

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

ORIGINAL APPLICATION NO. 32 OF 2021(EZ)

IN THE MATTER OF :

ANKUR SHARMA

... Applicant

Versus

STATE OF WEST BENGAL & ORS.

... Respondents

**AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 04 i.e. THE
WEST BENGAL POLLUTION CONTROL BOARD.**

INDEX

SL No	PARTICULARS	ANNEXURE	PAGE
1.	Affidavit		
2.	Copy of the report of West Bengal Pollution Control Board on Environmental Compensation dated 03.02.2022.	"R"	

Filed by

**PRITHWISH KUMAR BASU
ADVOCATE
W.B.P.C.B**

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 32 OF 2021(EZ)

SL. NO. 511/2022

IN THE MATTER OF :

ANKUR SHARMA

... Applicant

Versus

STATE OF WEST BENGAL & ORS.

... Respondents



AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 04 i.e THE
WEST BENGAL POLLUTION CONTROL BOARD.

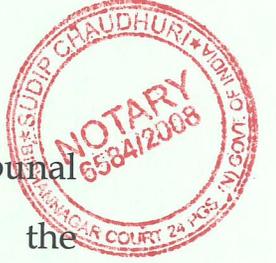
Most Respectfully Sheweth

I, Debashis Sarkar, son of Pabitra Kumar Sarkar, aged about 52 years, by faith-Hindu, by Occupation-Service, residing at 22/8, Purbachal Main Road, P.S. Garfa, Kolkata-700078, do hereby solemnly declare and say as follows :-

01. That, I am the Chief Engineer of the West Bengal Pollution Control Board (hereinafter will be referred to as the 'State Board') and look after this case and as such I am well acquainted with the facts and circumstances of the case. I have been duly authorized by the Respondent No. 04 to affirm this Affidavit on its behalf and as such, I am competent to do so.
02. That, this affidavit is being affirmed in pursuance to the solemn order passed by the Hon'ble Tribunal dated 21.12.2021.

15 FEB 2022

S. CHAUDHURI
★ NOTARY ★
GOVT. OF INDIA
Regd. No.-6584/08
Bidhanagar Court
Dist.-North 24 Pgs.



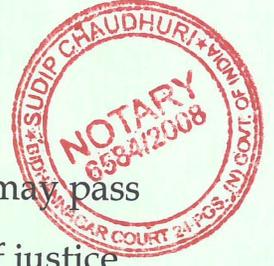
03. That, as per the order of the Hon'ble National Green Tribunal dated 21.12.2021, the State Board was directed to file the Committee's report by way an affidavit. The project in question is a residential housing complex named as "Swayam City", located at Mouza Bhasa, Touzi No. 14, opposite Swaminarayan Temple, P.S.- Bishnupur, South 24 Parganas, Pin.- 743503. The said project comprises of G+4 storied residential complex to be developed in four phases. Each phase comprises of different numbers of residential complex. The report of the West Bengal Pollution Control Board on environmental compensation inter alia is as follows :-

" The building and construction project of "Swayam City" is an identified violation project under Environmental Impact Assessment (EIA) Notification 2006 and its amendments. Therefore, Environmental Compensation for the project may be calculated on the project cost incurred upto the date of filing Environmental Clearance along with EIA/EMP reports as per the provisions of SOP. The project is still under construction stage. Since, operation of the project has not commenced, the Environmental Compensation amount may be 1% (one Percent) of the project cost as mentioned above".

Copy of the report of West Bengal Pollution Control Board on Environmental Compensation dated 03.02.2022 is annexed herewith and marked with letter "R".

15 FEB 2022


 S. CHAUDHURI
 ★ NOTARY ★
 GOVT. OF INDIA
 Regd. No.-6584/08
 Bishnupur Court
 Dist.-North 24 Pgs.



04. It is therefore respectfully prayed that Hon'ble Tribunal may pass such order/orders as it deems fit and proper in the interest of justice.

Sebastian Sankar

DEPONENT

BEFORE THE NOTARY PUBLIC
AT BIDHANNAGAR
DIST.-NORTH 24 PARGANAS

VERIFICATION

Verified at Kolkata by the deponent above named on this the *15th* day of February, 2022 and say that the contents of this affidavit made in paragraph nos. 1 is true to my knowledge and those made in paragraphs no. 2 to 3 are true to my information derived from records and rest are my respectful submission before this Hon'ble Tribunal.

[Signature]
S. CHAUDHURI
* NOTARY *
GOVT. OF INDIA
Regd. No. - 6584/08
Bidhannagar Court
Dist.-North 24 Pgs.

Sebastian Sankar

DEPONENT

Identified By Me

R. Nandani
ADVOCATE

15 FEB 2022

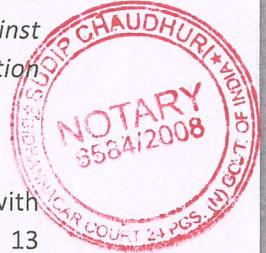
'R'

Report of WBPCB on Environmental Compensation as per Order of the Hon'ble National Green Tribunal dated 21.12.2021 in connection with O.A. No. 32/2021/EZ (I.A. No. 40/2021/EZ, I.A. No. 63/2021/EZ & I.A. No. 86/2021/EZ) - Ankur Sharma vs. State of West Bengal & Ors.

Background:

The Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata, in the matter of O.A. No. 32/2021/EZ (Ankur Sharma vs. State of West Bengal & Ors.) with respect to a complaint of construction of 'Swayam City' project over water bodies in P.S. Bishnupur, Mouza Bhasa, Touzi No. 14, South 24 Parganas by dumping of waste and construction material, passed an order on 10.06.2021 forming a Committee with the following direction:-

"The committee shall investigate, visit the site and after inspection which shall be carried out in the presence of the Respondent No. 7 to 11 as well as the applicant submit a detailed report. The committee shall examine as to whether the construction has been continuing over the site in dispute in spite of the directions of the West Bengal Pollution Control Board dated 25.01.2021. The committee shall also examine the damage caused to the environment and water body and assess the environmental compensation as cost of such damage to the environment which will be recovered from the promoters/builders if such violation is found. The Committee shall also find out whether environmental rules as well as Construction & Demolition (C&D) Waste Management Rules, 2016 have been violated. The committee shall also state specifically what action has been taken against the defaulter promoters who are acting in violation of the directions of the West Bengal Pollution Control Board as well as the existing rules, if such violation is found."



In pursuant to the order of the Hon'ble National Green Tribunal, a committee was formed with representatives of concerned agencies. The Committee conducted a visit at the project site on 13 July 2021. The following recommendations were made by the committee :-

1. All construction and development activities inside the entire 'Swayam City' project area at Mouza Bhasa, Touzi No. 14, Opposite Swaminarayan Temple, P.S. Bishnupur, South 24 Parganas, PIN-743503 should remain completely suspended till they obtain Environmental Clearance and Consent to Establish.
2. The project proponent should also submit an Environmental Compensation of Rs. 4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty-Five only) for causing damage to the environment.

About the Project:-

The project in question is a Residential Housing Complex, named as 'SWAYAM CITY', located at Mouza Bhasa, Touzi No. 14, Opposite Swaminarayan Temple, P.S. Bishnupur, South 24 Parganas, PIN-743503. The project comprises of G+4 storied residential blocks to be developed in four phases. Each phase comprises of different numbers of residential blocks.

The project proponent has obtained sanctioned Building Plans as detailed below:

Building Plan No.	Issue date	Validity of	Total Covered Area (m ²)
454/584/KM DA	04.07.2017	04.07.2020	14856.10
454/584/1/KM DA	23.03.2018	23.03.2021	7924.00
418/548/1/KMDA	23.03.2018	23.03.2021	6694.90
454/584/REVISED/KMDA	23.03.2018	23.03.2021	18266.81
Total Covered Area for four phases			47741.81

15 FEB 2022

Observations with respect to the NGT Order dated 21.12.2021 in connection with O.A. No. 32/2021/EZ and I.A. No. 40/2021/EZ:-

Considering the report of the committee, the Hon'ble NGT was pleased to pass an order on 21.12.2021 (**Annexure - 1**) directing the WBPCB to re-examine the issue of calculating the Environmental Compensation in a scientific and practical manner. Earlier the committee had recommended that the project proponent should submit an Environmental Compensation of Rs. 4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty-Five only) for causing damage to the environment.

