

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 1343 OF 2024**

IN THE MATTER OF:

Harish Yadav

...Applicant

Versus

State of Uttar Pradesh & Ors.

...Respondents

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Through



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Dated: 06.05.2025

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IN

ORIGINAL APPLICATION No. 1343 of 2024

IN THE MATTER OF:-

HARISH YADAV

...APPLICANT

VERSUS

STATE OF UP & ORS

....RESPONDENT(s)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.14 MINISTRY
OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (MoEF&CC)

MOST RESPECTFULLY SHOWETH:-

I, Dr. S Prabhu working as Scientist-D in the Ministry of Environment, Forest and
Climate Change (MoEF&CC) having office at Indira Paryavaran Bhawan, Jor
Bagh Road, New Delhi-110 003 do hereby solemnly affirm and state as under:

1. That I, in the capacity of Scientist-D in the MoEF&CC, am fully
conversant with facts of the case and competent to swear this affidavit
on behalf of the MoEF&CC.
2. That the instant application has been filed with an allegation that
Respondent No.2 M/s Aggarwal Associates Promoters Ltd. (PP) is
developing the integrated township known as "Aditya World City" on
land of various khasra number falling under the area of Master Plan of
Respondent No.3 Ghaziabad Development Authority (GDA) without



obtaining Environmental Clearance from State Environment Impact Assessment Authority (SEIAA), UP and CTE/CTO from Uttar Pradesh Pollution Control Board (UPPCB) and in violation of environmental norms.

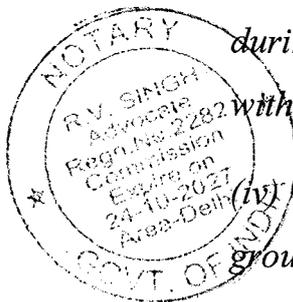
3. Instant application has been filed on the following **GROUND**S:

(i) *Because all standard related to ambient environment quality and emission/effluent as prescribed by the MoEF was not complied with.*

(ii) *Because the respondent No.3 has approved the DPR/layout plan/Construction map without verifying the prior Environment clearance from Respondent No.2 as required under para no. 3.11.10 of GDA Building byelaws 2008;*

(iii) *Because the respondent no.2 discharging the untreated sewage effluent into the open space/natural barsati nala and during the rainy season the sewerage effluent is being mixed with rainwater.*

(iv) *Because the effluent mix with rainwater is recharge the ground water along with toxic element which degrading the water quality of ground water besides effect the environment which is a clear-cut contravention of the order passed by the Hon'ble Supreme Court of India in the case of Hinch Lal Tiwari & Ors Vs Kamla Devi.*



S. Singh

(v) Because respondent no.2 has violated the Water (Prevention and Control of Pollution) Act, 1974 Air (Prevention and Control of Pollution) Act, 1981;

(vi) Because the respondent no.2 has not obtained the permission/clearances from forest department and has fell many green trees, greeneries and shrubs have been removed.

(vii) Because no drainage system and shelter, light, fuel water and solid waste disposal for constructions labours during the construction phase was complied.

(viii) Because the respondent no.2 has not built roof top rainwater harvesting system in the project.

(xi) Because the Respondent No.2 unauthorizedly extracted the ground water for the construction of the project since inception.

(x) Because the Hon'ble Supreme Court of India repeatedly held that the right to live is a fundamental right under article 21 of constitution of India and it includes the Right to enjoyment of pollution free water and air for full enjoyment of life.

(xi) Because no development in the name of unemployment and loss of revenue on the risk or harm to the environment or to human health can be done as life, public health and ecology and priority over unemployment and loss of revenue.

4. Instant application has been filed on the following PRAYERS:



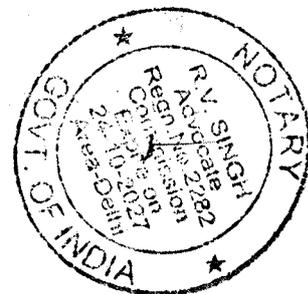
procedure specified in the said EIA Notification, 2006. The entry 8(a) and 8(b) of the Schedule of EIA Notification 2006, as amended provides as follows:

“8(a): Building and Construction projects - >20000 sq. mtrs and < 1,50,000 sq. mtrs. of built-up area require EC.

