

738



**BEFORE THE NATIONAL GREEN TRIBUNAL, SITTING**

**AT PUNE (WESTERN ZONE)**

**ORIGINAL APPLICATION NO.14 OF 2024 (WZ)**

**APPLICANT:**

ShriBrahmanand Tiwari

**//VERSUS//**

**RESPONDENTS:**

Lloyds Metal and Energy Limited,

through its directors and others.

**AFFIDAVIT FOR AND ON BEHALF OF RESPONDENT NO. 1**

1. I, Sat Prakash, aged about 52 years, R/o 301, Narayan Residency, Narayani Tower, Udit Nagar, Rourkela-769012 Dist: Sundargarh, Odisha, Senior Vice President - Corporate Affairs, of Respondent No. 1 Company, and authorized vide its Board Resolution dated 08.08.2023 to swear the present affidavit do hereby take oath and state on solemn affirmation:

2. I say that in compliance of the order dated 11.03.2024 passed by this Hon'ble Tribunal, respondent no. 1 has already filed its written

Notarised under Notaries Act, 1952  
and Notaries Rules 1956 by Govt  
Jharkhand Ranchi (India)

24 MAY 2024

Ref. No. \_\_\_\_\_ Date \_\_\_\_\_



submissions in the present matter on 20.03.2024, demonstrating before this Hon'ble Tribunal that the mining operations being carried out by it in the Surjagarh Iron Ore Mine, are in strict conformity with the law after obtaining all necessary permissions and approvals under the law. Pertinently, in paragraph 15 of the its written submissions, respondent no. 1 has categorically submitted that the MoEF& CC vide Office Memorandum dated 07.07.2021 was pleased to frame a Standard Operating Procedure for dealing with the violation cases, and categorically stipulates that the proposal for grant of Environmental Clearance in violation cases are to be considered on merits and granted prospectively. I say that, in strict compliance thereof, the Environmental Clearance dated 24.02.2023 has also been granted prospectively in favour of the Surjagarh Iron Ore Mine.

3. I say that when the present matter was called out before this Hon'ble Tribunal on 22.03.2024, after recording the submissions made on behalf of respondent no. 1, this Hon'ble Tribunal was pleased to observe that as the Office Memorandum dated 07.07.2021 is under challenge before the Hon'ble Apex Court, latest status with



regard to the said matter has to be brought on record, as to whether the same would have any impact on the present proceedings, and further direct respondent no. 1 to file an affidavit to that effect. In compliance of the said directions, I am filing the present affidavit on behalf of respondent no. 1.

4. I say that the Office Memorandum dated 07.07.2021 is under challenge before the Hon'ble Apex Court in Writ Petition (c) no. 1394 of 2023 preferred by an organisation, "Vanashakti". I say that the challenge in the said writ petition is principally on the ground that the said office memorandum seeks to grant *ex post facto* Environmental Clearance, which is contrary to the provisions of the Environmental Protection Act, 1986 and the Judgements of the Hon'ble Apex Court in Common Cause and Alembic cases. I say that the said challenge is without any merit, inasmuch as, as already stated herein above reiterate that the said Officer Memorandum categorically stipulates that the proposal for grant of Environmental Clearance in violation cases are to be considered on merits and granted prospectively.

Annexed hereto and marked as ANNEXURE-R1-1 is the true copy of



the memo of Writ Petition bearing no. 1394 of 2023 for ready reference by this Hon'ble Tribunal.

5. At any rate, I say that the said petition was called for hearing on 02.01.2024. Upon hearing the petitioner, the Hon'ble Supreme Court was pleased to issue notices to the respondents and grant stay only to the operation of the Office Memorandum dated 07.07.2021. It is submitted that vide its order dated 02.02.2024 passed in IA nos. 25197, 25309 and 25150 of 2024 in Writ Petition bearing no. 1394 of 2023, the Hon'ble Supreme Court clarified that the order of stay dated 02.01.2024 would not come in the way of competent authorities in considering the proposals for modifications/ alterations in the valid environmental clearances granted prior to 07.07.2021. I say that that the said matter has been adjourned from time to time, and is still pending before the Hon'ble Supreme Court. Annexed hereto and collectively marked as ANNEXURE-R1-2 is the true copy of the orders dated 02.01.2024 and 02.02.2024 passed by the Hon'ble Supreme Court in Writ Petition bearing no. 1394 of 2023 for ready reference by this Hon'ble Tribunal.

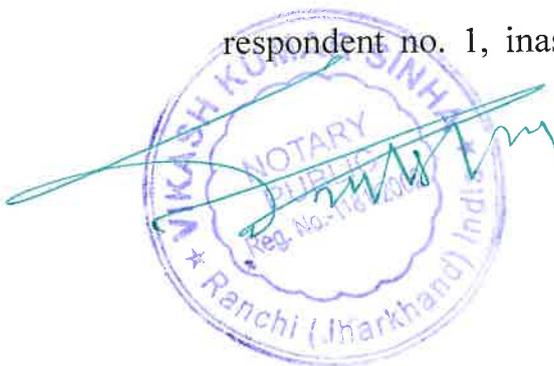
24 MAY 2024



6. I say that the pendency of Writ Petition bearing no. 1394 of 2023, and the order of stay dated 02.01.2024 passed by the Hon'ble Supreme Court therein, would not in any way have any impact on the present proceedings, inasmuch as the issues involved in the present proceedings are entirely distinct from the challenge raised therein. Not only that, but the challenge to the office memorandum in Writ Petition bearing no. 1394 of 2023 is only to the extent of granting of *ex-post facto* Environmental Clearance, which has not been granted in the present case. Furthermore, the Hon'ble Apex Court vide order dated 02.01.2024 has prospectively stayed only the operation of the Office Memorandum dated 07.07.2021 and not its effect, and in the event the Hon'ble Supreme Court holds and declares that the Office Memorandum dated 07.07.2021 is bad in law, respondent no. 1 would have to face the ensuing legal consequences.

7. In other words, I say that the order of stay dated 02.01.2024 passed by the Hon'ble Supreme Court does not affect the Environmental Clearance dated 24.02.2023 granted in favour of respondent no. 1, inasmuch as only the operation of the the Office

24 MAY 2024



Memorandum dated 07.07.2021 is stayed by the Hon'ble Supreme Court, i.e. prospectively and not its effect, and in the event while deciding the issues involved in Writ Petition bearing no. 1394 of 2023, the Hon'ble Supreme Court declares Office Memorandum dated 07.07.2021 to be illegal, respondent no. 1 shall have to suffer the consequences that would ensue. Furthermore, the issues involved in the present matter and the issues involved in Writ Petition bearing no. 1394 of 2023 are totally distinct and do not in any way overlap. Therefore, I humbly say that at any rate and in any case the challenge to Office Memorandum dated 07.07.2021 pending before the Hon'ble Supreme Court in Writ Petition bearing no. 1394 of 2023 does not have any bearing on the present proceedings.

Hence this Affidavit.

RANCHI

DATE: 24.05.2024

*Pat Prakash*

**DEPONENT**

24.05.2024



*Signature*  
 R. No. 11612302  
 Signature Attested on 24/5/2024  
 Identification of Law

24 MAY 2024

VERIFICATION

Verified that the contents of the above affidavit from paragraph Nos. 1 to 7 are true and correct to the best of my knowledge, belief and information derived from the record and believed to be true by me.

Hence, signed at Ranchi on this 24 MAY 2024 day of May, 2024.

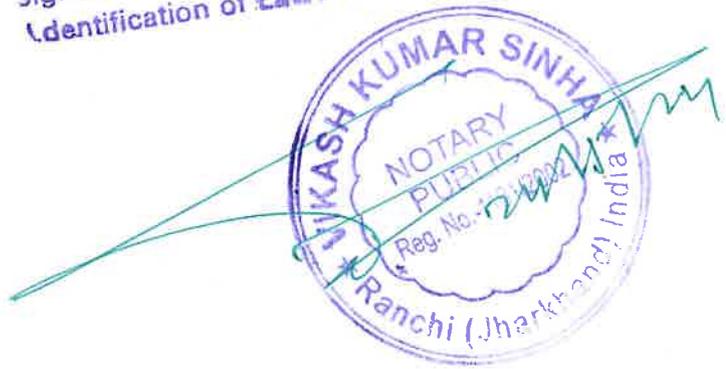
I know and identify the deponent

24 MAY 2024

*[Signature]*  
Advocate  
Rt. No - JH - 125/2010  
24.05.2024.  
ADVOCATE

*[Signature]*  
DEPONENT 24.05.2024

Signature Attested on  
Identification of Lawyer



**IN THE HON'BLE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION  
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA**

**WRIT PETITION (C) NO. 1394 OF 2023**

**[PUBLIC INTEREST LITIGATION]**

**IN THE MATTER OF:-**

VANASHAKTI

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

WITH

**I.A. NO. \_\_\_\_\_ OF 2023**

**AN APPLICATION FOR INTERIM DIRECTIONS**

**PAPER BOOK**

**[FOR INDEX: KINDLY SEE INSIDE]**

---

**VANSHDEEP DALMIA  
ADVOCATE FOR THE PETITIONER**

---



747

Diary No. 50009 / 2023

DECLARATION

All defects have been duly cured. Whatever has been/deleted/modified in the Petition is the result of curing of defects and nothing else.

Except curing the defects. Nothing has been done. Paper Books are complete in all respects.

