

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

(Appeal under Section 16 read with Section 18 of the National Green
Tribunal Act, 2010)

APPEAL NO. 36 OF 2020

IN THE MATTER OF:

Larsen & Toubro Limited

....Appellant

Versus

Sanghi Industries Limited & Ors.

....Respondents

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Raj Panjwani
Sr. Advocate

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BRIEF NOTE ON SUDA 2035 Dev. Plan 8.10.2020

RAJ PANJWANI Sr. Adv.

1. An order granting prior Environmental Clearance under the EIA Notification is an purely administrative order. It is an order passed in exercise of the provisions under a delegated subordinate legislation i.e. the EIA Notification. This administrative order is neither a judicial order nor it has the characteristics of subordinate legislation e.g. a notification prescribing pollution parameters. It neither creates nor confers any substantial right.

NGT Act, confers a statutory right of first appeal against such an administrative order under section 16 of the said Act. A first appeal is a continuation of the original proceedings. The said administrative order merges on the adjudication and determination of the appeal with the final order/judgement of the Hon'ble Tribunal. It is this final merged judicial appellate order which is binding and can be stated to have created a substantive right. Consequently, in all those cases where an first appeal has been preferred, the EC can be construed to have been granted on the date of the final adjudication of the first appeal. Cases where no appeal has been filed, the order granting EC would become final on the expiry of the prescribed period of limitation.

Hence, the validity of the administrative order granting EC is to be determined on the governing applicable provisions of law as on the date of its final judicial determination. Its validity shall not be tested on the basis of law as on the date when the administrative

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order granting EC was issued nor as on the date when the application for the grant of EC was presented before the Authority .

2. On 08/10/2020 SUDA published the Sanctioned Development Plan, 2035. Under the said plan the area where the project site is located falls under Industrial Zone General where only non- obnoxious and non- hazardous industries are permitted to be set up. Under the said Regulations 2017, manufacture of cement is prohibited due to the resultant discharge of "Dust, Smoke and solid wastes." One of the main objects of the Development plan is to arrest and contain pollution as on 08/10/2020. However, SIL after grant of EC dt. 23.8.2019 applied to SUDA on 07/09/2019 for obtaining permission, which application is yet pending. The application has been filed for permission for construction of buildings under NIC Code : 410 and not under the applicable code for manufacture of cement i.e. Code:2394 (23941-23942). Even assuming that the said application has been correctly filed, SUDA would decide the said application as per the applicable rules and regulations as on the date when the said application is taken up for consideration.
Consequently, a cement manufacturing plant would not be permissible in an Industrial Zone General Area.
3. SIL possibly has yet not applied for "Consent to Establish" under Section 25 of the Water (Prevention & Control of Pollution) Act and Section 21 of the Air (Prevention & Control of Pollution) Act. The said two Acts on the one hand and EIA Notification, 2006 on the other are separate and independent legal regimes having their distinct respective objectives. Even assuming that SIL has applied for Consent to Establish under the said Acts, the same would be decided as per the applicable governing provisions on the date of its consideration for the reasons already stated in Para (2) above.
4. One of the primary objects of the Development Plan published on 08/10/2020 is to arrest and contain pollution at least as of on the said date. It is obligatory for each of the executive institutions including GPCB to ensure that all their actions, directions and orders are in furtherance of the object and purpose of the said Development Plans.



Raj Panjwani
Sr. Advocate