8(b): Townships and Area Development projects - Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs require EC.”

The aforementioned entries under item 8(a) and 8(b) are categorised as category B projects under the EIA Notification, 2006 and require appraisal by the State Level Expert Appraisal Committees (SEACs) and approved by the State Level Environment Impact Assessment Authorities (SEIAAs). Further, in the absence of a duly constituted SEIAA/SEAC, a category B project shall be considered at the Central Level as category B project. **Copy of the Environmental Impact Assessment Notification, 2006 is annexed as Annexure - R/1.**

6. It is submitted that this answering respondent constitutes SEIAAs/SEACs in respective States/UTs under the provisions of the



EIA Notification, 2006 as amended from time to time, which function as per the provisions of the EIA Notification 2006.

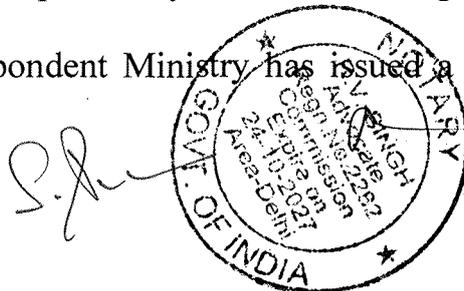
7. It is humbly submitted that the answering respondent vide Notification No. SO 637(E) dated 28.02.2014, has authorized the SEIAAs which have been constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 and delegated the powers under the Section 19 of the said Act. Therefore, SEIAA, Uttar Pradesh is empowered to take necessary action against the violations, if any. **Copy of Notification dated 28.02.2014 is annexed as Annexure-R/2.**
8. That the Answering Respondent Ministry has issued notification vide S.O. 3252(E) dated 22.12.2014 in order to streamline approval procedures for building and construction projects. By the aforesaid notification, certain exemptions were granted subject to compliance with the sustainable environment management guidelines/ safeguards issued vide OM dated 09.06.2015 so as to ensure adequate environmental protection.
9. It is humbly submitted that the aforesaid notification dated 22.12.2014 was challenged by way of Writ Petition No. 3097 of 2016 titled One Earth One Life Vs. MoEF&CC before the High Court of Kerala,



Ernakulam. The aforesaid petition was disposed of on 06.03.2024 on the sole ground that the final notification was different from the draft notification while granting liberty to the (Answering Respondent) Ministry to issue a fresh notification, in accordance with the law. **Copy of order dated 06.03.2024 is annexed as Annexure - R/3.**

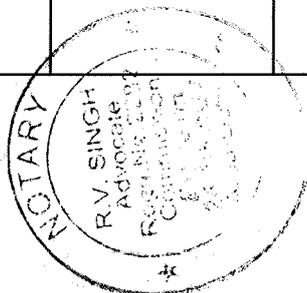
10. It is humbly submitted that Original Application No. 93 of 2024 titled Pranjali Karera vs. Union of India & Ors was also filed before the Hon'ble National Green Tribunal (NGT), Central Zone at Bhopal with a prayer for making General Condition (GC) applicable to item 8 of schedule of the EIA Notification, 2006 in light of the amendment dated 22.12.2014 being quashed by the HC of Kerala at Ernakulam vide its judgment dated 06.03.2024. In the light of judgment of Kerala High Court, the NGT, vide order dated 09.08.2024, inter alia, directed the (Answering Respondent) Ministry, to either comply with the provisions related to the applicability of General Conditions in respect of items 8 (a) and (b) of the Schedule to the EIA notification or to issue a clarificatory notification in this regard. **Copy of order dated 09.08.2024 is annexed as Annexure - R/4.**