*V. S. D.*  
Signature VANSUDEEP DALMIA

Advocate-On-Record for Petitioner

Date: 01.12.2023

Contact No. 9810077085

RECORD OF PROCEEDINGS

S.NO.	PARTICULARS	PAGES
-------	-------------	-------

INDEX

S. NO.	PARTICULARS	Page No. of Part to which belongs		Remark
		Part I (contents of Paper Book)	Part II (contents of Paper Book)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Listing Proforma	A-A1	A-A1	
2.	Cover Page of Paper Book		A-2	
3.	Index of Record of Proceedings		A-3	
4.	Limitation Report prepared by the Registry.		A-4	
5.	Defect List		A-5	
6.	Note Sheet		NS-1 - NS-	
7.	Synopsis & List of Relevant Dates And Events	B-U		
8.	Writ Petition under Article 32 of the Constitution of India with Affidavit.	1-44		
9.	<b><u>ANNEXURE A-1</u></b> A true copy of the Environment Impact Assessment Notification dated 14.09.2006 issued by the Respondent, MOEF&CC.	45-107		
10.	<b><u>ANNEXURE A-2</u></b> A true copy of Notification dated 14.03.2017 issued by the Respondent, MOEF.	108-111		

11.	<b><u>ANNEXURE A-3</u></b> A true copy of the Interim Order dated 04.05.2017 passed by the Hon'ble High Court of Judicature at Madras in W.P. No.11189 of 2017.	112		
7.	<b><u>ANNEXURE A-4</u></b> A true copy of the Order dated 13.10.2017 passed by the Hon'ble High Court of Judicature at Madras in W.P. No.11189 of 2017.	113-142		
8.	<b><u>ANNEXURE A-5</u></b> A true copy of the Order dated 14.03.2018 passed by the Hon'ble High Court of Judicature at Madras in W.P. No.11189 of 2017.	143-148		
9.	<b><u>ANNEXURE A-6</u></b> A true copy of the OM dated 16.03.2018 issued by the Respondent, MOEF.	149-150		
10.	<b><u>ANNEXURE A-7</u></b> A true copy of the Judgment dated 01.04.2020 passed in Civil Appeal No. 1526 of 2016 passed by the Hon'ble Supreme Court in the case of <i>Alembic Pharmaceuticals v. Rohit Prajapati</i> , 2020 (17) SCC 157.	151-183		

11.	<p><b><u>ANNEXURE A-8</u></b></p> <p>A true copy of the Draft Guidelines for Environmental Damage Assessment Cost published by the Respondent MOEF vide OM dated 05.03.2020.</p>	184-203		
12.	<p><b><u>ANNEXURE A-9</u></b></p> <p>A true copy of the Order dated 24.05.2021 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in '<i>Tanaji B. Gambhire v. Chief Secretary GOM &amp; Ors</i>', Appeal No. 34/2020 WZ.</p>	204-207		
13.	<p><b><u>ANNEXURE A-10</u></b></p> <p>A true copy of the Impugned SOP/OM dated 07.07.2021 issued by the Respondent, MOEF.</p>	208-216		
14.	<p><b><u>ANNEXURE A-11</u></b></p> <p>A true copy of the Order dated 15.07.2021 passed by the Hon'ble Madurai Bench of Madras High Court in W.P. (C) No. 11757 of 2021.</p>	217-220		
15.	<p><b><u>ANNEXURE A-12</u></b></p> <p>A true copy of the Order dated 9.12.2021 passed in Civil Appeal Nos. 7576-7577 of 2021 passed by the Hon'ble Supreme Court in <i>Electrosteel Steels Ltd v. UOI</i>, (2023) 6 SCC 615.</p>	221-248		

16.	<b><u>ANNEXURE A-13</u></b> A true copy of the Office Memorandum (OM) dated 28.01.2022 issued by the Respondent, MOEF.	249		
17.	<b><u>ANNEXURE A-14</u></b> A Tabular list of certain <i>ex post facto</i> ECs granted to violation projects under the Impugned SOP dated 7.07.2021 by the EACs at the Central Level and different State SEIAAs (Andhra Pradesh, Telangana, Rajasthan, Kerala).	250-252		
18.	<b><u>IA No. OF 2023</u></b> An Application for Interim Directions	253-257		
19.	Filing Memo		258	
20.	Vakalatnama /Memo of appearance & Board Resolution.		259-260	
21.	Proof of Identification.		261-264	

PROFORMA FOR FIRST LISTING

## SECTION - X

The case pertains to (Please tick/check the correct box):

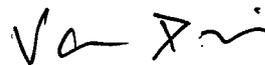
- Central Act: Constitution of India  
 Section: Article 32  
 Central Rule: (Title): NA  
 Rule No (s): NA  
 State Act: (Title): NA  
 Section: NA  
 State Rule: (Title): NA  
 Rule No (s): NA  
 Impugned Interim Order: (Date): NA  
 Impugned Final Order/Decree: NA  
 High Court: NA  
 Names of Judges: NA  
 Tribunal/Authority: (Name): NA

- .....
1. Nature of matter: **Civil**
  2. (a) Petitioner/Appellant: **VANASHAKTI**  
 (b) E-Mail ID: NA  
 (c) Mobile Phone Number: NA
  3. (a) Respondent No.1: **UNION OF INDIA**  
 (b) E-Mail ID: NA  
 (c) Mobile Phone Number: NA
  4. (a) Main category classification: 08  
 (b) Sub classification: 0805
  5. Not to be listed before: NA
  6. (a) Similar Disposed of matter with citation,  
 if any & case details: No similar disposed of matter.  
 (b) Similar Pending Matter: No similar pending matter.

A-1

7. **Criminal Matters:** NA
- (a) Whether accused/convict has surrendered: NA  
(b) FIR No: NA Date: NA  
(c) Police Station: NA  
(d) Sentence Awarded: NA  
(e) Period of sentence undergone including period of detention/ custody undergone: NA
8. **Land Acquisition Matters:**
- (a) Date of Section 4 notification: NA  
(b) Date of Section 6 notification: NA  
(c) Date of Section 17 notification: NA
9. **Tax Matters:** State the tax effect: NA
10. **Special Category:** (first petitioner/appellant only):  
**Senior Citizen > 65 years** SC/ST Women/Child  
Disabled Legal Aid Case in custody: NA
11. **Vehicle Number** (in case of Motor Accident Claim matters): NA

Filed By:

**[VANSHDEEP DALMIA]**

Advocate for the Petitioner

Registration No. 2650

Email Id: vanshdeepdalmia@gmail.com

Filed on: 01.12.2023

Place: New Delhi

SYNOPSIS

The instant Public Interest Petition is being filed in Public Interest under Article 32 of the Constitution of India, seeking issuance of an appropriate Writ in the nature of Certiorari quashing the Impugned SOP/OM dated 7.07.2021 issued by the Respondent MOEF permitting grant of *ex-post facto* clearances for admitted violations under the Environment Impact Assessment Notification, 2006 [EIA, 2006] being without jurisdiction & *ultra-vires* the provisions of Section 3 of the EP Act and various Judgments passed by this Hon'ble Court in *Common Cause v. UOI*, 2017 (9) SCC 499 & *Alembic Pharmaceuticals v. Rohit Prajapati*, 2020 (17) SCC 157.

The Petitioner is further seeking a Writ in the nature of Mandamus directing the Respondent MOEF and State SEIAAs / SEACs not to process and entertain any Application for grant of *ex post facto* Environmental Clearance filed after 13.04.2018 i.e. the window period under the Notification dated 14.03.2017 as extended by the Hon'ble Madras High Court in W.P. No. 11189 of 2017.

C

The Impugned OM/SOP dated 7.7.2021 prescribed a '*Standard Operating Procedure (SOP) for identification and handling of violation cases*' issued by the Respondent, MOEF to bring uniform procedure for the implementation of the MOEF Notification dated 14.03.2017 whereby violation projects commenced/operating without a prior EC could be accorded a *ex post facto* Environmental Clearance. Though the Impugned SOP dated 7.07.2021 only clarified the previous Notification dated 14.03.2017 (*which had a limited application window of 6 months that expired more than 5 years back i.e. on 13.04.2018*) without adding anything thereto or extending its application, however EACs at the Central Level and SEACs/SEIAAs at the State level are treating the Impugned SOP dated 7.07.2021 to be a substantive procedure to process fresh applications for grant of *ex post facto* environmental clearance.

The Impugned SOP dated 7.07.2021 was challenged and thereafter stayed by the Hon'ble Madras High Court in '*Fatima vs Union of India*', WP (MD) 11757 of 2021 vide Order dated 15.07.2021 wherein it was held to be *prima facie* without jurisdiction being *ultra-vires* the provisions of the EP Act and contrary to the EIA,

D

2006 which cannot be superseded, annulled or modified by an Office Order/Administration instruction. However, this Hon'ble Court in the case of *Electrosteels Steels Limited vs UOI*, (2023) 6 SCC 615 vide Judgment dated 9.12.2021 (*in an unconnected matter, not arising out of an Appeal against the Order dated 15.07.2021*) limited the operations of the said Interim Order dated 15.07.2021 to the State of Tamil Nadu, by stating that "*the interim stay passed by the Madras High Court can have no application to operating of the Standard operating procedure to projects in territories beyond the territorial jurisdiction of Madras High Court*".