The committee in its report concluded that the project should be considered as a single development project, being developed in four phases in contiguous plots without any separate boundary and having single access to the abutting road (i.e. Diamond Harbour Road), with cumulative total built up area of 47,741.81 sq.m. which is far above the threshold area (i.e. 20,000 sq.m.) for obtaining necessary Environmental Clearance from the State Environment Impact Assessment Authority (SEIAA) and Consent to Establish from the WBPCB.

The construction activities conducted till the date of site visit without obtaining prior Environmental Clearance and Consent to Establish is a serious non-compliance of the EIA Notification vide S.O. No. 1533(E) dated 14.09.2006 issued by the MoEF&CC, Govt. of India and the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

The Ministry of Environment, Forests & Climate Change (MoEF&CC) vide its Notification No.S.O.804(E) dated 14.03.2017 (**Annexure - 2**) has mentioned that *'the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified'*.

The MoEF&CC in its Notification vide No. S.O.1030(E) dated 08.03.2018 (**Annexure - 3**) stipulates that :

"The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.";

In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants, and the collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be

done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or an environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment."

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

The MoEF&CC vide its OM dated 07.07.2021 has defined Standard Operating Procedure (SoP) for identification and handling of violation cases under EIA Notification, 2006 in compliance to order of Hon'ble NGT in O.A. No. 34/2020 WZ (Annexure- 4). This was further upheld by the Hon'ble Supreme Court vide its order dated 09.12.2021 in the matter of Civil Appeal No. 7576-7577 of 2021 in Electrosteel Steels Limited vs Union of India & Ors. - MoEF&CC OM dated 28.01.2022 (Annexure - 5).

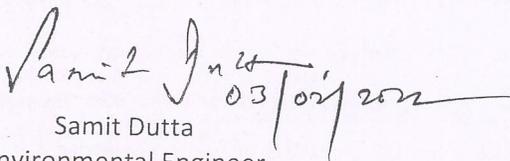
Item No. 12 of the Standard Operating Practice (SoP) clearly defines the penalty provisions for dealing with violations cases and applications. It specifies that :

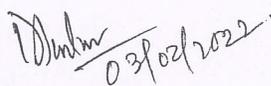
'For new projects :

Where operation has not commenced : 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs. 1 lakh for project cost of Rs.1 Cr]'

Conclusion:-

The building and construction project of "Swayam City" is an identified violation project under Environmental Impact Assessment (EIA) Notification 2006 and its amendments. Therefore Environmental Compensation for the project may be calculated on the project cost incurred upto the date of filing Environmental Clearance along with EIA/EMP reports as per the provisions of SOP. The project is still under construction stage. Since, operation of the project has not commenced, the Environmental Compensation amount may be 1% (one percent) of the project cost as mentioned above.


Samit Dutta
Environmental Engineer


Debashis Sarkar
Chief Engineer

n No. 05

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No. 32/2021/EZ
I.A. No.40/2021/EZ, I.A. No.63/2021/EZ & I.A. No.86/2021/EZ

Ankur Sharma Applicant(s)
State of West Bengal & Ors. Respondent(s)
Versus

Date of hearing: 21.12.2021

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Mr. Ankur Sharma, in person

For Respondent(s) : Mr. Rajib Ray, Advocate for R-1,3,5 & 6,
Mr. Surendra Kumar, Advocate for R-2,
Mr. Pritwish Basu, Advocate for R-4,
Mr. Kallol Basu, Advocate a/w Mr. Debnath Ghosh,
Advocate, Ms. Sushovit Dutt Majumder, Advocate, Mr.
Nilanjan Pal, Advocate and Mr. Bhavesh Garodia, Advocate
for R-7 to 11,
Mr. Gora Chand Roy Choudhury, Advocate for R-12

ORDER

1. Mr. Ankur Sharma, applicant is present in person.
2. One Vakalatnama has been filed by Mr. Rajib Ray, learned Counsel on behalf of the Respondent Nos. 1, 3, 5 & 6, State Respondents, Govt. of West Bengal; same is taken on record.
3. The West Bengal Pollution Control Board was directed to file Committee Report which has not been filed till date, however, the Committee Report has been brought on record on affidavit by the private respondents. This however, will not obviate the requirement of filing of the Committee Report by the West Bengal Pollution Control Board on affidavit.
4. An objection has been filed by the Respondent Nos.7 to 11 to the Committee Report constituted by the Tribunal; same is taken on record.
5. One affidavit dated 19.08.2021 has been filed by Respondent No.12; same is taken on record.
6. Two affidavits dated 28.10.2021 has been filed by the Applicant which are taken on record.

7. One rejoinder affidavit dated 28.10.2021 has been filed by the applicant; same is taken on record.
8. One supplementary affidavit dated 28.10.2021 has been filed by Respondent Nos. 7 to 1; same is taken on record.
9. One para wise reply dated 17.12.2021 has been filed by the Respondent No.2; same is taken on record.
10. **List on 14.02.2022.**

I.A. No. 40/2021/EZ:-

1. This IA has been filed by the Respondent Nos.7 to 11 seeking recall of the Tribunal's order dated 10.06.2021 along with this IA, which is in the nature of an objection of the Respondent Nos.7 to 11 to the report submitted by the Committee constituted by the Tribunal, the report of the Committee has also been filed as Annexure-J, page no. 230 of this IA. The observations, conclusions and recommendations of the Committee Report read as under:

"B. Observation of the Committee during visit of project site on 13.07.2021

- 1. The applicant mentioned that there were some waterbodies within the project site, but during site visit he was unable to identify the exact locations of the waterbodies.***
- 2. The Committee observed that the building blocks are in various stages of completion. However, no construction activity was goin on during site visit.***
- 3. The Block Land and Land Reforms Officer, Bishnupur-I at Bhasa, South 24 Parganas provided the information of Land Classification of the L.R. plots situated under the area of Swayam City Project as per Present L.R. ROR vide Memo no. Miscellaneous/377/BL&LRO/Bish-1/21 dated 13.07.2021. Conversion certificates were issued from 'Shali' to 'Housing Complex' (Bahutal Abasan) during the year 2015 to 2018.***
- 4. The Enquiry Report provided by the Assistant Director of Fisheries vide Memo No. 352 dated 14.07.2021 mentions that no waterbody was found during inspection and the complainant was unable to provide any such plot no., Khatian no. The report also reveals that the alleged areas does not retain water for more than six months.***
- 5. On examining the four sanctioned building plans it was revealed that the same "KEY PLAN" area for the entire project was shown in each of the four plans and has obtained separate phase wise sanction of building plans in contiguous plots within the said demarcated "KEY PLAN" area.***

6. In this regard, the Committee sought clarification from Zila Parishad, South 24 Parganas vide memo No. 1286-3L/WPB-C(III)/2021 dated 13.07.2021. The response from the ADM & AEO, South 24 Parganas Zila Parishad vide letter no. 493/ZP/BP/21 dated 14.07.2021 is enclosed.

7. The entire 'Swayam City' project site covering all the four phases of development has a single access road from the main abutting road (i.e. Diamond Harbour Road), opposite to Swami Narayan Temple. There is only one entrance gate on the access road for all the four phases. This is also indicated in the sanctioned plans.

8. The representatives of the Respondent No. 7 to 11 present failed to show necessary documentary evidence before the Committee regarding separate Service Plans for Sewage Treatment and Solid Waste Treatment for each of the four phases. They could not produce document regarding permission for water supply/groundwater extraction from the competent authority for the project.

9. During site visit, it was observed that there is no physical demarcation/boundary for the four phases within the project site.

10. No screen cover could be found in any of the building blocks during site visit.

11. Stockpiles of construction materials (sand and stone chips) were found to be lying on ground in uncovered condition.

12. No water sprinkling arrangement could be observed to arrest fugitive dust emission.

13. The project proponent also did not comply the direction of the WBPCB to submit an Environmental Compensation (EC) of Rs.10,00,000/- (Rupees Ten Lakhs) only within 15 days from the date of issue of the direction by the WBPCB.

C. Conclusion and Recommendations

After careful consideration of the available records and site inspection, the Committee concludes that the project should be considered as a single development project, being developed in four phases in contiguous plots without any separate boundary and having single access to the abutting road (i.e. Diamond Harbour Road), with cumulative total built up area of 47,741.81 sq.m. which is far above the threshold area (i.e. 20,000 sq.m.) for obtaining necessary Environment Clearance from the State Environment Impact Assessment Authority (SEIAA) and Consent to Establish from the WBPCB.