11. In compliance to the orders passed by the Hon'ble High Court and NGT, the Answering Respondent Ministry has issued a notification



dated 29.01.2025 (Copy of Notification dated 29.01.2025 is annexed as Annexure -R/5) pertaining to amendment of the item 8 of the schedule of Environment Impact Assessment Notification, 2006, which is as follows:

<i>Project/Activity</i>	<i>Category with threshold limit (Category B)</i>	<i>Conditions, if any</i>
8	<i>Building or Construction projects or Area Development projects and Townships</i>	
8(a)	<i>Building and Construction projects</i> ≥ 20000 sq. m and $< 1,50,000$ sq. m of built-up area	<p><i>The term 'built up area' for the purpose of this notification the built up or covered area on all floors put together, including its basement and other services areas, which are proposed in the building or construction projects.</i></p> <p><i>Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rainwater harvesting and may use recycled materials such as fly ash bricks.</i></p> <p><i>Note 2 – "General Conditions" shall not apply</i></p>



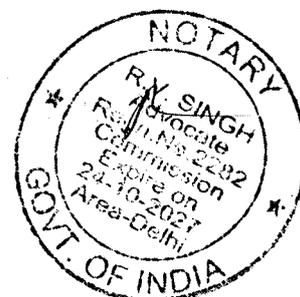
S. Singh

8(b)	Townships and Area Development projects.	Covering an area ≥ 50 ha and or built-up area $\geq 1,50,000$ sq. m	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' project. Note.- "General Conditions" shall not apply.
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The exemptions granted in the notification dated 29.01.2025 are subject to the sustainable environment management as per the guidelines issued vide OM dated 09.06.2015 and the same has been clarified vide OM dated 30.01.2025. **(Copy of OM dated 30.01.2025 is annexed as Annexure -R/6).**

12. It is humbly submitted that the notification dated 29.01.2025 has challenged by way of Writ Petition (C) No. 116 of 2025 by Vanashakti before the Hon'ble Supreme Court of India seeking quashing of the notification dated 29.01.2025 and OM dated 30.01.2025 pertaining to amendment of the item (8) of the schedule of Environment Impact Assessment Notification, 2006. Further, the Hon'ble Supreme Court vide order dated 24.02.2025 has stayed the operation and implementation of the aforesaid notification dated

S. J.



29.01.2025 as well as OM dated 30.01.2025. (Copy of order dated 24.02.2025 is annexed as Annexure - R/7).

CONSENT TO ESTABLISH/CONSENT TO OPERATE

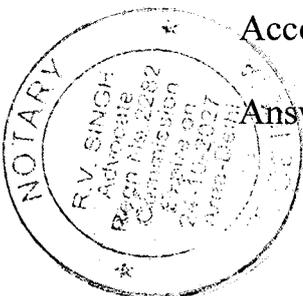
13. That the State Pollution Control Boards/Pollution Control Committees are empowered to take all such measures as are deemed necessary or expedient for the purpose of protection and improving the quality of environment as well as prevention, control and abatement of environmental pollution. The issuance of Consent to Establish and Consent to Operate also comes under the purview of the State Pollution Control Board/ Pollution Control Committees concerned.

PROCEDURE FOR VIOLATION :

14. It is submitted that the Hon'ble Tribunal, vide its order dated 24.05.2021 passed in Appeal No. 34/2020 titled Tanaji B. Gambhire vs. Chief Secretary, Govt. of Maharashtra & Ors., has directed to the Answering Respondent to laid down the SOP for violation cases.

Copy of order dated 24.05.2021 is annexed as Annexure-R/8.