Subsequent to the Judgment dated 9.12.2021 in *Electrosteel*, the Respondent MOEF issued an OM dated 28.01.2022 quoting the above observation in *Electrosteel*, whereinafter EACs at the Central Level and SEACs/SEIAAs at the State level are treating the SOP dated 7.07.2021 as a substantive measure to process even fresh applications for grant of *ex post facto* environmental clearance(s), beyond the limited (6) six month window period stipulated in the MOEF Notification dated 14.03.2017, that was expired more than 5 years ago.

E

Thus, the present Writ Petition under Article 32 of the Constitution seeking a Pan-India order in respect to the Impugned SOP/ OM dated 7.07.2021 which ironically is currently stayed for the State of Tamil Nadu, however is operating for the rest of the Country.

That the Petitioner hereinstrongly objects to the conduct of the Respondent MOEF & SEIAAs by treating the OM dated 7.07.2021 as an extension of the Notification dated 14.03.2017 in perpetuity, based on which all violations project even beyond the window period/ time stipulated in the Notification dated 14.03.2017 are being processed for grant of a *ex post facto* Environmental Clearance. A perusal of the OM dated 07.07.2021 would reveal that the said OM itself does not state that fresh application seeking *ex post facto* can be filed, albeit it refers to the window period stipulated under the 14.03.2017 and the Orders passed by the Hon'ble High Court of Madras in the case of *Puducherry Environment Protection Association vs Union Of India, W.P. No. 11189 of 2017*, wherein the High Court extended the period for one month for granting *ex post facto* environmental clearance on the undertaking of the MOEF that public hearings would be granted, and that the said Notification is a onetime measure only and thus,

F

the interpretation of the MOEF is blatantly erroneous and wholly misplaced.

This Hon'ble Court in the cases of *Common Cause v. UOI*, 2017 (9) SCC 499 & *Alembic Pharmaceuticals v. Rohit Prajapati*, 2020 (17) SCC 157 has consistently held that the concept of *ex post facto EC* is in derogation of the fundamental principle of environmental jurisprudence and is alien to Environment jurisprudence, in as much as, the EIA, 2006 requires a *prior EC*.

Even otherwise, Impugned SOP/OM dated 7.07.2021 being an administrative circular is not a measure issued under Section 3 of the Environmental Protection Act, 1986 (EP Act, 1986) and thus would have been *ultra-vires* the provisions of the EP Act, 1986, in as much as, the EIA, 2006 mandates a prior EC and an Administration Circular or/and Office Order in the nature of the OM dated 7.07.2021 cannot supersede, amend or modify the mandatory requirement of a prior EC.

It is submitted that as per the purport of Section 3 only positive amendments can be made and no retrograde steps/ regressive ought to take place and thus the Impugned OM dated 07.07.2021 would

G

have been *ultra-vires* the provisions of Section 3 itself. The Hon'ble Supreme Court in the recent case of *Alembic Pharmaceuticals* accepted this interpretation held as under:

*"21...Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purposes of protecting and improving the quality of the environment..."*

It is submitted that a provision of '*prior EC*' and '*ex post facto EC*' cannot co-exist being mutually destructive and an oxymoron, for the simple reason that an Impact Assessment can only take place before commencement of activity and not after, and that an EC is an approval which is taken prior to the commencement of activity and emanates from the "*Precautionary Principle*" which is one of the corner stones of Environmental Jurisprudence. The Notification of 2006, a statutory document having the force of law has used the words '*prior Environmental Clearance*' 34 times and in addition thereto the expression '*prior*' has been used six times to emphasize the need for obtaining Environmental Clearance prior to the commencement of any project activity. In other words, the

H

Notification mandates the requirement of '*prior Environmental Clearance*' without exception. However the entire mandate of prior Environmental Clearance has not only been diluted but completely rendered infructuous or ineffective by issuance of these impugned Office Memoranda. Therefore, the Office Memoranda stated to be 'guidelines', are potently destructive of the Notification of 2006.

The EIA, 2006 requires application for prior Environmental Clearance to be submitted in Form 1 and supplementary Form 1A, if applicable, under Appendix I and II respectively. These forms require detailed information and scientific analysis for a pre-construction investigation in relation to the project site, which is obviously relevant only prior to commencement of any activity of the project or even preparation of land.

The wrongful and illegal act of the Respondent MOEF in processing application for grant of *ex post facto* Environmental Clearance, across all sectors, under the garb of the OM dated 7.07.2021 invariably has a severe, deleterious and adverse impact on ecologically sensitive and vulnerable areas.

**ENVIRONMENTAL RAMIFICATIONS OF POST FACTO EC****WATER ENVIRONMENT**

- i. Indiscriminate usage of Ground Water by industry / building construction projects and fast depletion of ground water table.
- ii. Indiscriminate discharge of untreated sewage / industrial effluent to the surface water body and to the ground, pollutes the fresh water and the ground water and the local people consumes the same which lead to water borne diseases. This also impacts the aquatic flora and fauna.
- iii. Sand mining without site specific safeguards in surface water bodies / submerged water, impacts severely the hydrology, aquatic life leading to heavy financial losses to the people in the surrounding water bodies and whose livelihood is affected.
- iv. Sand mining without site specific safeguards causes creation of large craters on the bed of the water body.
- v. Sand mining without site specific safeguards in water bodies near coastal areas increases the salinity ingress

J

due to revers flow and the contamination of the fresh water bodies.

- vi. Unscientific sand mining in rivers causes large scale erosion of coastal areas.
- vii. Change in drainage pattern / topography leads to the flooding conditions in the downstream.
- viii. Reclamation or encroachment of natural drains / streams leads to the flooding conditions in cities and towns.
- ix. The muck / construction / demolition debris without dumping the same in safe designated areas, if it rains, the water carrying the dumped muck gets deposited into river ecosystem. As a result, even during normal rainfall, rivulets and rivers experience rapid swelling.
- x. Excavation below ground level and intersection of ground water table during excavation impacts hydrogeology of the region leading to depletion of ground water table, impacts to the people in the region.

K

**AIR ENVIRONMENT**

- i. Dust particles will be carried in the drains that ultimately reach the rivers. Immediate impact is higher TSS ( Total Suspended Solids) in the water bodies.
- ii. Uncontrolled emissions both dust and other gases causes severe air pollution and lead to various health related issues. This also impacts flora and fauna.
- iii. Uncontrolled dust laden emissions from chimney will cause severe damages to crops / flowers / orchards in the downwind direction and causes severe economic impacts.
- iv. The deterioration of air quality in Delhi NCR and its health impacts are known. Under the CREP guidelines, construction activity is the first activity to be stopped in severe air quality condition.

**ECOLOGICAL ENVIRONMENT**

- i. Cutting of trees and clearance of vegetation without the conservation plan leads to loss of habitat to fauna specially avifauna.
- ii. The loss of vegetation decreases the carbon sink capacity and aggravates factors leading to climate change which is

2

experienced now a days across the globe and across India.

- iii. The clearance of vegetation leads to increase in storm water runoff and the water flows with great intensity and causes damages in the agricultural areas downstream and in cases resulting in death.
- iv. Altered food chain and food web in eco-system gets impacted.
- v. Causing respiratory diseases.
- vi. Decrease in local bio-diversity.
- vii. Dust deposition on leaves surfaces reduces the photosynthesis.
- viii. Clearance of vegetation will to reduce the capacity of land to absorb water.

#### **LAND ENVIRONMENT**

- i. Indiscriminate open cast mining in hills / hillocks lead to instability and large scale landslides / landslips causing deaths to the inhabitants in the valley.
- ii. Abandoned mine without eco-restoration will ultimately lead to the fragmentation of habitat leading to creation of

M

many edges which will overtime act as point of entry of destructive factors resulting in the overall ecological destruction of the area and will leave a scar of the green lush area.

- iii. Total change of landscape / land use of the area.
- iv. Loss of fertile topsoil leads to loss in agricultural crops and impacts the farmers.

#### **NOISE ENVIRONMENT AND VIBRATION IMPACTS**

- i. The misuse of explosives used in blasting in open cast mining and overcharging of explosives leads to cracks and damage to the houses in the vicinity of mining site.
- ii. Noise from blasting or machines drives away the wildlife.
- iii. The vibration and noise from industrial activities (including use of explosives) impacts fauna and will impacts in their mating, findings of prey etc.

#### **SOCIO-ECONOMIC ENVIRONMENT**

- i. Inappropriate and deficient R & R plan lead to perpetual conflict between the locals and the entrepreneurs.

N

- ii. Inadequate safety measures and risk & hazard mitigation measures lead to the death of inhabitants in the surrounding village settlements.
- iii. Creates non-repairable prejudice among the locals on all types of developmental projects.

Hence the present Public Interest Litigation under Article 32 of the Constitution of India.

#### LIST OF RELEVANT DATES AND EVENTS

- |      |                                                                                                                                                                                                                                                                                      |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1972 | India was a signatory to the United Nations Convention on the Human Environment held in Stockholm in the year 1972 ( <i>hereinafter referred to as the 'Stockholm Convention'</i> ) wherein 26 broad principles concerning Environment and development were devised and recommended. |
| 1986 | The Parliament in 1986 enacted the Environmental Protection Act, 1986 ( <i>hereinafter referred to as the 'EP Act'</i> ), as a consequence of decisions taken at the United Nations Conference on Human                                                                              |

①

Environment held in Stockholm in June, 1972 to which India was a signatory.

