with the approval of the Competent Authority.

Yours faithfully,



(B. B. Barman)
Director

Copy to:

1. The Secretary, Department of Environment, Government of Maharashtra, Mumbai
2. The Superintending Engineer, Yavatmal Irrigation Circle, Yavatmal, Maharashtra
3. The Member Secretary, Maharashtra State Pollution Control Board, Kalptaru Point, 3rd floor, Near Sion Circle, Opp Cine Planet Cinema, Sion (E), Mumbai
4. The Secretary, Ministry of Water Resources, Shram Shakti Bhavan, New Delhi -1

copy to
M/s. Yavatmal Irrigation Circle
Yavatmal
LPP
Letter.

7/190

5. The Adviser (I & CAD), Planning Commission, Yojna Bhavan, New Delhi
6. The Chief Engineer, CWC, Sewa Bhavan, RK Puram, New Delhi
7. The Regional Office, Ministry of Environment & Forests, Bhopal
8. EI Division, MOEF, New Delhi
9. PS to JS (MS)/Director (BB)/PVSubba Rao (Sci-B)
10. Guard file

No J-11013/41/2006-IA.II (I)
Government of India
Ministry of Environment and Forests
(IA Division)

Paryavaran Bhavan
CGO Complex, Lodhi Road
New Delhi 110003

13th October 2006

CIRCULAR

Subject: EIA Notification 14 September 2006 – Interim Operational Guidelines till 13 September 2007 in respect of applications made under EIA 1994.

Pursuant to the new Environment Impact Assessment Notification of 14 September 2006 (“EIA 2006”) replacing the EIA Notification of 27 January 1994 and its various amendments (“EIA 1994”), and in terms of the provisions of Section (*Para*) 12 of EIA 2006, the following Interim Operational Guidelines are issued for the period up to 13 September 2007, with the approval of the Competent Authority:

1.0 Applications involving violation of EIA 1994:

1.1 Applications which were pending consideration for EIA Appraisal as on 14 September 2006: All such applications, provided the activity is included in Schedule of EIA Notification 2006, are to be considered as per the provisions of EIA 1994, and will continue to attract action under the relevant provisions of the Environment (Protection) Act (EPA) 1986. For those applications which are not covered under EIA 2006 only action under the relevant provisions of the EP Act , 1986 for violation of EIA 1994, will be pursued .

1.2 New applications (*under EIA 1994*) for EIA Appraisal received on or after 14 September 2006 and up to 30th June, 2007: All such complete applications with Public Hearing proceedings where it was necessary under EIA ,1994 and provided the activity is included in Schedule of EIA Notification 2006, will continue to attract action under the relevant provisions of the Environment

Protection Act 1986. Otherwise, they would undergo EIA Appraisal by Central Government as per the procedure of EIA (1994),

2.0 Applications NOT involving violation of EIA 1994: No NOC will be required from the SPCB/State Government/UT Administration in such cases for consideration for EIA Appraisal. The following are further specific instructions:

2.1 Applications for EIA Appraisal were pending with MOEF as on 14 September 2006:

2.1.1 Activity requires EIA Appraisal as per Schedule of EIA 2006: There are several sub cases:

- (i) **EIA has already been prepared, and PH conducted as per EIA 1994:** The EIA would be evaluated by the Expert Appraisal Committee (EAC), without insistence on the submission of FORM I/IA required under EIA 2006. In case the EIA document is considered complete and accurate, the EC would consider the same, together with the PH proceedings, even if PH is not required under EIA 2006, and furnish its recommendations. In case the EIA document is considered incomplete and/or inaccurate, the EAC would specify ALL the additional Terms of Reference (TORs) to be undertaken by the project sponsor. In case PH is required under EIA 2006, the proceedings of the PH conducted as per EIA 1994 would be considered along with the EIA by the EAC, which would provide its recommendations.

- (ii) **EIA has already been prepared, but PH NOT conducted:** The EIA would be evaluated by the Expert Appraisal Committee (EAC), without insistence on the submission of a FORM I/IA required under EIA 2006. In case the EIA document is considered complete and accurate, and PH if required under EIA 2006, the same would be conducted as per the provisions of EIA 2006. In case the EIA document is considered incomplete and/or inaccurate, the EAC would specify ALL the additional Terms of Reference (TORs) to be undertaken by the project sponsor. If required under EIA 2006, the PH would be conducted as per the provisions of EIA 2006. When a complete and accurate EIA document is available, together with the PH proceedings, if required under EIA 2006, the EAC would consider the same and furnish its recommendations.

(iii) **Neither has EIA been prepared nor PH conducted:** In such cases, the project proponent would be advised to follow the procedure of EIA 2006 in its entirety.