The construction activities conducted till the date of site visit without obtaining prior Environmental Clearance and Consent to Establish is a serious non-compliance to the EIA Notification vide S.O. No. 1533 (E) dated 14.09.2006 issued by the MoEF&CC, Govt. of India and the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

The Committee also assessed the Environmental Compensation for the above non-compliance and damage caused to the

environment, without taking prior environmental clearance, as Rs. 4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty Five only). The detailed assessment of Environmental Compensation, as per the "Report of the CPCB in-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" in response to order of the Hon'ble NGT dated 03.08.2018 in OA No. 593/2017(PB).

Therefore, the Committee makes the following recommendations:

- 1. All construction and development activities inside the entire 'Swayam City' project area at Mouza Bhasa, Touzi No.14, Opposite Swaminarayan Temple, P.S. Bishnupur, South 24 Parganas, PIN-743503 should remain completely suspended till they obtain Environmental Clearance and Consent to Establish.*
- 2. The project proponent should also submit an Environmental Compensation of Rs. 4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty Five only) for causing damage to the environment."*
2. The Committee has computed Environmental Compensation of Rs.4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty Five only).
3. Mr. Kallol Basu, learned Counsel has objected to the methodology of computation of this amount of Rs.4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty Five only) on the ground that the total period of construction has been counted from 04.07.2017 up to 13.07.2021 i.e. 1469 days.
4. The learned Counsel submits that the date of the building plan and its issuance is different for different projects as would be clear from the letter of the West Bengal Pollution Control Board dated 13.07.2021 addressed to the Additional District Magistrate & District Land & Land Reforms Officer, page no. 228 of the paper book.
5. The Committee Report also shows land in question is shaili water body in the strict sense of the term and that it is covered by water only for six months of year and this land has already been converted from shaili to Bastu.
6. He further submits that the formula for computing Environmental Compensation has been applied blindly presuming 100% occupancy of

the tower even though on ground level there is no occupancy because the project is not complete.

7. Mr. Kallol Basu further submitted that the environmental clearance has not been taken by the Respondent Nos.7 to 11 and that he shall be applying for the same.
8. The amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) as imposed by the Committee has not been deposited for which Mr. Kallol Basu submits that the same shall be deposited by tomorrow on the instructions of his client who is present in court.
9. We direct the West Bengal Pollution Control Board to re-examine the issue of calculating the Environmental Compensation in a scientific and practical manner.
10. Considering the above facts, we do not find any good ground for allowing the I.A. No.40/2021/EZ filed by the Respondent No.7 to 11 for recall of the Tribunal's order dated 10.06.2021.
11. However, considering the fact that we have directed the West Bengal Pollution Control Board to revise the computation of Environmental Compensation, we direct that the payment of the sum of Rs.4,13,15,625/- (Rupees Four Crore Thirteen Lakhs Fifteen Thousand Six Hundred Twenty Five only) by way of Environmental Compensation shall remain in abeyance till a decision is taken by the West Bengal Pollution Control Board in this regard.
12. I.A. No.40/2021/EZ is accordingly rejected.

I.A. No.63/2021/EZ:-

1. This application will be considered at the time of final hearing.

I.A. No. 86/2021/EZ:-

1. I.A. No. 86/2021/EZ has been filed by the Applicant praying therein that contempt proceedings be initiated against the private builders for proceeding with making of construction in violation of the interim order of this court of status quo.

2. We direct the West Bengal Pollution Control Board to file a reply to this I.A. No. 86/2021/EZ within four weeks.
3. The Respondents Nos.7 to 11 shall also file his reply to the I.A. within four weeks.

.....
B. Amit Sthalekar, JM

.....
Saibal Dasgupta, EM

December 21, 2021
Original Application No. 32/2021/EZ
(I.A. No.40/2021/EZ, I.A. No.63/2021/EZ &
I.A. No.86/2021/EZ)
MN

से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा।

14. ऐसी परियोजनाएं और क्रियाकलाप, जो इस अधिसूचना की तारीख को उल्लंघनकारी हैं, इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए आवेदन करने के पात्र होंगे और परियोजना प्रस्तावक इस अधिसूचना के अधीन पर्यावरणीय अनापत्ति के लिए केवल इस अधिसूचना की तारीख से छह मास के भीतर ही आवेदन कर सकते हैं।

[फा. सं. 22-116/2015-आईए-III]

मनोज कुमार सिंह, संयुक्त सचिव

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION**

New Delhi, the 14th March, 2017

S.O. 804(E).—Whereas, a draft notification under sub-section (1), and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), *vide* number S.O. 1705(E), dated the 10th May, 2016, as required by sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for finalising the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance under the Environment Impact Assessment Notification, 2006 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

2. And whereas, copies of the said notification were made available to the public on the 10th May, 2016;

3. And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government.

4. Whereas, subject to the provisions of the Environment (Protection) Act, 1986, under sub-section (1) of section 3 of the Act, the Central Government has the power to take 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 environment pollution;

5. Whereas, section 5 of the Environment (Protection) Act, 1986 empowers the Central Government to give directions which reads as "Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions;

6. Whereas the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12.12.2012 and 27.06.2013 to establish a process for grant of environmental clearance to cases of violation.

7. Whereas, the Hon'ble High Court of Jharkhand had passed an order dated the 28th November, 2014 in W.P. (C) No. 2364 of 2014 in the matter of Hindustan Copper Limited *Versus* Union of India in which the High Court held that the conditions laid down under Office Memorandum dated 12th December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon'ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws;

8. And whereas, Hon'ble National Green Tribunal, Principal Bench *vide* its order dated 7th July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had also held that the Office Memoranda dated 12th December, 2012 and 24th June, 2013 on the subject of consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the Environment (Protection) Act, 1986 or Environment Impact Assessment Notification, 2006 Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment notification, 2006 and had quashed the same;
9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;
10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;
11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;
12. And whereas, Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action V's. Union of India* (the Bichhri village industrial pollution case), while delivering its judgment on 13th February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon'ble Court observed that section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures..... Hon'ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be

looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-

(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification.

[F. No. 22-116/2015-IA-III]

MANOJ KUMAR SINGH, Jt. Secy.

अधिसूचित प्रयोगशाला या राष्ट्रीय जांच और अशांकन प्रत्यायन बोर्ड द्वारा प्रत्यायित प्रयोगशाला या वैज्ञानिक और औद्योगिक अनुसंधान परिषद् की पर्यावरण के क्षेत्र में कार्य कर रही प्रयोगशाला द्वारा किया जाएगा।";

(घ) उपपैरा (6) के स्थान पर निम्नलिखित उपपैरा रखा जाएगा, अर्थात्:-

"(6) विशेषज्ञ मूल्यांकन समिति, यथास्थिति, राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति पर्यावरणीय प्रबंधन योजना, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना से मिलकर बनने वाली पर्यावरणीय प्रबंधन योजना को उपदर्शित करेगी, जो कि मूल्यांकन किए गए पर्यावरणीय नुकसान और पर्यावरणीय अनापत्ति की शर्त के उल्लंघन के कारण उद्भूत आर्थिक फायदे की तत्स्थानी होगी।";

(ङ) उपपैरा (7) के स्थान पर निम्नलिखित उपपैरा रखा जाएगा, अर्थात्:-

"(7) परियोजना प्रस्तावक से सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना की रकम के समतुल्य बैंक प्रत्याभूति को राज्य प्रदूषण नियंत्रण बोर्ड के पास प्रस्तुत करने की अपेक्षा होगी और राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति द्वारा या प्रवर्ग 'क' परियोजना के लिए मात्रा की सिफारिश विशेषज्ञ मूल्यांकन समिति द्वारा की जाएगी और इसको विनियामक प्राधिकरण द्वारा अंतिम रूप दिया जाएगा तथा बैंक प्रत्याभूति को पर्यावरणीय अनापत्ति अनुदत्त करने से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति, यथास्थिति, राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा।"

[फा. सं. जेड-11013/22/2017-आईए-II(एम)]

ज्ञानेश भारती, संयुक्त सचिव

टिप्पण: मूल अधिसूचना का.आ. 804(अ), तारीख 14 मार्च, 2017 द्वारा प्रकाशित की गई थी।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 8th March, 2018

S.O. 1030(E). —Whereas, the Ministry of Environment, Forest and Climate Change *vide* notification number S.O.804(E), dated the 14th March, 2017 (hereinafter referred to as the said notification) has notified the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance as mandated under the Environment Impact Assessment Notification, 2006 [S.O.1533 (E), dated the 14th September, 2006];