1992 That next significant major global conference under the UN umbrella was held in 1992 at Rio (*popularly known as the Rio Declaration*) wherein participating countries including India adopted the newly coined terms '*sustainable development*', '*inter-generational equity*', '*precautionary principle*', and further committed to enact a comprehensive Environmental Impact assessment framework at the Municipal level under Principle 17 thereof.

14.09.2006 That in September 2006, the parent EIA Notification dated 14.09.2006 was issued by the Respondent, MOEF under Section 3 of the EP Act by superseding the previous EIA, 1994 with an endeavour to *inter alia* provide a substantive legal framework and comprehensive procedural mechanism for prior evaluation, assessment and

P

monitoring of the Environmental impact on land, air and water by Expert bodies, before commencement of the activity, across sectors, all throughout the territory of India.

14.03.2017 The Respondent, MOEF issued a Notification dated 14.03.2017 granting a one-time opportunity to avail *ex post facto* Environmental Clearance(s) for all violation projects across Sectors that were operating without a Prior Environmental Clearance. This Notification was valid for a period of 6 months only.

04.05.2017 The MOEF Notification dated 14.03.2017 was challenged before a Division Bench of the Hon'ble Madras High Court in W.P. No.11189 of 2017 on the ground that the said Notification is against the '*precautionary principle*' and '*Polluter pay*', in as much as, the EIA, 2006 requires a Prior EC and *ex post facto* environmental clearances are *per se* prohibited and impermissible.

Q

The Hon'ble Madras High Court vide Order dated 4.5.2017 prohibited the Respondent MOEF from taking any further action pursuant to the Notification dated 14.03.2017.

13.10.2017 The Hon'ble Madras High Court vide Order dated 13.10.2017 disposed off the said Writ Petition on the statement made by the Additional Solicitor General appearing for the MOEF that public hearings would be granted, and that the said Notification dated 14.03.2017 is a one-time measure only.

14.03.2018 The Hon'ble Madras High Court vide its Order dated 14.03.2018 allowed the prayer of the Respondent MOEF for extension of time for submission of applications under the MOEF Notification dated 14.03.2017 by 30 days from the date of the said order i.e. from 14.03.2018 till 13.04.2018 since during the pendency of the said Writ Petition, the Notification dated 14.03.2017 had

R

remained stayed.

29.01.2019 The MOEF Notification dated 14.03.2017 was challenged before the Hon'ble Supreme Court in W.P. (C) No. 118/2019 titled '*Ajaay S. Jajodia v. Union of India*'. This Hon'ble Court vide its Order dated 11.02.2019 was pleased to issue notice and the said Writ Petition is pending adjudication.

2017-2020 The Hon'ble Supreme Court in the cases of *Common Cause v. UOI, 2017 (9) SCC 499 & Alembic Pharmaceuticals v. Rohit Prajapati, 2020 (17) SCC 157* consistently held that the concept of *ex post facto EC* is in derogation of the fundamental principle of environmental jurisprudence and is alien to Environment jurisprudence, in as much as, the EIA, 2006 requires a *prior EC*.

24.05.2021 The Hon'ble National Green Tribunal vide its Order dated 24.05.2021 in Appeal No.34/2020/ WZ, in the matter titled '*Tanaji B. Gambhire v. Chief Secretary GOM & Ors*', directed the Respondent MOEF to

S

prepare a SOP for dealing with violation projects for their demolition and/or imposition of damage on payment of assessed compensation.

It is trite to submit, that the Hon'ble Tribunal did not approve or disapprove the concept of *ex post facto* EC but only directed that a uniform and standard practice being followed throughout the country.

07.07.2021 In Compliance of the aforesaid Order dated 24.05.2021 passed by the Hon'ble Tribunal, the Respondent MOEF issued the Impugned OM dated 7.07.2021 prescribing a '*Standard operating Procedure (SOP) for identification and handling of violation cases*'.

15.07.2021 The OM dated 07.07.2021 was challenged before the Hon'ble Madras High Court in W.P. (C) No. 11757 of 2021, whereby vide its Order dated 15.07.2021 the said OM was stayed in as much as,

T

it was *prima facie* without jurisdiction being *ultra-vires* the provisions of the EP Act and contrary to the EIA, 2006 which cannot be superseded, annulled or modified by an Office Order/ Administration instruction.

Further the Hon'ble Court opined that the OM dated 7.07.2021 was contrary to the undertaking given by the MOEF in the case of *Puducherry Environmental Protection Association*, that the Notification was a one-time measure.

9.12.2021 This Hon'ble Court vide its recent Order dated 9.12.2021 in Civil Appeal No. 7576-77 of 2021, '*Electrosteel Steels Ltd v. UOI*' held that the interim stay granted by the Hon'ble Madras High Court vide Order dated 15.07.2021 would have no application in territories beyond the territorial jurisdiction of Madras High Court.

28.01.2022 The Respondent MOEF issued OM dated

U

28.01.2022, thereby communicating to all EACs, SEIAAs and SEACs the observations of the Hon'ble Supreme Court in *Electrosteel Steels Ltd*, whereinafter the EACs at the Central level and all SEIAA & SEACs at the State level, across the Country, started processing Applications for grant of Ex-post facto Environmental Clearance, under the SOP dated 7.07.2021.

**01.12.2023** Hence the present Public Interest Litigation under Article 32 of the Constitution of India.

IN THE HON'BLE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION  
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

WRIT PETITION (C) NO. 1394 OF 2023

[PUBLIC INTEREST LITIGATION]

IN THE MATTER OF:

**VANASHAKTI**

Nandakumar Pawar House,  
Opp. Shri Jagannath Darshan Building,  
M.D. Keni Marg, Nahur (East),  
Mumbai – 400042, Maharashtra.  
**PAN No. AABTV1057H**  
Annual Income 35 Lakhs approx.  
Email: vanashakti@gmail.com  
M No. +91 9967632302

Through its authorised signatory  
**STALIN DAYANAND**  
S/o K. Dayanand  
Near Friends Colony,  
B-205, Shivmangal so-op hsg soc,  
Bapu Juvekar Marg, Bhandup East S.O.,  
Mumbai, Maharashtra – 400042  
AADHAR NO. 5948 0651 7588  
PAN NO. AECPD7849E  
Annual income 10 Lakhs approx.  
Email: vanashakti@gmail.com

...Petitioner

**VERSUS**

**UNION OF INDIA**

Through Secretary, Govt. of India  
Ministry of Environment, Forest & Climate Change  
Indira Paryavaran Bhavan, Jor Bagh Road,  
New Delhi-110003

...Respondent

**PUBLIC INTEREST LITIGATION UNDER ARTICLE 32**  
**OF THE CONSTITUTION OF INDIA**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS  
COMPANION JUSTICES OF THE SUPREME COURT OF  
INDIA.

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:-**

1. The instant Public Interest Petition is being *inter alia* filed by the Petitioner in Public Interest under Article 32 of the Constitution of India for issuance of an appropriate Writ in the nature of Mandamus directing the Respondent MOEF and State SEIAAs / SEACs not to process and entertain any Application for grant of *ex post facto* Environmental Clearance filed after 13.04.2018 i.e. the window period under the Notification dated 14.03.2017 as extended by the Hon'ble Madras High Court in W.P. No. 11189 of 2017; AND for issuance of an appropriate Writ in the nature of Certiorari quashing the Impugned SOP/OM dated 07.07.2021 issued by the Respondent MOEF being without jurisdiction & *ultra-vires* the provisions of the EP Act and

Judgments passed by this Hon'ble Court in *Common Cause & Alembic*.

2. That the Respondent MOEF had issued the SOP/OM dated 07.07.2021 to bring clarity and remove ambiguities, if any, regarding the procedure for implementation of the MOEF Notification dated 14.03.2017 in terms of the Order dated 24.05.2021 passed by the Hon'ble National Green Tribunal in the case of *Tanaji B. Gambhire v. Chief Secretary GOM & Ors*, Appeal No. 34/2020 WZ.

Though the SOP dated 07.07.2021 MOEF only clarified the previous Notification dated 14.03.2017 without adding anything thereto or extending its application, however EACs at the Central Level and SEACs/SEIAAs at the State level are treating the SOP dated 7.07.2021 to process even fresh applications for grant of *ex post facto* environmental clearance by wrongly citing the Judgment dated 9.12.2021 passed by the Hon'ble Supreme Court in the case of *Electrosteel Steels Limited v. Union of India*, (2023) 6 SCC

4

615 beyond the limited window period stipulated in the MOEF Notification dated 14.03.2017.

3. That a perusal of the OM dated 07.07.2021 would reveal that the said OM itself does not state that fresh application seeking *ex post facto* can be filed, albeit it refers to the window period stipulated under the 14.03.2017 and the Orders passed in the case of *Puducherry Environment Protection Association vs Union of India, W.P. No. 11189 of 2017*, and thus the interpretation of the MOEF is blatantly erroneous and wholly misplaced.
4. Even otherwise, without prejudice to the above, assuming that the OM dated 07.07.2021 extended the window period under Notification dated 14.03.2017 and/or permitted processing of fresh application for seeking *ex post facto* clearance, the said OM dated 7.07.2021 being an administrative circular is not a measure issued under Section 3 of the Environmental Protection Act, 1986 (EP Act, 1986) and thus would have been *ultra-vires* the provisions of the EP Act, 1986, in as much as, the EIA, 2006 mandates a prior

5

EC and an Administration Circular or/and Office Order in the nature of the OM dated 7.07.2021 cannot supersede, amend or modify the mandatory requirement of a prior EC.