Accordingly, in compliance of the order dated 24.05.2021, the Answering Respondent has issued a SoP for identification and



A handwritten signature in black ink, appearing to be 'S. R.' with a horizontal line extending to the right.

handling of violation cases under EIA Notification, 2006 vide its OM dated 07.07.2021. **Copy of OM dated 07.07.2021 is annexed at Annexure-R/9.**

15.It is submitted that the aforesaid SoP was challenged by Ms. Fatima in Writ Petition (MD) No. 11757 of 2021 before the High Court of Madras at Madurai Bench wherein the Hon'ble High Court has quashed/set aside the OM dated 07/07/2021 vide order dated 30.08.2024. **Copy of the order dated 30.08.2024 is annexed as Annexure-R/10.**

16.It is submitted that the Hon'ble Supreme Court vide its order dated 09.12.2021 passed in Civil Appeal Nos.7576-7577 of 2021 titled as Electrosteel Steels Limited Vs Union of India and Ors., has observed the following:

*“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 07.07.2021. **Copy of the order dated 09.12.2021 is annexed as Annexure-R/11.**”*

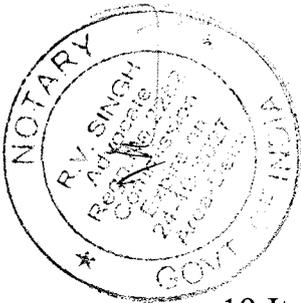
S.R.



17. In view of the aforesaid order passed by the Hon'ble Supreme Court, this Answering Respondent has issued an OM dated 28.01.2022 for circulating the above order of the Hon'ble Supreme Court to all the EACs and SEIAAs/SEACs with the observations of the Hon'ble Supreme Court i.e. violation proposals were appraised in all the States except the State of Tamil Nadu. **Copy of OM dated 28.01.2022 is annexed as Annexure-R/12.**

18. It is submitted that currently, Vanashakti has filed W.P.(C) No. 1394/2023 challenging the SOP dated 07.07.2021 before the Hon'ble Supreme Court of India. The aforesaid matter was heard on 02.01.2024 wherein the Hon'ble Supreme Court has stayed the operation of the SOP dated 07.07.2021 and 28.01.2022. The Hon'ble Supreme Court has inter-alia observed the following:

"(...) Until further orders, there shall be stay of operation of the Office Memoranda dated 7th July, 2021 and 28th January, 2022 issued by the Ministry of Environment, Forest and Climate Change." **Copy of OM dated 02.01.2024 is annexed as Annexure-R/13.**



19. It is submitted that the present counter affidavit may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass

S.R.

appropriate Order(s), direction(s) as deemed fit and proper under the facts and circumstances of the present case.

20. That other/ancillary issues raised in the application under reply do not pertain to the answering respondent. The Answering Respondent seeks leave to make additional submissions, if required, during the course of the proceedings.


DEPONENT

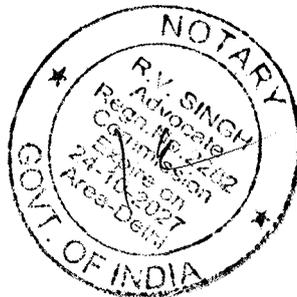
VERIFICATION

(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

- 6 MAY 2025

Verified at _____ on _____ this day of _____, 2025 that the contents of the above affidavit are correct to my knowledge and belief based on official records and nothing material has been concealed therefrom.

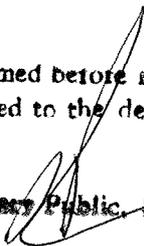
I Identified the deponent/executioner who has signed in my presence




DEPONENT

(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

solemnly affirmed before me, read over & explained to the deponent


Notary Public, DELHI

6 MAY 2025

**(Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii)
MINISTRY OF ENVIRONMENT AND FORESTS
New Delhi 14th September, 2006
Notification**

S.O. 1533(E). - Whereas, a draft notification under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006 and the procedure specified in the notification, by the Central Government or the State or Union territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union territory Administration concerned under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for the purpose of this notification, was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) vide number S.O. 1324 (E) dated the 15th September, 2005 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;

And whereas, copies of the said notification were made available to the public on 15th September, 2005;

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

Now, therefore, in exercise of the powers conferred by sub-section (1) 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 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

¹Includes the territorial waters

2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

3. State Level Environment Impact Assessment Authority:- (1) A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary to be nominated by the State Government or the Union territory Administration concerned.