2.1.2 Activity does NOT require EIA Appraisal as per EIA 2006: In all such cases, the applicant shall be informed that the activity does not require EIA Appraisal as per EIA 2006, and the application may be returned to him.

2.2 New applications for EIA Appraisal received on or after 14 September 2006 and up to 30th June, 2007: No NOC from SPCB/State Government/UT Administration is necessary in such cases. Such cases may be considered as follows:

2.2.1 Activity requires EIA Appraisal by the MoEF as per Schedule of EIA 2006: The EIA Appraisal applications will be dealt with as follows:

(i) **EIA document has been submitted:** The EAC would not request the submission of the FORM I/IA as per EIA 2006, and evaluate the EIA for completeness and accuracy. In the event that it is found to be incomplete and/or inaccurate, the EAC would specify ALL the additional TORs to be accomplished by the proponent. Upon receipt of the revised EIA, the same would be considered further. In case (or as and when) the EIA as submitted is found to be in order, the same would be considered further by the EAC. In addition if the activity requires PH as per EIA 2006:

(a) In case PH has been conducted as per the procedure of EIA 1994, it would be considered along the EIA by the EAC, which would provide its recommendations

(b) In case PH has not been conducted at all, it would be conducted as per the procedure of EIA 2006.

2.2.2 Activity requires EIA Appraisal/Clearance by the SEIAA /SEAC as per Schedule of EIA 2006, but SEIAA/SEAC has not yet been notified: The EIA Appraisal applications will be processed/evaluated by MoEF as per the procedure above, till such time as the concerned SEIAA/SEAC is notified. Upon such notification, the papers will be promptly transferred to the SEIAA for further consideration as above.

3.0 Applications in respect of category of Thermal Power projects pending with the State Government under EIA 1994 (delegated powers): The above applications will fall in two categories:

3.1.1 EIA has already been prepared, and PH conducted as per EIA 1994:

All such pending applications should be transferred to concerned SEIAA. In the absence of a duly notified SEIAA the applications should be forwarded to MoEF

3.1.2 EIA has already been prepared, but PH NOT conducted:

The SPCB concerned should be directed to conduct and complete PH as in EIA 2006. Thereafter action should be taken as in 3.1.1 above.

4.0 Applications pending with SPCB's for PH:

In all such cases SPCB's will conduct PH as per procedure prescribed in EIA 2006 and the proceedings should be forwarded to the MOEF /SEIAA.

5.0 No application made as per EIA 1994 will be accepted after 1st July, 2007 for appraisal and clearance under EIA 2006

(G.V. Subrahmanyam)
Director

To:

**All officers of IA Division/SPCBs/State Governments/UT Administrations
MoEF website**

Copy to:

- 1. PPS to Secretary E&F**
- 2. PPS to AS (CC)**
- 3. PS to JS (CC-II)**

No J-11013/41/2006-IA.II (I)
Government of India
Ministry of Environment and Forests
(IA Division)

Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi 110003

8th December, 2006

CIRCULAR

Subject: EIA Notification 14 September 2006 – Interim Operational Guidelines till 13 September 2007 in respect of River Valley and Hydro-Electric Power Project applications made under EIA 1994.

Pursuant to the new Environment Impact Assessment Notification of 14 September 2006 (“EIA 2006”) replacing the EIA Notification of 27 January 1994 and its various amendments (“EIA 1994”), and in terms of the provisions of *Para* 12 of EIA 2006, the Ministry had earlier issued Interim Operational Guidelines on 13th October, 2006 and 21st November, 2006. Further to these Guidelines, the following Guidelines are issued in respect of River Valley and Hydro-Electric Power Project applications made under EIA Notification, 1994 with the approval of Competent Authority:

- i. In respect of cases where site clearance has been accorded before 14th September, 2006 and EIA and EMP has been prepared and public hearing has been conducted; appraisal etc. will be in accordance to the procedure given in EIA Notification, 1994.
- ii. In respect of cases where site clearance has been accorded before 14th September, 2006 but EIA and EMP and public hearing have not been completed; appraisal under EIA Notification, 1994 will be done only for those cases where receipt of the complete documents including public hearing

conducted as per EIA Notification, 2006 is made by 30th June, 2007. Other such cases will be appraised under EIA Notification, 2006.

- iii. In respect of cases where site clearance has not been accorded but which were pending with the Ministry prior to 14th September, 2006 Notification; site clearance is not required and all such cases have to be processed as per EIA Notification dated 14th September, 2006.

(G.V. Subrahmanyam)
Director

To:

All officers of IA Division/SPCBs/State Governments/UT Administrations / MoEF website

Copy to:

- 1. PPS to Secretary E&F**
- 2. PPS to AS (CC)**
- 3. PS to JS (CC-II)**