

Pravir Prabhakar Fadte v. MoEF and Ors (Appeal no. 18/2022)

BRIEF WITTEN SUBMISSIONS
ON BEHALF OF RESPONDENT NO. 3 (PROJECT PROPONENT)

1. The instant appeal seeks to challenge an EC dated 24.01.2022 granted by the MoEFCC to upgrade the blast furnaces of a pig iron plant to enhance production, and to set-up an Oxygen plant.
2. The Appellant has impugned the EC dated 24.01.2022 on various aspects, but restricted its arguments to the following 3 grounds:
 - i. Non consideration of graphite emissions at the plant's present capacity;
 - ii. Violation of Ambient Air Quality (AAQ) norms;
 - iii. Non consideration of non-polluting alternate technology.
3. At the outset, it must be noted that in the course of the arguments, the Appellant has fairly conceded that they do not dispute that due process was followed by the MoEFCC and the EAC. The challenge is only to the non-consideration of the aforesaid 3 aspects.
4. Before dealing with the allegations of the Appellant, it is important to note the threshold for judicial review of an EC, and in particular, the threshold to interfere with the findings and consideration by the EAC, which has been laid down by the Hon'ble Supreme Court. In *Rajeev Suri v. DDA*¹ the Hon'ble Supreme Court held that the standard for interference with findings of the EAC is that of "*total absence of mind*", and that due deference must be shown to a body like the EAC which has domain expertise.

GRAPHITE EMISSION

5. The issue of graphite emissions is squarely *sub judice* before the Hon'ble High Court, at the behest of the very Appellant before this Hon'ble Tribunal. This issue was raised by the Appellant in the Hon'ble High Court first in WP No. 243/2008, wherein the High Court sought for a report from the NEERI on the aspect of graphite particles and its effect on human health and life.² Thereafter, the Appellant raised this issue once again in the Bombay High Court at Goa in WP No. 881/2017,³ which is currently pending adjudication.⁴

¹ 2021 SCC OnLine SC 7 *para 509 at pg. 393 and 529 at 399 of Compilation of Judgments(CoJ)*

² *2 of Convenience Compilation (CC)*

³ *Pg. 93 at 96* (para 4), *99* (para 11), *100 (A) and 155* for prayer h.

⁴ *See* order dated 04.12.2019 *at pg. 326 and* GSPCB report dated 02.07.2021 *at pg. 471*

6. It is of some significance that the pendency of the said writ petition has not been disclosed in the appeal, which amounts to suppression of material facts.
7. Before dealing with the said allegation of graphite emissions, it is pertinent to note that since the High Court is in seisin of this issue, it may not be appropriate for this Hon'ble Tribunal to adjudicate on the same, so as to avoid any conflicting orders as has been held by the Hon'ble Supreme Court in *State of AP v. Raghu Ramakrishna Raju Kanumuru*.⁵ In fact, the Bombay High Court (Nagpur Bench) in *Court on its own motion v. National Highway Authority of India*⁶ has stayed proceedings before this Hon'ble Tribunal arising from an appeal under Sec. 16 of the NGT Act, only because one of the aspects being considered by this Tribunal was pending adjudication before the High Court.
8. Nonetheless, it is pertinent to note that:
 - i. The PP has complied with all directions in WP No. 243/2008. Moreover, the NEERI by a Dec. 2008 report found that there was “*no obvious disease related to graphite exposure*”.⁷
 - ii. The PP continues to comply with all directions in WP No. 881/2017, which is evident from the GSPCB's inspection report dated 23.11.2018⁸, and its affidavits of March 2018⁹ and February 2019.¹⁰
 - iii. The EC itself has been granted after due consideration of this aspect, and also the pending litigation since the EAC was also appraised of this fact, and has consequently, noted the pendency of these proceedings at para 50.1.27(A)(i), and made the EC subject to any orders that may be passed therein.¹¹
9. Furthermore, the PP has in compliance with subsequent directions¹² (dated 14.01.2022) issued by the GSPCB, pursuant to an environmental audit, further upgraded the material of

⁵ 2022 SCC Online 728 (*para 12-14 at 516 of CoJ*)

⁶ 2015 SCC OnLine Bom 6353 (*para 48, 50 at pg. 543 of CoJ*)

⁷ 4 at 76 of CC

⁸ 169-171 of CC

⁹ 162 at 167 of CC

¹⁰ 173 at 181 of CC

¹¹ 760 of CC

¹² 767 of CC

the filter bags to PTFE Teflon Dust Collection Bags, and provided addition hoods for the Blast Furnaces¹³ to reduce the emission of graphite particles.

10. Above all, the EAC after due consideration of this aspect has imposed a specific condition in para 50.1.27(A)(iv)(d) directing the installation of a wind shield to control graphite particles.¹⁴ This too has been installed by the PP and can be confirmed from the GSPCB's inspection report dated 23.06.2022.¹⁵

11. As for the Appellant's reliance on the judgment rendered by this Hon'ble Tribunal in *Vijayaraghava Reddy v. Graphite India* Appeal No. 174/18, the *dicta* in the said judgment is not applicable to the PP since, unlike the industry in that case, the PP has:

- i. Installed necessary stack emission monitoring devices;
- ii. The Dec. 2008 NEERI report has confirmed that graphite particles from the unit do not adversely affect human health and life.