And whereas, the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the Ministry) in the said notification *inter alia*, directed *vide* sub-paragraph (2) of paragraph 13, that in case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority, are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level;

And whereas, the Ministry has received a number of proposals relating to all sectors covered under category A and category B, for consideration in pursuance of the said notification;

And whereas, the Ministry is in receipt of representations from the public representatives and Industrial Associations, requesting delegation of powers to the respective States to deal with the violation cases for operational reasons and expediting the proposals;

And whereas, the National Green Tribunal, Principal Bench at New Delhi *vide* their order dated the 27th November, 2017 in similar matters in OA No.570/2016 titled M/s Anjli Infra Housing LLP Vs Union of India & others, OA No.576/2016 in the matter of M/s Ankur Khusal Construction LLP Vs Union of India & others and OA No.579/2016 in the matter of Anjli Infra Housing LLP Vs Union of India & others, has passed directions for consideration of the projects at the State level and pass appropriate orders in regard to grant/refusal of the environmental clearance in accordance with law;

And whereas, in view of the above, the Central Government finds it necessary to amend the said notification number S.O.804(E), dated the 14th March, 2017 by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 regarding inviting objections and suggestions from persons likely to be affected thereby, in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, namely:-

In the said notification, in paragraph 13, -

- (a) for sub-paragraph (2), the following sub-paragraph shall be substituted, namely:-
- “(2) In case the projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernisation, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and the projects or activities covered under category A of the Schedule to the Environment Impact Assessment Notification, 2006, including expansion and modernisation of existing projects or activities and change in product mix, shall be appraised for grant of environmental clearance by the Expert Appraisal Committee in the Ministry and the environmental clearance shall be granted at Central level, and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.”;
- (b) for sub-paragraph (4), the following sub-paragraph shall be substituted, namely:-
- “(4) The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.”;
- (c) for sub-paragraph (5), the following sub-paragraph shall be substituted, namely:-
- “(5) In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants, and the collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board

for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.”;

(d) for sub-paragraph (6), the following sub-paragraph shall be substituted, namely:-

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

(e) for sub-paragraph (7), the following sub-paragraph shall be substituted, namely:-

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

[F.No.Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

Note: The principal notification was published vide number S.O.804(E), dated the 14th March, 2017.

आदेश

नई दिल्ली, 8 मार्च, 2018

का.आ. 1031(अ).—केन्द्रीय सरकार ने पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (1), उपधारा (2) के खंड (i) के उपखंड (क) और खंड (v) के अधीन जारी भारत सरकार की, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय में अधिसूचना संख्या का.आ.804(अ) तारीख 14 मार्च, 2017 (जिसे इसमें इसके पश्चात् उक्त अधिसूचना कहा गया है) द्वारा उन परियोजनाओं का जिन्होंने पूर्व पर्यावरण अनापत्ति प्राप्त किए बिना कार्य आरंभ कर दिया है और ऐसे मामलों को उल्लंघन माना गया है, का मूल्यांकन करने के लिए प्रबंध किया है।

और उपर्युक्त अधिसूचना के पैरा 13 के उपपैरा (1) द्वारा निर्देश दिया गया है कि यथास्थिति केन्द्रीय सरकार से अथवा उपर्युक्त अधिनियम के अधीन केन्द्रीय सरकार द्वारा विधिवत रूप से गठित राज्य पर्यावरण समाघात निर्धारण प्राधिकरण से, पूर्व पर्यावरणीय स्वीकृति प्राप्त किए बिना भारत के किसी भी भाग में प्रक्रिया या प्रौद्योगिकी अथवा दोनों में परिवर्तन सहित अतिरिक्त क्षमता के लिए शुरू की गई पर्यावरण समाघात निर्धारण अधिसूचना, 2006 [का.आ.1533(अ) तारीख 14 सितंबर, 2006] के अधीन पूर्व पर्यावरणीय स्वीकृति की अपेक्षा वाली परियोजनाओं अथवा क्रियाकलापों या मौजूदा परियोजनाओं अथवा क्रियाकलापों के विस्तार या आधुनिकीकरण को पर्यावरण संघात निर्धारण अधिसूचना, 2006 के उल्लंघन का मामला माना जाएगा;

और उपर्युक्त अधिसूचना में यह और उपबंध है कि ऊपर उल्लिखित परियोजनाओं और क्रियाकलापों से उपर्युक्त अधिसूचना के पैरा 13 के उपपैरा (2) से (7) में विनिर्दिष्ट प्रक्रिया के अनुसार सख्ती से निपटा जाएगा;

और पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त अधिसूचना के पैरा 13 के उप पैरा (4) के अनुसरण में सभी क्षेत्रों में उल्लंघन के मामलों का मूल्यांकन करने और केन्द्रीय सरकार को सिफोरिशें करने के लिए विभिन्न क्षेत्रों के विशेषज्ञों से मिलकर बनने वाली भारत सरकार, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, संख्यांक का.आ.1805(अ), तारीख 6 जून, 2017 की अधिसूचना द्वारा एक विशेषज्ञ मूल्यांकन समिति (ईएसी) का गठन किया गया था ;

और इस प्रकार गठित की गई विशेषज्ञ मूल्यांकन समिति में, श्री एस.के.श्रीवास्तव, वैज्ञानिक ई को उक्त समिति के सदस्य सचिव के रूप में पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय के प्रतिनिधि रूप में नामनिर्देशित किया गया था।

और प्रशासनिक तथा प्रचालन संबंधी कारणों से, अतिक्रमण मामलों में कार्यवाई करने के लिए गठित की गई विशेषज्ञ मूल्यांकन समिति के सदस्य सचिव के रूप में यथास्थिति श्री एस.के.श्रीवास्तव, वैज्ञानिक ई के साथ वैज्ञानिक ई या वैज्ञानिक एफ या वैज्ञानिक जी का नामांकन प्रतिस्थापित करना समीचीन हुआ है;

और अतः अब, केन्द्रीय सरकार पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और उक्त अधिसूचना सं० का.आ.804(अ) तारीख 14 मार्च, 2017 के पैरा 13 के उपपैरा (4) के अनुसरण में भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 6 जून, 2017 में प्रकाशित भारत सरकार की पर्यावरण वन और जलवायु परिवर्तन मंत्रालय संख्या का.आ.1805(अ), तारीख 6 जून, 2017 के आदेश में निम्नलिखित संशोधन करती है, अर्थात्:--

उक्त आदेश की सारणी में, क्रम सं० 11 के सामने, स्तंभ (2) में प्रविष्टियों के स्थान पर, निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:--

"वैज्ञानिक ई या वैज्ञानिक एफ या वैज्ञानिक जी, यथास्थिति, पर्यावरण, वन और जलवायु परिवर्तन, मंत्रालय, जोरबाग रोड, नई दिल्ली-3।

[फा.सं.जेड-11013/22/2017-आईए-11(एम)]

ज्ञानेश भारती, संयुक्त सचिव

टिप्पण: मूल आदेश सं. का.आ.1805(अ) तारीख 6 जून, 2017 द्वारा प्रकाशित किया गया था।

ORDER

New Delhi, the 8th March, 2018

S.O. 1031(E).—Whereas, by the notification of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O. 804(E), dated the 14th March, 2017, issued under sub-section (1), sub-clause (a) of clause (i) 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 (hereinafter referred to as the said notification), the Central Government has established an arrangement to appraise the projects, which have started the work without obtaining prior environmental clearance and such cases have been termed as cases of violation;

And whereas, vide sub-paragraph (1) of paragraph 13 of the said notification, it has been directed that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 [S.O.1533(E), dated the 14th September, 2006] entailing capacity addition with change in process or technology or both, undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006;

And whereas, the said notification further provides that the projects and activities referred above, shall be dealt strictly as per the procedure specified in sub-paragraph (2) to (7) of paragraph 13 of the said notification;

And whereas, in exercise of the power conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification, an Expert Appraisal Committee (EAC) was constituted by notification of the Government of India in the Ministry of Environment, Forest and Climate Change vide number S.O.1805(E), dated the 6th June, 2017 comprising members with expertise in different sectors to appraise and make recommendations to the Central Government as cases of violation in all the sectors;

And whereas, in this Expert Appraisal Committee so constituted, Shri S K Srivastava, Scientist E was nominated as representative of the Ministry of Environment, Forest and Climate Change as Member Secretary of the said Committee;

And whereas, due to administrative and operating reasons, it has become expedient to replace the nomination of Shri S. K. Srivastava, Scientist E with the Scientist E or Scientist F or Scientist G, as the case may be, as Member Secretary of the Expert Appraisal Committee constituted to deal with violation cases;

And now, therefore, in exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification number S.O.804(E), dated the 14th March, 2017, the Central Government hereby makes the following amendments in the order of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O.1805(E), dated the 6th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 6th June, 2017, namely:-

In the said order, in the Table, against serial number 11, for the entries in column (2), the following entries shall be substituted, namely:-

“Scientist E or Scientist F or Scientist G, as the case may be, Ministry of Environment, Forest and Climate Change, Jorbagh Road, New Delhi-3”.