6. The wrongful and illegal act of the Respondent MOEF in processing applications for grant of *ex post facto* Environmental Clearance under the garb of the Impugned OM dated 7.07.2021 invariably has a severe, deleterious and adverse impact on ecologically sensitive and vulnerable areas and thus needs to be seriously viewed in a uniform manner by a uniform procedure, across the country.

It is submitted that a provision of '*prior EC*' and '*ex post facto EC*' cannot co-exist being mutually destructive and an oxymoron, for the simple reason that an Impact Assessment can only take place before commencement of activity and not after, and that an EC is an approval which is taken prior to the commencement of activity and emanates from the "*Precautionary Principle*" which is one of the corner stones of Environmental Jurisprudence.

6

7. That the Petitioner is an NGO, working and functioning for the improvement and betterment of the environment as a whole, and has consistently and sincerely worked towards strengthening and protecting environmental laws in the Country.
8. The Petitioner NGO has in the past successfully espoused and undertaken many public causes before this Hon'ble Court, various High Courts and the National Green Tribunal, with the sole objective and *endeavor* to protect and safeguard the environment. That Petitioner is actively involved in sustained efforts towards conservation of coastal zones, forests, coastal and inland wetlands and wildlife and have also undertaken programs to ensure sustainable livelihood options for the tribal population of the country. Petitioner also has a sub-unit called Sagar Shakti which undertakes marine conservation work. Petitioner has also been instrumental in seeking release of much delayed CZMP Maps under the CRZ Notification, 2011.

7

9. Petitioner, Vanashakti has been working consistently for more than a decade for the protection of forests, rivers, wetlands, mangroves, creeks, floodplains, beaches, National Parks and Wildlife Sanctuaries. Petitioner has not only undertaken various socio-environmental outreach programmes aimed at developing a sense of environmental awareness amongst the younger population of Mumbai by ensuring their active participation in afforestation and cleaning activities but it has also taken an active role in using law as a tool to bring systemic change in protecting the environment.

The Petitioner has been instrumental in securing protective orders from various constitutional courts and the NGT such as complete ban on reclamation and destruction of all coastal and inland wetlands in Maharashtra by the High Court of Bombay, fine of Rs. 100 Cr. as restoration costs imposed by the Supreme Court & NGT on various industrial bodies and government agencies for restoration of Ulhas River, complete ban on felling of trees in Sawantwadi-Dodamarg Corridor by High Court, complete ban on felling of trees in

Aarey Forest by NGT & HC, direction to IIT Bombay to prepare a comprehensive report on cleaning of Mithi river by Supreme Court, a fine of more than Rs. 30 Cr. on Municipal Corporation of Greater Mumbai (MCGM) by NGT for cleaning up sewage pollution in creeks of Mumbai, ban on any construction activity on flood plains in Maharashtra by High Court and initiating much-delayed declaration of "Critical Wildlife Habitats" in all Protected Areas of Maharashtra.

Further, Petitioner has *inter alia* challenged vires of various delegated legislations such as challenge to Wetlands Rules, 2017 before this Hon'ble Court, challenge to withdrawal of river regulation zone and challenge to the circular allowing *post facto* CRZ clearances before the High Court where stay on the operation of concerned delegated legislations have been granted, pending final hearing. Petitioner has challenged the *vires* of CRZ Notification, 2019 before the NGT and has also been instrumental in seeking release of much delayed CZMP Maps under the CRZ Notification, 2011.

10. That the present Writ Petition, if allowed, would benefit the citizens of this country and ensure their right to a clean and healthy environment under Article 21 of the Constitution of India and Section 20 of the NGT Act, 2010. That the persons affected by such acts of the State are numerous and are not in a position to approach this Hon'ble Court hence the Petitioner is also filing the present petition on behalf of such affected persons.
11. The Respondent, the Ministry of Environment, Forests and Climate Change (MOEF & CC) is the nodal agency in the administrative structure of the Central Government & has been entrusted with the task of implementation of policies and programs relating to conservation of the country's natural resources and has issued the relevant OMs dated 14.03.2017 & the Impugned SOP dated 7.07.2021.
12. The following Questions of Substantial Public importance arise for the kind consideration of this Hon'ble Court in the instant Public Interest Petition:

- I. Whether the Impugned SOP/OM dated 7.07.2021 is an administrative circular or a measure under Section 3 of the EP Act, and can dilute, supersede, annul or modify the requirement of a *prior* Environmental clearance which is a mandatory prerequisite as per the EIA Notification, 2006?
- II. Whether the Impugned SOP/OM dated 7.07.2021 expressly or impliedly extends the window period as prescribed under the Notification dated 14.03.2017, in perpetuity, and empowers the Respondent MOEF/ State SEIAA to process application seeking *ex post facto* clearance?
- III. Whether the act of the Respondent MOEF/ SEIAAs in granting *ex post facto* Clearance violates various principles / Doctrines recognized by Indian Courts in the field of environmental jurisprudence; namely, Precautionary Principle, Polluter Pay Principle, Intergenerational Equity, Public Trust Principle, Sustainable Development and the newly accepted principle of non-regression?

13. That the source of knowledge of facts of the present case have been obtained by the Petitioner through the official MOEF notifications, Orders and judgments available in public domain.
14. That the present petition is being filed in the interest of justice, for ensuring safety of public at large. Some of the stakeholders being represented by virtue of this instant PIL may not be aware of their legal rights being infringed or have the economic means to approach this Hon'ble Court.
15. That for the sake of brevity and keeping in mind the precious time and resources of the Court, the present petition is being filed to avoid the filing of plethora of proceedings, suits or Writ that maybe filed against the Respondents for the same relief.
16. That the Petitioner undertakes to bear the costs, if any imposed by the Hon'ble Court arising out of this Petition.
17. That the present Petition is being filed owing to the larger questions of fundamental rights involved in the matter. This Hon'ble Court being empowered under Article 32 and 142 of

the Constitution of India to pass any order or decree as is necessary for doing complete justice & the said order and decree shall be enforceable throughout the territory of India.

18. That the Petitioner is constrained to directly approach this Hon'ble Court under Article 32 of the Constitution of India against the illegal, arbitrary and unconstitutional conduct of the Respondent MOEF in granting Ex post facto Clearance(s), in as much as, the Impugned SOP dated 07.07.21 was stayed by the Hon'ble Madras High Court in W.P. (C) No. 11757 of 2021, however this Hon'ble Court vide its Judgment dated 9.12.2021 in Civil Appeal No. 7576 of 2021, *Electrosteel Steels Ltd v. UOI* held that the interim stay granted by the Hon'ble Madras High Court vide Order dated 15.07.2021 would have no application in territories beyond the territorial jurisdiction of Madras High Court. Consequently, though the Impugned SOP dated 7.07.2021 remains stayed for the State of Tamil Nadu, however is operating through the rest of the Country.
19. It is submitted that for an effective and efficacious adjudication of the legality of the Impugned SOP/OM, it is

imperative to place certain relevant background facts for the kind perusal of this Hon'ble Court:

**BRIEF FACTS CONSTITUTING THE CAUSE OF  
ACTION OF THE PRESENT PIL**

- 19.1 India was a signatory to the United Nations Convention on the Human Environment held in Stockholm in the year 1972 (*hereinafter referred to as the 'Stockholm Convention'*) wherein 26 broad principles concerning Environment and development were devised and recommended.
- 19.2 Pursuant to its commitment under the Stockholm Convention, 1972, the Indian Parliament enacted a host of legislations with the aim and objective to regulate various activities that pollute the environment namely, the Water Act, 1974, the Air Act, 1981 and the Environment Protection Act, 1986 (EP Act).
- 19.3 The Statement of objects and reasons for enactment of the EP Act, 1986 declares that the Act has been prompted by concern over the state of environment that has grown the world over since the sixties. Section 3 of the EP Act

*interalia* empowered the Central Government to “take all such measures as it deems necessary or expedient for the purposes of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution”.

19.4 That next significant major global conference under the UN umbrella was held in 1992 at Rio (*popularly known as the Rio Declaration*) wherein participating countries including India adopted the newly coined terms ‘sustainable development’, ‘inter-generational equity’, ‘precautionary principle’, and further committed to enact a comprehensive Impact assessment framework at the Municipal level under Principle 17 thereof.

19.5 That the Central Government, Respondent MOEF issued the prevailing Environmental Impact Assessment Notification dated 14.09.2006 (*hereinafter referred to as ‘EIA, 2006’*) under Section 3 of the EP Act by superseding the previous EIA, 1994 with an endeavour to *interalia* provide a substantive legal framework and comprehensive procedural

mechanism for evaluation, assessment and monitoring of the Environmental impact on land, air and water by Expert bodies prior to commencement of the activity, across sectors all throughout the territory of India.

It is submitted that the EIA, 2006 requires the submission of a detailed Form 1 (Appendix I) which requires various aspects and certain pre-construction investigations/ likely impacts of the proposed activity, on the Air Water and Land Environment, to be conducted before the commencement of the project. This *a fortiori* cannot be done after the proposed activity has already been completed.

It is submitted that if the project execution is carried out at any stage prior to grant of EC, it would be detrimental to the environment as at the very outset even primary baseline information for filling up Form 1 and Form 1A would not be available for providing project specific TOR for the EIA studies and thus the EIA study would become irrelevant thereby making the appraisal of EIA Report only a formality.