- (2) The Member-Secretary shall be a serving officer of the concerned State Government or Union territory administration familiar with environmental laws.
- (3) The other two Members shall be either a professional or expert fulfilling the eligibility criteria given in Appendix VI to this notification.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- (4) One of the specified Members in sub-paragraph (3) above who is an expert in the Environmental Impact Assessment process shall be the Chairman of the SEIAA.
- (5) The State Government or Union territory Administration shall forward the names of the Members and the Chairman referred in sub- paragraph 3 to 4 above to the Central Government and the Central Government shall constitute the SEIAA as an authority for the purposes of this notification within thirty days of the date of receipt of the names.
- (6) The non-official Member and the Chairman shall have a fixed term of three years (from the date of the publication of the notification by the Central Government constituting the authority).
- ¹(7) All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:
Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and copy thereof sent to MoEF."

4. Categorization of projects and activities:-

- (i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.
- (ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;
- (iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, *will* require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. ^{II} "In the absence of a duly constituted SEIAA

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

or SEAC, a Category 'B' project shall be considered at Central Level as a Category 'B' project;"

5. Screening, Scoping and Appraisal Committees:-

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.

- (a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;
- (b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitute one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;
- (c) The EAC and SEAC shall be reconstituted after every three years;
- (d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;
- (e) The EAC and SEACs shall function on the principle of collective responsibility. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:-

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-

- Stage (1) Screening (Only for Category 'B' projects and activities)
- Stage (2) Scoping
- Stage (3) Public Consultation
- Stage (4) Appraisal

I. Stage (1) - Screening:

In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2) - Scoping:

- (i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub- group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/Commercial Complexes /Housing) shall not require Scoping and will be appraised on the basis of Form 1/ Form 1A and the conceptual plan.

- (ii) The Terms of Reference (TOR) shall be conveyed to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned within sixty days of the receipt of Form 1. In the case of Category A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for pre-construction activities .If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.
- (iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

III. Stage (3) - Public Consultation:

- (i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:-

- (a) modernization of irrigation projects (item 1(c) (ii) of the Schedule).

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- (b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.
 - (c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.
- III “(cc) maintenance dredging provided the dredged material shall be disposed within port limits.”;
- III “(d) All Building or Construction projects or Area Development projects (which do not contain any category ‘A’ projects and activities) and Townships (item 8(a) and 8(b) in the Schedule to the notification).”
- e) all Category ‘B2’ projects and activities.
 - f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.
- (ii) The Public Consultation shall ordinarily have two components comprising of:-
- (a) a public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;
 - (b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.
- (iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45(forty five) of a request to the effect from the applicant.
- (iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

- (v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.
- (vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.
- (vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- (i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.
- (ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.
- (iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V ;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

8. Grant or Rejection of Prior Environmental Clearance (EC):

- (i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.
- (ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.
- (iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

- (iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.
- (v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.
- (vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

9. Validity of Environmental Clearance (EC):

The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.

10. Post Environmental Clearance Monitoring:

- IV (i)(a) In respect of Category 'A' project, it shall be mandatory for the project proponent to make public the environment clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently.
- (b) In respect of Category 'B' projects, irrespective of its clearance by MoEF / SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of the MoEF website where it is displayed.
- (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Governmental portal.
- (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.";
- IV (ii) It shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.
- IV (iii) All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority.

11. Transferability of Environmental Clearance (EC):

A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases.