[F. No. Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

Note: The principal order was published vide number S.O.1805(E), dated the 6th June, 2017.

F. No. 22-21/2020-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi - 110003
sujit.baju@gov.in

Date: 7th July, 2021

Office Memorandum

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been

pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014). The salient extracts of the judgements are as under:

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."

"(...) the proposal of the petitioner company for environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws."

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating

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pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

*Held: "(...) an EC will come into force **not earlier than the date of its grant.**"*

Issue 3: 'Principles of Proportionality' – to be applied:

Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

*Held: "(...) **this Court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality**"*

Issue 4: 'Polluter pays' principle &

&
Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ... and also the power to impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....

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b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the "**Polluter Pays**" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

52

i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19 of The Environment (Protection) Act, 1986 against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to close its operation
2.	If prior EC is available for existing/old unit	Order to revert the activity/production to permissible limits.
3.	If prior EC was not required for earlier production level but is now required	Restrict the activity/production to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

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form/configuration/features then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. For new projects:

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

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b. For expansion projects:

- i. **Where operation/production with expanded capacity has not commenced:**
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

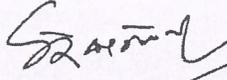
- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Sd/-

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
- iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.


(Dr. Sujit Kumar Bajpayee)
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

F. No. 22-21/2020-IA.III [E 138949]
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003

Dated 28th January, 2022

OFFICE MEMORANDUM

Sub.: Observation of Hon'ble Supreme Court with reference to the SoP dated 7th July 2021 for identification and handling of violation cases under EIA Notification 2006 - reg.

The Ministry issued a Standard Operating Procedure dated 7th July 2021 bearing the file number 22-21/2020-IA.III, for identification and handling of violation cases under EIA Notification 2006 in compliance to order of the Hon'ble National Green Tribunal in Appeal No. 34/2020 (WZ) titled Tanaji B. Gambhire Vs Chief Secretary, Government of Maharashtra. The copy of the SoP is enclosed for ready reference.

2. The SoP was challenged in the Madurai Bench of the High Court of Madras in the matter W.P.(MD) No. 11757 of 2021 titled Fatima Vs Union of India and was interim stayed vide order dated 15th July 2021.

3. Recently, in the Order dated 09th December 2021 in the matter of Civil Appeal Nos. 7576-7577 of 2021 in Electrosteel Steels Limited Vs Union of India and Ors., the Hon'ble Supreme Court of India has *inter-alia* observed the following:

"93. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/ Rules prevailing prior to 7th July, 2021."

4. The copy of the order which is self-explanatory is enclosed herewith for necessary action.

5. This is issued with the approval of the competent authority.


(A K Agrawal)
Director

Encl: As above.

To

1. Chairperson/ Member Secretaries of all Expert Appraisal Committees
2. Chairperson/Member Secretaries of all SEIAAs/SEACs
3. All Officers of IA Division

Copy for information to

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to AS (TK)/JS (SKB)
5. Website, MoEF&CC /Guard file

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 7576-7577 OF 2021
[Arising out of SLP (C.) Nos. 11226-11227 of 2020]

Electrosteel Steels LimitedPetitioner (s)

Versus

Union of India and Ors. Etc.Respondent (s)

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. These Appeals are against an order dated 16th September 2020 passed by a Single Bench of the High Court of Jharkhand in W.P. (C) No.1873 of 2018 and W.P. (C) No. 4850 of 2018, discontinuing the interim orders earlier passed by the High Court, allowing the Appellant to operate its unit under the supervisory regulatory control of the Respondent - Jharkhand State Pollution Control Board, hereinafter referred to as "JSPCB", which had been in force for over two years.

3. The Appellant owns and runs a 1.5 MTPA integrated steel plant in Bokaro District in Jharkhand. The said steel plant in Bokaro, which

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Digitally signed by
Rajni Mukhi
Date: 2024.12.14
17:13:44 IST
Reason:

employs 3,000 regular employees and 7000 contractual employees, produced steel worth Rs.4,200 crores in the financial year 2019-20.

4. The Appellant claims that about 30,000 persons other than those actually employed by the steel plant as regular or contractual employees depend on the steel plant for their livelihood.

5. Corporate Insolvency Resolution Process (CIRP) had commenced against the Appellant under the Insolvency and Bankruptcy Code 2016. As successful Resolution Applicant, Vedanta Ltd. took over the Appellant on or about 4th June 2018 upon payment of Rs.5,320 crores for discharge of its debts.

6. Pollution and consequential deterioration of environment has been assuming alarming proportions, and has become a cause of universal concern. Fumes, smoke, emission of green house gases by use of motors and machines and operation of mills, factories and plants cause environmental degradation.

7. Under the aegis of the United Nations discussions and deliberations have been held to protect and improve environment and prevent pollution.

8. In 1972, the United Nations Conference on the Human Environment was convened in Stockholm to work out ways and means to protect and improve the environment. In course of deliberations, it was felt that there was need to enact law to tackle environmental pollution. India

participated in the conference and strongly voiced environmental concerns.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "*the 1986 Act*", has been enacted as a consequence of decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972.

10. The statement of objects and reasons for enactment of the 1986 Act declares that the Act has been prompted by concern over environment, that has grown the world over, since the sixties.

11. Sub-Section (1) of Section 3 of the 1986 Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

12. Sub-section (2) of Section 3 of the 1986 Act enables the Central Government to take, *inter alia*, the following measures:

"(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of

environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

13. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

“The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

14. Subject to the provisions of the 1986 Act, the Central Government has power under sub-section (1) of section 3 to take 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.

15. Section 5 of the 1986 Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the 1986 Act, the Central Government may, in exercise of its powers and performance of its functions under the 1986 Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

16. In exercise of powers conferred by Sub-Section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 the Central Government issued the Environmental Impact Assessment Notification dated 27th January 1994 directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernisation of any activity or a new project listed in Schedule I of the Notification shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government in accordance with the procedure specified in the Notification.

17. Under Clause (2)(I) of the said Notification, any person who desires to undertake any new project listed in Schedule I is required to submit an application to the Secretary, Ministry of Environment and Forests (MoEF), New Delhi in the pro forma specified in Schedule II, accompanied by a project report which is to include the EIA (Environmental Impact Assessment) Report /Environment Management Plan (EMP) prepared in accordance with the guidelines issued by MoEF. Another Environmental Impact Notification was issued in 2006, for grant of Terms and Environmental Clearance *inter alia* for projects which had started work on site.

18. The EIA Report submitted with the application of the project proponent is to be evaluated and assessed by the Impact Assessment Agency (IAA), that is MoEF, and if deemed necessary, it may consult a Committee of Experts constituted in the manner prescribed in Schedule III. The Committee of Experts shall have full right of entry and inspection of the site. The Impact Assessment Agency is to prepare a set of recommendations based on technical assessment of documents and data, furnished by the project proponent, supplemented by data collected during visits to sites, interaction with the affected population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which EC is given shall, subject to public interest, be made available to the parties concerned or environmental groups on request. The IAA may solicit comments of the public within the specified period by arranging public hearings for that purpose. The public shall, subject to public interest, be provided access, to the summary of the EIA Report/Environment Management Plan (EMP). The clearance granted for commencement of the construction or operation of the plant, is to be valid for five years. Clause IV of the Environmental Impact Assessment Notification provides for the monitoring of the implementation of the conditions of EC and/or the recommendations and conditions laid down by IAA.

19. A minor amendment was made to the said Environmental Impact Assessment Notification dated 27th January 1994, by a Notification dated 10th April 1997, which prescribes a detailed procedure for public hearing.

20. By a notification being S.O. 327(E), dated 10th April 2001, published in the Gazette of India, Extra., Pt.II, Sec.3(ii), dated 12th April 2001, the Central Government has delegated the powers vested in it under Section 5 of the 1986 Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority for the violations of the standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986 subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.