In other words, the said decision turned entirely on the non-compliance of directions for installation of anti-pollution measures by the industry, as is evident from paragraph 2 of the said judgment.

AAQ NORMS

12. The terms of reference issued by the MoEFCC on 06.03.2019¹⁶ required the PP to provide raw ambient air data for 3 months.

13. The NATIONAL AMBIENT AIR QUALITY STANDARDS [2009] (NAAQS) formulated by the CPCB prescribe one standard for daily limits and another for annual limits. The difference between the two limits is that the annual limits can be tested only with readings of a minimum of **104** measurements taken over a period of **1 year** at uniform intervals.¹⁷ As far as PM¹⁰ and PM^{2.5}, while the daily limit for the former is 100, the annual limit is 60, and similarly, the daily limit for the latter is 60, and the annual limit is 40.

14. The basis of the Appellant's claim of violation of annual AAQ norms is an extrapolation of data provided in Ann. X to the EIA report i.e., an extrapolation based on **26**

¹³ See report of GSPCB inspection carried out on 05.04.2023

¹⁴ **718 at 761 of CC**

¹⁵ **822 at 829 of CC**

¹⁶ **182 at 191 of CC (ToR) and 226 at 227 of CC (ToR Compliance)**

¹⁷ **1 of CC**

measurements taken from 11 locations over a period of **3 months only**,¹⁸ and not the minimum 104 measurements over 12 months, as mandated by the NAAQS.

15. As for the annual AAQ data placed on record by the Appellant,¹⁹ the same is a conscious attempt to mislead this Hon'ble Tribunal inasmuch as the data provided is only with respect to 2 locations, which are within the boundary of the unit, and not of all 11 locations around the unit. Pertinently, the PP has obtained data from the surrounding villages under RTI²⁰ (which runs into 32 pages), and the same have been provided in a tabular chart at para 20²¹ of the Respondent's sur-rejoinder dated 14.11.2022. This data clearly demonstrates that all values were within the parameters prescribed under the NAAQS.

16. It is also pertinent to note that the GSPCB other than confirming improvements in the AAQ in its reply of Sept. 2022²², has in an interim report dated 22.06.2020, in fact attributed exceedances in AAQ noticed to "*other anthropogenic activities in and around the area*",²³ and consequently, it would be incorrect to allege violation of norms by the PP without a thorough study to ascertain the source of the alleged exceedances.

AVAILABILITY OF BETTER TECHNOLOGY

17. The PP is currently using the best available technology, and has consistently strived at improving the technology used to reduce pollution. To this end, the PP has engaged the services of IIT Bombay, so as to ascertain the feasibility of alternate technology to decarbonise the process of steel manufacturing, in particular, the use of hydrogen as an alternative to carbon.

18. Furthermore, the PP has always co-operated with the concerned authorities, and made its facilities available for all inspections/ audits, and has complied with all directions for improvements which have been issued in the past including the directions dated 14.01.2022²⁴ issued pursuant to the Environment Audit carried out on 31.08.2021. This is

¹⁸ 309-319 of CC

¹⁹ 833-834 of CC

²⁰ 846 of CC

²¹ pg. 1891 of Respondent's sur-rejoinder dated 14.11.2022.

²² 1683 at 1690 of GSPCB's reply of Sept. 2022

²³ 351 at 352-357 of CC

²⁴ 767 of CC

evident from the report of the GSPCB inspection carried out on 05.04.2023, which records that all directions have been complied with.

19. In fact, NEERI has now been engaged by the GSPCB to carry out a source apportionment study of the unit in question, which is currently in progress.

EAC HAS APPLIED ITS MIND

20. Lastly, it is submitted that the EAC, while recommending the grant of the EC for expansion has considered the aforesaid objections raised by the Appellant in its letter dated 20.03.2021²⁵, which can be seen from the following:

ISSUE	MINUTES OF EAC	PAGES OF CC
Graphite Emission	50.1.26(v)(iv)	760
	50.1.27(A)(iv)(d)	761
AAQ Norms	50.1.11	727
	50.1.26(i)	758

21. Thus, the EAC, which is an expert body, has considered the objections raised, and has only thereafter recommended the grant of an expanded EC. In other words, there is clear application of mind by the EAC, which is an expert body, prior to grant of the EC and consequently, this Hon'ble Tribunal ought not interfere with its findings as held by the Hon'ble Supreme Court in *Rajeev Suri v. DDA*.²⁶

22. Hence, it is humbly submitted that the captioned appeal deserved to be dismissed.

²⁵ 437 of CC

²⁶ 2021 SCC OnLine SC 7 para 509 at pg. 393 and 529 at 399 of CoJ