16

A true copy of the Environment Impact Assessment Notification [EIA, 2006] dated 14.09.2006 issued by the Respondent, MOEF&CC is annexed herewith as ANNEXURE A-1 [at page 45 to 107].

19.6 The Respondent, MOEF issued a Notification dated 14.03.2017 granting a one-time opportunity to avail *ex post facto* Environmental Clearances for all violation projects that were operating without a Prior Environmental Clearance. The Notification dated 14.03.2017 provided that such remediation plan/ augmentation plan be prepared as a separate and independent chapter in the Environmental Impact Assessment.

A true copy of Notification dated 14.03.2017 issued by the Respondent, MOEF is enclosed and marked as **Annexure A-2** (Page 108 to 111 )

19.7 The Notification dated 14.03.2017 was challenged before a Division Bench of the Hon'ble Madras High Court in W.P. No.11189 of 2017 on the ground that the said Notification is

17

against the '*precautionary principle*' and '*Polluter pay*', in as much as, the EIA, 2006 requires a Prior EC:

The Hon'ble Madras High Court vide Order dated 4.05.2017 prohibited the Respondent MOEF from taking any further action against the Petitioner pursuant to the Notification dated 14.03.2017.

The said Writ Petition was disposed of by the Hon'ble Madras High Court vide Order dated 13.10.2017 based on the undertaking of the MOEF that public hearings would be granted, and that the said notification is a one-time measure only.

The Hon'ble High Court further, vide its Order dated 14.03.2018 allowed the prayer of the Respondent MOEF for extension of time for submission of applications under the MOEF Notification dated 14.03.2017 by 30 days from the date of the said order i.e. till 13.04.2018.

A true copy of the Interim Order dated 04.05.2017 passed by the Hon'ble High Court of Judicature at Madras in W.P.

18

No.11189 of 2017 is enclosed herein and marked as  
**Annexure A-3 (page 112 to 113)**

A true copy of the Order dated 13.10.2017 passed by the  
Hon'ble High Court of Judicature at Madras in W.P.  
No.11189 of 2017 is enclosed herein and marked as  
**Annexure A-4 (page 113 to 142)**

A true copy of the Order dated 14.03.2018 passed by the  
Hon'ble High Court of Judicature at Madras in W.P.  
No.11189 of 2017 is enclosed herein and marked as  
**Annexure A-5 (page 143 to 148)**

19.8 In furtherance of the Order dated 14.03.2018 passed by the  
Hon'ble Madras High Court, the Respondent MOEF issued  
O.M. dated 16.03.2018 directing those project proponents  
wanting to take the benefit of the Notification dated  
14.03.2017, to submit fresh proposals afresh within a period  
of 30 days to the EAC for Category A projects and  
SEAC/SEIAA in the respective States/UTs for Category B  
Projects.

19

A Copy of the Office Memorandum dated 16.03.2018 issued by the Respondent, MOEF is enclosed herein and marked as **Annexure A-6 at pages 149 to 150.**

19.9 The MOEF Notification dated 14.03.2017 was challenged before the Hon'ble Supreme Court in W.P. (C) No. 118/2019 titled '*Ajaay S. Jajodia v. Union of India*' and is pending adjudication.

The Hon'ble Supreme Court in the cases of *Common Cause v. UOI*, 2017 (9) SCC 499 & *Alembic Pharmaceuticals v. Rohit Prajapati*, 2020 (17) SCC 157 consistently held that the concept of *ex post facto EC* is in derogation of the fundamental principle of environmental jurisprudence and is alien to Environment jurisprudence, in as much as, the EIA, 2006 requires a *prior EC*.

A true copy of the Judgment dated 01.04.2020 passed in Civil Appeal No. 1526 of 2016' passed by the Hon'ble Supreme Court in the case of *Alembic Pharmaceuticals v. Rohit Prajapati*, 2020 (17) SCC 157 is enclosed herein and marked as **Annexure A-7 (page 151 to 183 )**

- 19.10 The Respondent MOEF, after consultation with Expert Appraisal Committee (Violation) vide OM dated 5.03.2020, issued *'Draft Guidelines for Environmental Damage Assessment cost for violations case submitted under the Notification dated 14.03.2017'*.

The Expert Appraisal Committee (EAC) noted the shortcomings of the CPCB methodology after reviewing other available methodologies which are in practice in Europe and other developed Nations, and concluded as under:

**CONCLUSION:**

*This methodology will be used to calculate the environmental damage assessment cost for prescribing remediation as well as natural and community resource augmentation plan. The EAC would also give due consideration to the inputs received from the project proponent and would compute the potential damages that would have been caused during construction and operation phases, due to violation. The economic benefit accrued*

*during violation period will also be added to the environmental damage assessment cost and shall be used for Community Resource Augmentation Plan”.*

After having reviewed the available methodologies from CPCB and European Environmental Agency, as well as based on brain storming and learnings from appraisal of a number of projects, a methodology which has wider application and encompasses all the sectors appraised under violation projects was proposed. Prior to assessing the damages, details have to be assimilated to compute the damage cost.

A Copy of the Draft Guidelines for Environmental Damage Assessment Cost published by the Respondent MOEF vide OM dated 05.03.2020 is enclosed herein and marked as **Annexure A-8 at pages 184 to 203.**

- 19.11 The Hon'ble National Green Tribunal, WZ in Appeal No. 34/2020 WZ in the matter titled '*Tanaji B. Gambhire v. Chief Secretary GOM & Ors*', vide its Order dated 24.05.2021, in light of the Judgment passed by this Hon'ble

Court in *Alembic*, directed the Respondent MOEF to prepare a SOP for dealing with violation cases so as to firstly address the gap in the binding law and the practice currently followed, and secondly to ensure that a uniform practice is followed by all EACs/ SEACs across the country.

It is trite to submit, that the Hon'ble Tribunal did not expressly or impliedly extend the operations of the Notification dated 14.03.2017, let alone in perpetuity as a general principal, beyond the stipulated window period in the said Notification.

A true copy of the Order dated 24.05.2021 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in *Tanaji B. Gambhire v. Chief Secretary GOM & Ors*, Appeal No. 34/2020 WZ is enclosed herein and marked as Annexure A-9 (page 204 to 207).

19.12 In Compliance of the aforesaid Order dated 24.05.2021 passed by the Hon'ble Tribunal, the Respondent MOEF, issued OM dated 7.07.2021 prescribing a 'Standard

*operating Procedure (SOP) for identification and handling of violation cases'.*

By virtue of the OM dated 7.07.2021, the MOEF clarified and modulated the existing procedure envisaged on a combined reading of the EIA, 2006 and the Notification dated 14.03.2017, by stipulating for an immediate closure of the project, grant of EC if the same was permissible, subject to a damage assessment, Remediation Plan and Community Augmentation Plan, and for demolition of the project if the project was impermissible in the first place.

A Copy of the Impugned SOP/OM dated 07.07.2021 issued by the Respondent, MOEF is enclosed herein and marked as **Annexure A-10** at pages 208 to 216 .

- 18.13 The OM dated 07.07.2021 was challenged before the Hon'ble Madras High Court in W.P. (C) No: 11757 of 2021, whereby vide its Order dated 15.07.2021 the said OM dated 07.07.2021 was stayed, in as much as, it was *prima facie* without jurisdiction being *ultra-vires* the provisions of the EP Act and contrary to the EIA, 2006 which cannot be superseded,

annulled or modified by an Office Order/ Administration instruction.

Further the Hon'ble High Court opined that the OM dated 7.07.2021 was contrary to the undertaking given in the case of *Puducherry Environmental Protection Association*, that the Notification was a one-time measure.

A true copy of the Order dated 15.07.2021 passed by the Hon'ble Madurai Bench of Madras High Court in W.P. (C) No. 11757 of 2021 is enclosed herein and marked as **Annexure A-11** (page 217 to 220)

18.14 The Hon'ble Supreme Court vide its recent Order dated 9.12.2021 in Civil Appeal No. 7576-77 of 2021, *Electrosteel Steels Ltd v. UOI*, (2023) 6 SCC 615 held that the interim stay granted by the Hon'ble Madras High Court vide Order dated 15.07.2021 would have no application in territories beyond the territorial jurisdiction of Madras High Court.

A true copy of the Order dated 9.12.2021 passed in Civil Appeal Nos. 7576-7577 of 2021 passed by the Hon'ble Supreme Court in *Electrosteel Steels Ltd v. UOI*, (2023) 6

25

SCC 615 is enclosed herein and marked as **Annexure A- 12** (page 221 to 248).

18.15 The Respondent MOEF issued another OM dated 28.01.2022, thereby communicating to all EACs, SEIAAs and SEACs the observations of the Hon'ble Supreme Court in *Electrosteel Steels Ltd*, whereinafter the EACs at the Central level and all SEIAA & SEACs at the State level, across the Country, started processing Applications for grant of Ex-post facto Environmental Clearance, under the SOP dated 7.07.2021.

A true copy of the Office Memorandum (OM) dated 28.01.2022 issued by the Respondent, MOEF is enclosed herein and marked as **Annexure A-13** at pages 249 to 250.

A Tabular list of certain *ex post facto* ECs granted to violation projects under the Impugned SOP dated 7.07.2021 by the EACs at the Central Level and different State SEIAAs (Andhra Pradesh, Telengana, Rajasthan, Kerala) is enclosed

herein and marked as Annexure A-14 at pages 250 to 252.