21. On or about 8th January 2007, the Appellant applied to the Ministry of Environment, Forest and Climate Change, Government of India, hereinafter referred to as "MoEF&CC" for grant of EC to establish 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District.

22. In its application, the Appellant stated that 1350 acres of land were required for establishing the said plant at the Mauza South Parbatpur of Chandankiyari Block of Bokaro District and that no forest land was involved in the project.

23. By a letter No. F.No.J-11011/137/2006-1A-II (i) dated 21st February 2008, the Appellant was granted EC. After obtaining EC, the Appellant applied to the JSPCB, for grant of 'Consent to Establish' (CTE) under the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as the Air Pollution Act, and Water (Prevention and Control of Pollution) Act 1974, hereinafter referred to as the Water Pollution Act.

24. On 5th May 2008, the JSPCB granted CTE to the Appellant to establish the 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District. The CTE was granted on the basis of the EC granted by the MoEF&CC.

25. The CTE was extended from time to time till 4th May 2011. Even though CTE was granted to the Appellant to establish a steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District, the Appellant established steel plant in Mauza Bhagabandh in the Chas Block in Bokaro District, 5.3 Kms away from the site for which EC and CTE had been granted.

26. A Circular No.J-11013/41/2006-1A.2(i) dated 22nd January, 2010 was issued by the Ministry of Environment and Forest (MoEF) of the Government of India which provided as follows:

"Instances have come to the notice of this Ministry wherein the project proponents have changed the project site after the said project has been granted environmental clearance or after the public hearing has been held. The project proponents have approached this Ministry to revalidate the environmental clearance so granted without undergoing afresh the procedure prescribed for obtaining environmental clearance. The matter has been considered in the ministry. The change in project site would lead to change in project affected people as well as the

change in study area and the impact zone. As such the Environment Impact Assessment Report and Public Hearing conducted for a particular location cannot be taken valid for the changed location.

Accordingly, it has been decided that any shift in project site location after holding of public hearing will be deemed to be a new proposal and will be appraised afresh as per the procedure prescribed under EIA Notification 2006 provided the respective Expert Appraisal Committee is satisfied that the shift is so minor as to have no change in EIA/EMP, duly recorded in the minutes and prior approval of advisor (In-charge)/SEIAA for Category 'A'/Category 'B' projects respectively is obtained for not holding the public hearing for the changed location afresh.

This issues with the approval of the Competent Authority."

27. By a communication being Reference No.1142 dated 4th May 2010, the District DFO (District Forest Officer) Bokaro requested JSPCB to take action against the Appellant for setting up its integrated steel plant on forest land in Mauza Bhagabandh of Chas Block of Bokaro District, in violation of the Forest Conservation Act 1980 and Indian Forest Act 1927. The DFO, Bokaro reported encroachment of 220.88 acres of notified forest land by the Appellant to JSPCB.

28. It appears that cases had been initiated against the officials of the Appellant under the Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Bihar Public Land Encroachment Act, 1955 which have been quashed by the Jharkhand High Court, by an order dated 25th January 2011.

29. On or about 23rd September 2010 the Appellant applied for Consent to Operate (CTO) under the Air Pollution Act and the Water Pollution Act for its 350 m³ blast furnace. Later on 9th September 2011, the Appellant applied for CTO in respect of its entire plant.

30. By a letter dated 2nd December 2011, addressed to the Appellant, the MoEF confirmed that the lay out of the Appellant's 3 MTPA Integrated Steel Plant was well within the Environment Impact Area and that the affected people had the opportunity to participate in a public hearing.

31. By letter dated 18th May 2012, the JSPCB reported encroachment by the Appellant upon forest land and alleged violation by the Appellant of the Forest Conservation Act, 1980 to the MoEF&CC, New Delhi. The MoEF&CC was also informed of the unauthorized shifting of the integrated steel plant from Mauza South Parbatpur of Chandankiyari Block of Bokaro District to Mauza Bhagabandh of Chas Block of Bokaro District in violation of the conditions of Environment Clearance granted by the MoEC&CC.

32. Pursuant to the report of JSPCB, MoEF&CC issued a Show Cause Notice dated 6th June 2012 to the Appellant under Section 5 of the 1986 Act. The Appellant submitted its reply to the Show Cause Notice on 20th June 2012.

33. On 10th September 2012, the Appellant once again applied to JSPCB for CTO for one year under the Water Pollution Act and Air Pollution Act. According to the Appellant, several reminders were sent to MoEF&CC requesting MoEF&CC to intimate JSPCB of the outcome of the Show Cause

Notice issued to the Appellant. However, JSPCB has not been informed of the decision of MoEF&CC.

34. The Appellant filed a Writ Petition being W.P. No.2247/2012 in the Jharkhand High Court for orders on JSPCB to grant the Appellant CTO. The said writ petition was disposed of by an order dated 5th November 2012, the operative part whereof is set out hereinbelow:-

"Respondent 1& 2 to consider the petitioner's application and as assured by them, if so required, give an opportunity of hearing to the petitioners and after taking into consideration the facts and provisions of law and the related decisions, shall dispose of the petitioner's application within five weeks from the date of receipt/production of a copy of this order."

35. On or about 27th November 2013, the application of the Appellant for CTO was rejected on the ground that the Appellant had shifted the site of its steel Plant and had encroached upon forest land in violation of the Forest Conservation Act, 1980. The operative part of the order dated 27th November 2013 reads:-

"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of Pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."

36. The Appellant filed an application for contempt being Contempt Case (C) No.939 of 2013 in W.P.(C) No.2247 of 2012 in the Jharkhand High Court. Pursuant to an order dated 29th November 2013 in the Contempt Petition, the JSPCB disposed of the applications for grant of CTO to the Appellant.

37. By a letter dated 17th April 2013, the MoEF&CC had called for a status report from the State of Jharkhand in respect of forest land encroached by the Appellant. The Forest Department submitted a report to the MoEF&CC on 13th May, 2014.

38. Thereafter, by a letter dated 20th October 2014, the MoEF&CC, New Delhi directed the Department of Forest, Environment and Climate Change, Government of Jharkhand to take action against the Appellant for violating the provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980. In compliance with the aforesaid order, JSPCB directed the Appellant to close down its plant under Section 31(A) of the Air Pollution Act and Section 33(A) of Water Pollution Act.

39. By a Memo No.521 dated 6th February 2015, the Department of Forest, Environment and Climate Change, Government of Jharkhand directed the DGP, Jharkhand, Ranchi and the Deputy Commissioner, Bokaro to take action against the Appellant in the light of the letter dated 20th October, 2014 of the MoEF&CC, Government of India and to submit an action taken report.

40. The aforesaid order of JSPCB was challenged by the Appellant by filing a Writ Petition being WP(C) No.2033 of 2015 in the Jharkhand High Court. By an order dated 5th February 2016 the High Court set aside the order of the JSPCB holding that the same had been passed in violation of principles of natural justice. The High Court however, held that JSPCB

would be at liberty to pass an order in accordance with law after giving the Appellant an opportunity of hearing.

41. Thereafter, a show cause notice dated 25th April 2016, was issued to the Appellant. The Appellant replied to the show cause notice on 28th September 2016, contending that the Appellant had not set up its plant on any forest land and that all pollution control measures had been taken. However, the Principal Chief Conservator of Forests (PCCF), Jharkhand had by a communication No.2966 dated 8th August 2016 informed JSPCB that the Appellant had encroached forest land. Thereafter JSPCB once again called upon the Appellant to show cause in the light of information provided by the PCCF, Jharkhand. The Appellant by a letter dated 28th September 2016 reiterated that there was no forest land in the plant premises.

42. JSPCB passed an order No.B-319 dated 13th February 2017 disposing of the show cause notice in the light of the direction dated 5th February 2016 of the Jharkhand High Court and the applications for CTO. JSPCB granted CTO to the Appellant which was valid till 31st December, 2017.

43. The MoEF&CC and the State Environment Impact Assessment Authorities had, in the meanwhile been receiving proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of Reference and Environmental Clearance for projects which had started the work on site, expanded the production beyond the limit of

environmental clearance or changed the product mix without obtaining prior environmental clearance.

44. The MoEF&CC deemed it necessary that all entities not complying with the environmental regulation under Environment Impact Assessment Notification, 2006, be brought to comply with the environmental laws in expedient manner, for the purpose of protecting and improving the quality of the environment and reducing environmental pollution.