12. Operation of EIA Notification, 1994, till disposal of pending cases:

From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O.60 (E) dated 27th January, 1994 is hereby superseded, except in suppression of the things done or omitted to be done before such suppression to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule I , or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

SCHEDULE

(See paragraph 2 and 7)

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
^v 1(a)	(i) Mining of minerals. (ii) Slurry pipelines (coal lignite and other ores) passing through national parks / sanctuaries / coral reefs, ecologically sensitive areas.	≥ 50 ha. of mining lease area in respect of non-coal mine lease. > 150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area All projects.	<50 ha ≥ 5 ha .of mining lease area in respect of non-coal mine lease. ≤ 150 ha ≥ 5 ha of mining lease area in respect of coal mine lease.	General Condition shall apply. Note: Mineral prospecting is exempted.”;
1(b)	Offshore and onshore oil and gas exploration, development & production	All projects		<u>Note</u> Exploration Surveys (not involving drilling) are exempted provided the concession areas have got previous clearance for physical survey
1(c)	River Valley projects	(i) ≥ 50 MW hydroelectric power generation; (ii) ≥ 10,000 ha. of culturable command area	(i) < 50 MW ≥ 25 MW hydroelectric power generation; (ii) < 10,000 ha. of culturable command area	^v “General Condition shall apply. Note: Irrigation projects not involving submergence or inter-state domain shall be appraised by the SEIAA as Category ‘B’ Projects.”;

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(1)	(2)	(3)	(4)	(5)
1(d)	Thermal Power Plants	^v " ≥ 500 MW (coal / lignite / naphtha & gas based); ≥ 50 MW (Pet coke diesel and all other fuels including refinery residual oil waste except biomass); ≥ 20 MW (based on biomass or non hazardous municipal waste as fuel).";	< 500 MW (coal / lignite / naphtha & gas based); <50 MW ≥ 5MW (Pet coke, diesel and all other fuels including refinery residual oil waste except biomass); ≥ 20 MW > 15 MW (based on biomass or non hazardous municipal waste as fuel).";	^v "General Condition shall apply. Note: (i) Power plant up to 15 MW, based on biomass and using auxiliary fuel such as coal / lignite / petroleum products up to 15% are exempt. (ii) Power plant up to 15 MW, based on non-hazardous municipal waste and using auxiliary fuel such as coal / lignite / petroleum products up to 15% are exempt. (iii) Power plants using waste heat boiler without any auxiliary fuel are exempt.";
1(e)	Nuclear power projects and processing of nuclear fuel	All projects		
2		Primary Processing		
2(a)	Coal washeries	≥ 1 million ton/annum throughput of coal	<1million ton/annum throughput of coal	General Condition shall apply (If located within mining area the proposal shall be appraised together with the mining proposal)
2 (b)	Mineral beneficiation	≥ 0.1million ton/annum mineral throughput	< 0.1million ton/annum mineral throughput	General Condition shall apply (Mining proposal with Mineral beneficiation shall be appraised together for grant of clearance)

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

3				
Materials Production				
(1)	(2)	(3)	(4)	(5)
3(a)	Metallurgical industries (ferrous & non ferrous)	a) Primary metallurgical industry All projects b) Sponge iron manufacturing ≥ 200TPD c) Secondary metallurgical processing industry All toxic and heavy metal producing units ≥ 20,000 tonnes /annum	Sponge iron manufacturing <200TPD Secondary metallurgical processing industry i.) All toxic and heavy metal producing units <20,000 tonnes /annum ii.) All other non –toxic secondary metallurgical processing industries >5000 tonnes/annum	^v “General condition shall apply. Note: (i) The recycling industrial units registered under the HSM Rules, are exempted. (ii) In case of secondary metallurgical processing industrial units, those projects involving operation of furnaces only such as induction and electrical arc furnace, submerged arc furnace, and cupola with capacity more than 30,000 tonnes per annum (TPA) would require environmental clearance. (iii) Plant / units other than power plants (given against entry no. 1(d) of the schedule), based on municipal solid waste (non-hazardous) are exempted.”
3 (b)	Cement plants	≥ 1.0 million tonnes/annum production capacity	<1.0 million tonnes/annum production capacity. All Stand alone grinding units	General Condition shall apply
4				
Materials Processing				
(1)	(2)	(3)	(4)	(5)
4(a)	Petroleum refining industry	All projects	-	-
4(b)	Coke oven plants	≥2,50,000 tonnes/annum	<2,50,000 & ≥25,000 tonnes/annum	^v “General Condition shall apply.”
4(c)	Asbestos milling and asbestos based products	All projects	-	-