Hence the present PIL.

20. The Petitioner seeks relief as prayed for on the following grounds on the basis of above-mentioned facts, amongst other:

#### GROUNDS

- A.** Because the Hon'ble Supreme Court in the case of *Common Cause v. UOI*, (2017) 9 SCC 499 and *Alembic Pharmaceuticals v. Rohit Prajapati*, 2020 (17) SCC 157 has held that the very concept of 'ex post facto clearance' is alien to environmental laws and would be detrimental to the ecology.
- B.** Because the Respondent MOEF ought to appreciate that there is no provision of regularization/ grant of *ex post facto* Environment Clearance under the Environment (Protection) Act, 1986, or the EIA Notification dated 14.09.2006, and that the Notification dated 14.03.2017 was also only a one-time measure as per the Respondent MOEF's own statement, which

cannot be extended in perpetuity and made a permanent feature, let alone by an administrative circular/ office order.

It is trite to submit that the legality and vires of the MOEF Notification 14.03.2017 was challenge in W.P. (C) No. 118/2019 titled '*Ajaay S. Jajodia v. Union of India*' and is pending adjudication before this Hon'ble Court.

- C.** Because the wrongful and illegal act of the Respondent MOEF in processing applications for grant of *ex post facto* Environmental Clearance under the garb of the Impugned OM dated 7.07.2021 invariably has a severe, deleterious and adverse impact on ecologically sensitive and vulnerable areas and thus needs to be seriously viewed.

It is submitted that a provision of '*prior EC*' and '*ex post facto EC*' cannot co-exist being mutually destructive and an Oxymoron, for the simple reason that an Impact Assessment can only take place before commencement of activity and not after, and that an EC is an approval which is taken prior to the commencement of activity and emanates from the

"Precautionary Principle" which is one of the corner stones of Environmental Jurisprudence.

- D. Because the Impugned OM dated 7.07.2021 being an administrative circular is not a measure issued under Section 3 of the Environmental Protection Act, 1986 (EP Act, 1986) and thus, without prejudice to the above, assuming that the OM dated 7.07.2021 extended the window period under Notification dated 14.03.2017 and/or permitted processing of fresh application seeking *ex post facto* clearance, the same would have been *ultra-vires* the provisions of the EP Act, 1986, in as much as, the EIA, 2006 mandates a prior EC and an Administration Circular or/and Office Order in the nature of the OM dated 7.07.2021 cannot supersede, amend or modify the mandatory requirement of a prior EC.

It is submitted that as per the purport of Section 3 only positive amendments can be made and no retrograde steps/ regressive ought to take place and thus the impugned OM dated 07.07.2021 would have been *ultra-vires* the provisions of Section 3 itself. This Hon'ble Court in the recent case of

*Alembic Pharmaceutical* accepted this interpretation and held as under:

“20. Section 3(1) is an enabling provision for the Central Government to undertake all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution...”

“21...Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purposes of protecting and improving the quality of the environment...”

**E.** Because the decision in *Electrosteel* was rendered in the special and peculiar facts and circumstances of its own case without referring to or relying on the prior decision of this Hon'ble Court in *Common Cause*, which was binding under Article 141, being that of a co-ordinate bench. Thus, any observations in *Electrosteel* permitted *ex post facto* environmental clearance(s) are *per incuriam*, having been made by disregarding a binding precedent.

**F.** Because the EIA, 2006 provides for taking precautionary measures with respect to the projects listed in the *SCHEDULE* to the said Notification along with the requisite Form 1/ IA viz. Construction Phase, Operation Phase and Post Operation Phase.

The conditions imposed by the regulatory authority while granting prior Environmental Clearance are the safeguards to eliminate or to minimize the environmental impacts likely to be caused due to the development projects.

This Hon'ble Court vide its Judgment in *Keystone Realtors v. Anil V Tharthare*, dated 3.12.2019 in Civil Appeal No. 2435 of 2019, in the context of an expansion of a Building construction projects which commenced without taking prior EC, stated as under:

*"We further note that as on the date of the Impugned order construction at the project site had already been completed. A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of the project. By completing the construction of the project, the appellant has denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage. At this stage only remedial action may be taken"*

- G.** Because if prior EC is not taken, the project will commence without such Environmental safeguards and cause significant environmental impacts to different facets of the environment like air environment, water environment, ecological environment, land environment and social economic

environment etc which would be impossible to identify at a later stage, and *a fortiori*, mitigate, as invariably the Environmental impact/ damage is irreversible and irretrievable.

Some of the examples of Environmental Damages including social impact/death of citizens due to the operation of establishments/ industries without taking prior Environmental Clearance(s) are provided below :-

**a. LG Polymers India Vs. EAS Sarma [O.A. No. 73/2020]: -**  
Leakage of Hazardous gas

*“That leakage of hazardous gas, Styrene, took place at 03:45AM on 07.05.2020, from a chemical factory owned by the South Korean company LG Polymers India Pvt., Limited, R.R. Venkatpuram village, Pendurthy Mandal, Vishakhapatnam resulting in death of 11 persons and hospitalization of more than 100 people of whom at least 25 were reported to be serious. These fatalities and injuries are reportedly likely to increase. More than 1000 persons are reported sick. There is also damage to environment and habitat”*

**b. Akhil Bhartiya Mengela Samaj Parishad & Ors vs. MPCB & Ors [O.A. No. 64/2016 (WZ)] – Discharge of untreated effluent into Arabian Sea.**

*“That water standards in villages have got affected due to water pollution cause. Report of diseases spread to villagers/fishermen. Fisheries in Maharashtra is facing crisis as per report of Fisheries Department of Maharashtra*

*due to various other reasons mainly over-fishing, destructive fishing practices, declining fish stocks, coastal land use changes, sea water pollution, etc. Rise in emission of heat trapping greenhouses is causing increase in earth's temperature and this is one of the major causes of global warming and a contributing factor to climate change. This climate change has added to the problem of fishing. For marine fisheries, temperature of water is one of the most important environmental variables. Global warming has caused rise in sea surface temperature. Average annual temperature, along Maharashtra Coast, has risen more than 10 centigrade, over the past few decades. This data is submitted by satellite thermal imageries for the past four decades. All these factors contribute to several physical and biological changes which impact coastal marine ecology and fisheries. Displacement or destruction of phytoplankton habitat and coral bleaching have a profound effect on the marine ecosystem. All these have affected fish reproduction and food consumption. They influence metabolic activity of fish and phenology (life cycle events) leading to their migration and extension of the depth where they occur".*

**c.H.P. Ranjanna & Ors vs. Union of India & Ors** (Appeal No. 54 / 2018) and **Tanaji Balasaheb Gambhire vs. The Secretary, Environment Department, Govt. of Maharashtra & Ors** [O.A. No. 164/2016 (WZ)] - Construction of Buildings in the buffer zone of Lakes & Rivers-

- Issues of encroachments which is detrimental to the hydrology & obstruct the natural flow
- Discharge of sewage – slushy malarial bed of sewage and waste
- Growth of unhealthy hyacinth

- Loss of urban bio-diversity hot spot & thereby loss of habitat of birds, reptiles and flora
- Loss of wetland and its ecosystem
- Loss of urban biodiversity hot spot.

**d. Kumar City Residents Co-operative Housing Society Ltd.** [O.A. no. 66/2019 (SW)] – Impacts of Building construction projects.

*“When environmental norms are not observed and in violation thereof there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as ‘PMLA 2002’ as amended from time to time)”*.

**H.** Because even otherwise a perusal of the Impugned OM dated 7.07.2021 would reveal that the said OM itself does not state that fresh application seeking *ex post facto* can be filed, albeit it refers to the window period stipulated under the 14.03.2017 and the Orders passed in the case of *Puducherry Environment Protection Association*, and thus the interpretation of the Respondent MOEF is blatantly erroneous and wholly misplaced.

**I.** Because the Hon’ble National Green Tribunal in the case of *S.P. Muthuraman V. Union of India & Manoj Mishra v. Union of*

34

India [O.A No. 37/15 & O.A No. 213/14] had quashed the previous office memorandums dated 12.12.2012 & 27.06.2013 issued by the Respondent MOEF for *ex facto clearance* and upheld the significance of 'Prior' Environment Clearance, by observing as under:

*"To obtain Environmental Clearance prior to commencement of any activity or project is the mandate of law. This language has to be given its proper and purposive meaning. It is undoubtedly mandatory. When the law mandates prior approval, it ought not to be averred as post activity approval or ex-post facto permission"*

Further the Hon'ble Tribunal underlined the importance of having prior environmental clearance and observed:

*"The Notification of 2006, a statutory document having the force of law has used the words 'prior Environmental Clearance' 34 times and in addition thereto the expression 'prior' has been used six times to emphasise the need for obtaining Environmental Clearance prior to the commencement of any project activity. In other words, the Notification mandates the requirement of 'prior Environmental Clearance' without exception."*

- J.** Because the wrongful and illegal act of the Respondent MOEF in processing application for grant of *ex post facto* Environmental Clearance under the garb of the OM dated 7.07.2021 is contravening various principles, namely, the

35

Precautionary Principle, Polluter Pay principle, Intergenerational Equity, Doctrine of Public Trust, Doctrine of Non-Regression and Sustainable Development as propounded by the Hon'ble Apex Court, which are cornerstones of environmental jurisprudence in our country.