45. The MoEF&CC deemed it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which would be more damaging to the environment.

46. In furtherance of this objective, the Government of India deemed it essential to establish a process for appraisal of cases of violation of norms, and prescribing such adequate environmental safeguards that would deter violation of the provisions of Environment Impact Assessment Notification, 2006 and ensure that damage to environment was adequately compensated for.

47. In ***Indian Council for Enviro-Legal Action and Ors. v. Union of India and Ors.***¹, the Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting the

1. (1996) 3 SCC 212

environment. This Court affirmed that the power of the Central Government under Section 3 of the 1986 Act was wide and included the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures could also be looked into from the principle "polluter pays."

48. In exercise of power under Section 3(1) and Section 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification being S.O. 804(E) dated 14th March 2017 which provides for grant of ex post facto EC for project proponents who have commenced, continued or completed a project without obtaining EC under the 1986 Act or the EIA notification issued under it.

49. Paragraphs 3, 4 and 5 of the said notification, read as follows :

"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."

50. On or about 24th August 2017, the Appellant applied for CTO for five years. On 13th November 2017, JSPCB issued a Show Cause Notice to the Appellant pointing out alleged contraventions of the conditions of Consent to Operate (CTO) earlier granted to the Appellant. The Appellant was called upon to show cause whether conditions of the CTO had been contravened while the application of the Appellant for CTO for five year was pending.

51. On 23rd November 2017, the Appellant submitted its online reply to the Show Cause Notice showing compliance of the conditions of the CTO.

52. By a communication No.2105 dated 18th December 2017 JSPCB requested MoEF&CC to inform JSPCB of the decision on the show cause notice issued to the Appellant under Section 5 of the 1986 Act for

revocation of the EC for non compliance of the conditions for grant of EC for the integrated plant at Parbatpur, Jharkhand.

53. Aggrieved by the failure of JSPCB to issue/renew the CTO to the Appellant, pursuant to its application made on 24th August 2017, the Appellant filed a writ petition being W.P.(C) No. 1873 of 2018 in the Jharkhand High Court on or about 12th April 2018 seeking directions on the JSPCB to issue CTO to the Appellant.

54. By an order dated 16th July 2018, the High Court directed the JSPCB to take a final decision on the application of renewal/grant of CTO filed by the Appellant on 24th August 2017 within the time stipulated in the said order.

55. The High Court further passed an interim order directing that the Appellant be allowed to operate its unit under the supervisory and regulatory control of the JSPCB, who might carry out periodical check as to adherence by the Appellant of pollution control laws.

56. JSPCB passed an order dated 21st August, 2018, rejecting at that stage the request of the Appellant for CTO, subject to the decision of MoEF&CC on the show cause notice issued to the appellant. The operative part of the said order is set out hereinbelow:

"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."

57. The Appellant, thereafter approached the High Court with a prayer for amendment of Writ Petition No.1873 of 2018. By an order dated 25th August 2018, the High Court allowed the application for amendment of the Writ Petition and directed the respondent to file their response to the amended writ petition. The High Court further directed:-

"10. So far as interim relief is concerned, this court finds that the order passed by the respondent-Jharkhand State Pollution Control Board dated 23.08.2018 appears to be directly dependent on the final decision which is yet to be taken by the Ministry of Environment, Forest & Climate Change on the show cause issued to the petitioner as back as in the year 2012. As per the submission made by the counsel appearing on behalf of Union of India, they are shortly going to take a final decision in the matter after hearing the petitioner. Accordingly the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board is hereby stayed till 27.09.2018 and the interim order dated 16.07.2018 is hereby extended till 27.09.2018.

11. So far as decision of the Ministry of Environment, Forest & Climate Change are concerned, considering the fact that the unit of the petitioner is running unit and large number of employees are working in this unit of the petitioner, this court consider it appropriate that the issue regarding the environmental clearance of the petitioner should be decided at the earliest.

12. It is further observed that it is open to the petitioner to approach the Union of India with their proposal/ application for regularization of the alleged violation, without prejudice to their rights (including right, title, interest, possession and nature of property of the petitioner) and advance submissions before the respondent authority of Union of India pursuant to the show cause notice issued to them dated 6.6.2012 and the appropriate authority may, if possible, simultaneously consider the aforesaid application of the petitioner for regularization along with the show cause reply of the petitioner such that entire dispute is decided and the petitioner may also have a clarity about the fate of its unit. The decision which is to be taken by the Union of India be brought on record by either of the parties by filing supplementary affidavit latest by 25.09.2018.

13. I.A. No. 7610 of 2018 and I.A No. 7613 OF 2018 are hereby disposed of.

14. It is made clear that this court has not gone into the merits of the claim of the petitioner and it will be open to the respondent no 3 to take decision as per law."

58. By the aforesaid order dated 25th August 2018, the High Court directed MoEF to take a decision on the application of the Appellant for EC as also a decision regarding violation by the Appellant of the provisions of EC by encroachment upon forest land by shifting the location of the plant.

59. On 31st August 2018, MoEF&CC issued a show cause notice No. F.No. J-11011/137/2006-1A Pt.II (i) dated 31st August 2018 to the Appellant for violating the provisions of the EC by shifting the location of its plant and encroaching upon forest land.

60. The Respondent No.1 was also accorded personal hearing on 10th September 2018. On 12th September 2018 Mr. Gyanesh Bharti who presided over the personal hearing was transferred from MoEF&CC.

61. On 20th September 2018 the Respondent No.1 issued an order bearing No.F.No.J-11011/137/2006-IA.II(I) revoking the EC of the Appellant on the ground that the Appellant had encroached upon 220 acres of forest land and had shifted the location of its plant from Parbatpur to Bhagabandh, violating the conditions stipulated in the EC.

62. The Appellant filed Writ petition being W.P. (C) No.4850 of 2018 in the Jharkhand High Court challenging the revocation of the EC granted to the Appellant.

63. On 27th September 2018 the High Court passed an interim order staying the operation, implementation and execution of the impugned order dated 20th September 2018. The Court prima facie found that the impugned order, passed in violation of principles of natural justice, had serious repercussions on the unit of the Appellant which was a running unit, and had caused prejudice to the Appellant.

64. On 4th October 2018, the Appellant applied for ex post facto Forest Clearance (FC) without prejudice to its rights and contentions. On 27th November 2019 the Appellant applied for a "revised" EC without prejudice to its rights and contentions. In the meanwhile, the Interim order passed by the High Court on 27th September 2018 was extended from time to time. Such extensions were granted on 10.10.2018, 5.11.2018, 11.12.2018, 8.1.2019, 23.1.2019, 16.5.2019, 25.7.2019 and 17.10.2019.

65. On 17th December 2019, MoEF&CC passed an order according ex post facto in principle approval for the forest diversion/clearance proposal of the Appellant. The operative part of the said order reads:-

"After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee and approval of the same by the competent authority of the MoEF&CC, New Delhi, the Central Government hereby accords ex-post facto 'in-principle' approval under Section -2 of the Forest (Conservation) Act, 1980 for diversion of 184.23 ha of forest land (174.39 ha encroached (ex-post facto) and 9.84 ha virgin land) in favour of M/s Electrosteel Steels Limited in the State of Jharkhand subject to fulfilment of following conditions:-

(i) Legal status of the diverted forest land shall remain unchanged;..."

66. By an order dated 26th February 2020, the Jharkhand High Court directed that the pendency of W.P. (C) No. 4850 of 2018 and W.P. (C) No.1873 of 2018 would not come in the way of consideration by the MoEF&CC of grant or refusal of restoration of EC and it would be open to the Ministry to take appropriate decision in accordance with law. The interim orders in force were extended.

67. Thereafter by a letter dated 2nd March 2020, the Appellant requested MoEF&CC to consider the application of the Appellant for revised EC. In the meanwhile, the interim orders passed by the High Court were further extended. The interim orders were extended by orders passed on 26.2.2020, 7.4.2020 and 29.5.2020.

68. The Writ Petition was called for hearing on 19th June 2020 whereupon it was submitted on behalf of the Respondent No.1 that the revised EC application of the Appellant would be placed before the Expert Appraisal Committee (EAC) for consideration on merit and Violation Committee would decide on the action to be taken against the Appellant for violation of Environment (Protection) Act, 1986.

69. On 6th August 2020 and 7th August 2020, the case of the Appellant was placed before the EAC at its 35th meeting. The Appellant was invited to present its proposal online before the Committee.