**K.** Because the wrongful and illegal act of the Respondent MOEF in processing application for grant of *ex post facto* Environmental Clearance under the garb of the Impugned OM dated 7.07.2021 encourages the acts of the offenders and sets a wrong precedent by giving violators the same status as non-violators. It is submitted that this conduct is ostensibly in derogation of Article 14 of The Constitution of India as violators are being granted undue privilege and are treated at par with non-violators and those who have duly conformed and adhered to the law and obtained prior Environmental Clearance(s). This erroneous interpretation and mis-application of the law only sub-serves and furthers the interest of violators, and is in fact against the public interest at large.

The Hon'ble Supreme Court in its decision in **Royal Paradise Hotels (P) Ltd vs State of Haryana**, (2006) 7 SCC 597 stated that:

*"7... It is time that the message goes abroad that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of the HC to ensure that such defiers of law are not rewarded."*

*"8. We also find no merit in the argument that regularization of acts of violation of the provisions of the act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or significant accidental violations unconsciously made after trying to comply with all the requirements of law can only qualify for regulations, which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant."*

L. Because, without prejudice to the above, the mechanism for damage assessment/ environmental compensation under the Impugned SOPs based on an age-old *formulae*/ methodology formulated by the Central Pollution Control Board (CPCB)

which is obsolete, deficient, scanty and a mechanical mode of damage assessment.

That after taking note of the shortcoming of the CPCB methodology for calculation of damage accrued, an Expert Committee constituted by the Respondent MOEF, based on the existing legal regimes are the world had recommended a new mechanism to assess the damage caused towards (a) the air environment (b) water environment (c) Noise & Vibration (d) Land environment (e) Solid Waste Management (f) Green Belt (g) Wildlife Conservation Plan (h) Energy Conservation (i) Risk Hazard / Occupation Health & Safety (j) Economic benefit Accrued during violation.

The above-mentioned mechanism for assessment of Damages was proposed by an OM dated 5.03.2020 by the Respondent MOEF however the same is yet to adopted to deal with such violation cases. Such a proposed mechanism under the OM dated 5.03.2020 is a robust and more comprehensible methodology for evaluating the damaged caused due to not taking a prior EC and / or non -compliance of existing EC

conditions, and would deter violators and increase compliance of Environmental Norms.

21. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.
22. The Petitioner craves leave to alter, amend or add to this Petition as may be required or directed by this Hon'ble Court.
23. There is no civil, criminal or revenue litigation involving the Petitioner which has or could have a legal nexus with the issues involved in this Petition. That the Petitioner herein has not filed any other Petition before any other Court of law including this Hon'ble Court and/or any other High Court or the National Green Tribunal seeking the relief as sought before this Hon'ble Court or any other relief with respect to the Impugned OM/ SOP dated 07.07.2021.
24. The Petitioner has not submitted any representation to the Respondents and is directly approaching this Hon'ble Court for relief.

25. That this Petition is motivated by Public Interest. There is no personal gain, private motive or oblique reason in filing the Petition.
26. This Petition is bonafide and in the interest of justice and the Environment as a whole.
27. That the Petitioner herein has no other alternative remedy, except to challenge the Impugned SOP dated 7.07.2021 before this Hon'ble Court, in as much as, the Impugned SOP is applied throughout the territory of India having a Pan India effect.

It is pertinent to mention, that though such a prayer could have been sought for in a Writ Petition filed under Article 226 of the Constitution of India, in ordinary course, however qua the Impugned SOP/OM, the same has been stayed by the Hon'ble Madras High Court vide its Order dated 15.7.2021, however this Hon'ble Court vide its Judgment dated 9.12.2021 in *Electrosteel* has restricted the stay to the territorial limits of the State of Tamil Nadu.

40

In light of the above-mentioned facts, the only remedy available to the Petitioner is to file the present Writ Petition under Article 32 of the Constitution of India.

**PRAYER**

In view of the facts and circumstances arrayed above, the Petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to allow the present Public Interest Litigation and pass the following order(s):

- a) Issue an appropriate Writ in the nature of Certiorari quashing the Impugned OM/SOP dated 07.07.2021 issued by the Respondent MOEF being arbitrary, illegal and ultra vires of the provisions of the EP Act; and
- b) Issue an appropriate Writ in the nature of Mandamus directing the Respondent MOEF and State SEIAAs / SEACs not to process and entertain any Application for *ex post facto* Environmental Clearance filed after 13.04.2018 i.e. the window period under the Notification dated 14.03.2017 as extended by the Hon'ble Madras High Court in W.P. No. 11189 of 2017; and

41

c) Pass such other orders/ directions as deemed fit in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER  
AS IN DUTY BOUND SHALL EVER PRAY.**

Filed by



**(VANSHDEEP DALMIA)**  
Advocates for the Petitioner

Dated: 01.12.2023  
Place: New Delhi

**816**

1394

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

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

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

(FOR ADMISSION  
ORDERS/DIRECTIONS )

and

IA

Respondent(s)

No.257416/2023-APPROPRIATE

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

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

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

For Respondent(s)

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

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

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS(BEENA JOLLY)  
COURT MASTER (NSH)

ITEM NO.56

COURT NO.3

SECTION PIL-W

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

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

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(IA No. 257416/2023 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 02-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s)

Mr. Gopal Sankaranarayanan, Sr. Adv.  
Mr. Vanshdeep Dalmia, AOR  
Ms. Anisha Jian, Adv.  
Mr. Sarthak Dora, Adv.  
Ms. Trisha Chandran, Adv.

For Respondent(s)

Mr. Tushar Mehta, Solicitor General  
Ms. Aishwarya Bhati, A.S.G.  
Mr. Gurmeet Singh Makker, AOR  
Mr. Ketan Paul, Adv.  
Ms. Ruchi Kohli, Adv.  
Ms. Swarupama Chaturvedi, Adv.  
Mr. Rajat Nair, Adv.Mr. Puneet Bali, Sr. Adv.  
Mr. Akhil Anand, Adv.  
Mr. Samit Shukla, Adv.  
Mr. Himanshu Vij, Adv.  
Ms. Saakshi Saboo, Adv.  
Mr. Anuj Salva, Adv.  
M/S. D.S.k. Legal, AORMr. T. V. S. Raghavendra Sreyas, AOR  
Mr. Naveen Hegde, Adv.  
Mr. A Yogeswaran, Adv.  
Ms. B Poongkhulali, Adv.  
Mr. Siddharth Vasudev, Adv.

Mr. Vanshdeep Dalmia, AOR

Mr. Anisha Jain, Adv.  
Mr. Sarthak Dosa, Adv.

Mr. Guru Krishna Kumar, Sr. Adv.  
Mr. Saket Mone, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR  
Mr. Abhishek Salian, Adv.  
Ms. Nitika Grover, Adv.  
Mr. Devansh, Adv.

Mr. Atmaram Nadkarni, Sr. Adv.  
Mr. Kunal Mimani, AOR  
Mr. Samit Shukla, Adv.  
Mr. Kunal Vajani, Adv.  
Ms. Sakshi Saboo, Adv.  
Mr. Anuj Savla, Adv.  
Mr. Shubhang Tandon, Adv.  
Ms. Shraddha Chiramia, Adv.

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

I.A. Nos. 25197, 25309 and 25150 of 2024

1. The application (IA No. 25150 of 2024) for intervention is allowed.
2. The applicant(s) approached this Court seeking modifications/alterations of the order dated 02<sup>nd</sup> January, 2024.
3. Vide order dated 2<sup>nd</sup> January, 2024, we had granted stay of operation of the Office Memoranda dated 07<sup>th</sup> July, 2021 and 28<sup>th</sup> January, 2022 issued by the Ministry of Environment, Forest and Climate Change.
4. Mr. A.N.S. Nadkarni and Mr. Puneet Bali, learned senior counsels appearing for the applicant(s) submit that though their projects had acquired environmental clearances much prior to the Office Memoranda dated 07<sup>th</sup> July, 2021 and only certain modifications/alterations are required therein, the

same cannot be considered in view of the order dated 2<sup>nd</sup> January, 2024.

5. We clarify that our orders dated 02<sup>nd</sup> January, 2024 would not come in the way of the competent authorities in considering the proposals for modifications/alterations in the Environmental Clearances if area of such projects had any valid environmental clearances prior to 07<sup>th</sup> July, 2021.

6. Needless to state that such applications for modification/alteration would be considered by the competent authorities strictly in accordance with law as it existed prior to 07<sup>th</sup> July, 2021.

7. We further clarify that our order should not be construed as having stayed any proceedings before any High Courts touching the subject matter of the Office Memoranda, referred to above.

8. The applications are, accordingly, disposed of.

I.A. Nos. 13975, 16527, 21877, 21878 and 24981 of 2024

1. Mr. Gopal Sankaranarayanan, learned senior counsel appearing for the petitioner-Vanashakti seeks four weeks' time to file reply affidavit to these applications.

2. List these applications alongwith main matter after four weeks.

(DEEPAK SINGH)  
COURT MASTER (SH)

(ANJU KAPOOR)  
COURT MASTER (NSH)

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

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

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

(FOR ADMISSION  
ORDERS/DIRECTIONS )

and

IA

Respondent(s)

No.257416/2023-APPROPRIATE

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

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

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

For Respondent(s)

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

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

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS(BEENA JOLLY)  
COURT MASTER (NSH)