70. After detailed deliberation, the EAC appraised the proposal on merits and recommended issuance of Standard Terms of Reference along with Specific Terms of Reference for undertaking Environmental Impact Assessment (EIA) and preparation of Environment Management Plan (EMP). The EAC noted that the plant was a running unit and the EC was subject to the conditions imposed in the Terms of Reference.

71. On 4th September 2020, the Jharkhand High Court extended the interim orders till 8th September 2020 while awaiting response from the Respondents. On 8th September 2020, the High Court reserved orders on the extension of interim orders dated 16th July 2018 and 27th September 2018 while listing the writ petitions for final hearing on 16th September 2020.

72. On 15th September 2020, the Respondent No.1 filed an affidavit stating that it had no objection to extension of the interim orders considering that the steel plant employed a large workforce. At the hearing on 16th September 2020 JSPCB also consented to extension of the interim order. However, the High Court passed the impugned order dated 16th September 2021 dis-continuing the earlier interim orders on, *inter alia*, the following grounds:

- (i) The Expert Appraisal Committee of the MoEF&CC had, after detailed deliberations, found that the Appellant had been in violation of the EIA Notification 2006 and general condition no. (ii) of the EC dated 21.02.2008.
- (ii) The MoEF&CC had while issuing ToR for grant of EC recommended action against the Appellant under Section 19 of

the 1986 Act for past violations. Extension of the interim orders would amount to staying action.

(iii) In ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Others***², this Court had deprecated ex post facto Ecs but passed certain directions in exercise of powers under Article 142 of the Constitution.

73. By an Office Memorandum, being F.No. 22-21/2020-1A III, dated 7th July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for Identification and Handling of violation cases under EIA Notification 2006.

74. The said Office Memorandum, *inter alia*, reads:

"The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/ or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are

free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that " ... **a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the list of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

75. The Standard Operating Procedure formulated by the said Office Memorandum dated 7th July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in ***Alembic Pharmaceuticals*** (supra).
76. In terms of the Standard Operating Procedure, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.
77. By an interim order passed on 15th July 2021 in WP(MD) 11757 of 2021 in ***Fatima vs. Union of India***, the Madurai Bench of Madras High Court has stayed the operation of the Standard Operating Procedure.
78. By an order dated 25th August 2021, MoEF&CC rejected the application of the Appellant for the time being. The application has, in effect, been kept in abeyance.
79. The MoEF apparently did not take any decision on the application of the Appellant for EC, since the Standard Operating Procedure issued by it has been stayed by the Madurai Bench of Madras High Court, by the said order dated 15th July 2021, citing the judgment of this Court in ***Alembic Pharmaceuticals*** (supra).
80. The Appellant has filed an application being I.A No.125221 of 2021 in this appeal seeking directions on the Respondent No.1 to process the Appellant's application dated 5th August 2020 for revised EC.

81. There can be no doubt that the need to comply with the requirement to obtain Environment Clearance is non-negotiable. A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.

82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the

environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

85. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*³ ("Lafarge") reported in (2011) 7 SCC 338:

"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring

3. (2011) 7 SCC 338

exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."

86. In ***Alembic Pharmaceuticals*** (supra) this Court observed:-

"27. The concept of an *ex post facto* EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in *Common Cause* holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an *ex post facto* clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an *ex post facto* clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an *ex post facto* clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

87. *In Alembic Pharmaceuticals* (supra), this Court deprecated ex-post facto clearances, but this Court did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure. This court proceeded to observe and held:-

44. *The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index⁴ report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution⁵. In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures⁶ of pollution in the Ankleshwar area. The CEPI scores for 2013⁷ and 2018⁸ were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.*

45. *Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three*

4. "CEPI"

5. CEPI score - 88.50

6. CEPI score - 85.75

7. CEPI score - 80.93

8. CEPI score - 80.21

industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to the notice of this Court in *Goa Foundation (I) v. Union of India*⁹. Fourth, though in the context of the facts of the case, this Court in *Lafarge Umiam Mining Private Limited v. Union of India*¹⁰ (“*Lafarge*”) has upheld the decision to grant *ex post facto* clearances with respect to limestone mining projects in the State of Meghalaya. In ***Lafarge***, the Court dealt with the question of whether *ex post facto* clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the *ex post facto* clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. “

(Emphasis supplied)

46. After advertng to the decision in ***Lafarge***, another Bench of three learned judges of this Court in *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai*¹¹, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday Umesh Lalit speaking for the Bench held thus:

“19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.”

47. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant's unit and instead held thus:

“20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken

9. (2005) 11 SCC 559

10. (2011) 7 SCC 338

11. (2016) 9 SCC 300

and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. **However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.** If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. **In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today."**

(Emphasis supplied)

48. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.

49. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016."

87. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in *Alembic Pharmaceuticals (supra)*. This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

88. We are of the view that the High Court erred in passing the impugned order, vacating interim orders which had been in force for two years. The impugned order is not in conformity with the principle of proportionality. This is not a case where the steel plant was started without environmental clearance or consent of JSPCB. The Appellant had applied for and obtained environmental clearance to set up an integrated steel plant (3MTPA) on 1350 acres of land at Mauza South Parbatpur, as observed above. Environmental Clearance had been granted on 21st

February 2008 and Consent to Operate had been granted by JSPCB on 5th May 2008.

89. The Appellant established its steel plant in Mauza Bhagaband, 5.3 kms away from the site for which EC and CTE had been granted. It is the contention of the Appellant that the shift is minor and makes no change in the EIA/EMP on the basis of which EC has been granted. The shift did not require fresh public hearing in terms of the Circular dated 22nd January 2010 of the MoEF.

90. As aforesaid, by a letter dated 2.12.2011 addressed to the Appellant, the MoEF confirmed that the steel plant of the Appellant was within the Environment Impact Area and the affected people had the opportunity to air their views in a public hearing. The question is whether the Petitioner was required to obtain fresh prior clearance for shifting or was covered by the exemption under the said Notification dated 22nd January 2010.

91. The Appellant has all along asserted that no part of the premises of the integrated steel plant is in any forest. As such there was no violation of the Indian Forest Act, 1927 or the Forest Conservation Act, 1980. The MoEF had also confirmed that the steel plant in question was well within the Environment Impact Area and the affected people had the opportunity in a public hearing. Be that as it may, whether the shifting of the site has really made any difference from the environmental impact angle requires consideration by the appropriate authority/forum.

92. In any case, the Appellant has duly applied for ex post facto forest clearance approval without prejudice to its rights and contentions that its steel plant is not on forest land and also applied for revised EC. On 17th December 2019, MoEF&CC accorded ex post facto in principle approval to the forest clearance proposal on the recommendations of the Forest Advisory Committee. The application for revised clearance is pending consideration. No final decision has however been taken, ostensibly in view of the interim order passed by the Madras High Court staying the operation of the Standard Operation Procedures issued vide Memorandum dated 7th July 2021.

93. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7th July, 2021.

94. In passing the impugned order the High Court overlooked the consequences of closure of an integrated steel plant with a work force of 300 regular and 700 contractual workers. The High Court also failed to appreciate that the judgment of this Court in ***Alembic Pharmaceuticals*** (supra) was distinguishable on facts. Furthermore, continuance of the interim orders allowing operation of an industrial establishment or even the grant of revised EC to the industrial establishment cannot stand in

the way of action against that establishment for contraventions, including the imposition of penalty, on the principle 'polluter pays'. The scope and effect of Section 32A of the IBC is a different issue. This Court need not examine into the question of whether penal action can be initiated against the Appellant or, whether compensation can be recovered from the Appellant, at this stage. The issue may be decided by the appropriate authority at the appropriate stage when it adjudicates an action for penalization of the Appellant or recovery of compensation from the Appellant. The application of the Appellant for revised EC, CTO etc. shall be considered strictly in accordance with environmental norms.

95. The appeals are allowed. The impugned order is set aside. The Respondent No.1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.

.....J.
[Indira Banerjee]

.....J.
[J.K. Maheshwari]

**New Delhi;
December 9, 2021**

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

ORIGINAL APPLICATION NO. 32 OF 2021(EZ)

IN THE MATTER OF :

ANKUR SHARMA

... Applicant

Versus

STATE OF WEST BENGAL & ORS.

... Respondents

**AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 04 i.e. THE WEST BENGAL
POLLUTION CONTROL BOARD.**

PRITHWISH KUMAR BASU

ADVOCATE

W.B.P.C.B