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(1)	(2)	(3)	(4)	(5)
4(d)	Chlor-alkali industry	≥300 TPD production Capacity or a unit located out side the notified industrial area/ estate	√ “(i) All projects irrespective of the size, if located in a Notified Industrial Area/ Estate. (ii) <300 tonnes per day (TPD) and located outside a Notified Industrial Area/ Estate.”	√ “General as well as specific condition shall apply. No new Mercury Cell based plants will be permitted and existing units converting to membrane cell technology are exempted from this notification.”
4(e)	Soda ash industry	All projects	-	-
4(f)	Leather/skin/hide processing industry	New projects outside the industrial area or expansion of existing units out side the industrial area	All new or expansion of projects located within a notified industrial area/ estate	√ “General as well as specific condition shall apply.”
5		Manufacturing / Fabrication		
5(a)	Chemical fertilizers	√ “All projects except Single Super Phosphate.”	√ “Single Super Phosphate.”	-
5(b)	Pesticides industry and pesticide specific intermediates (excluding formulations)	All units producing technical grade pesticides	-	-
5(c)	Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)	All projects -	-	-
5(d)	Manmade fibers manufacturing	Rayon	Others	General Condition shall apply
5(e)	Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)	Located out side the notified industrial area/ estate -	Located in a notified industrial area/ estate	√ “General as well as specific condition shall apply.”

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(1)	(2)	(3)	(4)	(5)
5(f)	Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)	Located out side the notified industrial area/ estate	Located in a notified industrial area/ estate	^v "General as well as specific condition shall apply."
5(g)	Distilleries	(i) All Molasses based distilleries (ii) All Cane juice/ non-molasses based distilleries ≥ 30 KLD	All Cane juice / non-molasses based distilleries - <30 KLD	General Condition shall apply
5(h)	Integrated paint industry	-	All projects	General Condition shall apply
5(i)	Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp with out bleaching	Pulp manufacturing and Pulp & Paper manufacturing industry	Paper manufacturing industry without pulp manufacturing	General Condition shall apply
5(j)	Sugar Industry	-	≥ 5000 tcd cane crushing capacity	General Condition shall apply
5(k)	^v Omitted			
6	Service Sectors			
6(a)	Oil & gas transportation pipe line (crude and refinery/ petrochemical products), passing through national parks / sanctuaries / coral reefs / ecologically sensitive areas including LNG Terminal	All projects		-

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(1)	(2)	(3)	(4)	(5)
6(b)	Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)	-	All projects	General Condition shall apply
7	Physical Infrastructure including Environmental Services			
7(a)	Air ports	v "All projects including airstrips, which are for commercial use."	-	v "Note: Air strips, which do not involve bunkering/ refueling facility and or Air Traffic Control, are exempted."
7(b)	All ship breaking yards including ship breaking units	All projects	-	-
7©	Industrial estates/ parks/ complexes/ areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.	If at least one industry in the proposed industrial estate falls under the Category A, entire industrial area shall be treated as Category A, irrespective of the area. Industrial estates with area greater than 500 ha. and housing at least one Category B industry.	Industrial estates housing at least one Category B industry and area <500 ha. Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B.	v "Genral as well as special conditions shall apply. Note: 1. Industrial Estate of area below 500 ha. and not housing any industry of Category 'A' or 'B' does not require clearance. 2. If the area is less than 500 ha. but contains building and construction projects > 20,000 Sq. mts. And or development area more than 50 ha it will be treated as activity listed at serial no. 8(a) or 8(b) in the Schedule, as the case may be."
7(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	All integrated facilities having incineration & landfill or incineration alone	All facilities having land fill only	General Condition shall apply

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(1)	(2)	(3)	(4)	(5)
7(e)	^v "Ports, harbours, break waters, dredging."	≥ 5 million TPA of cargo handling capacity (excluding fishing harbours)	< 5 million TPA of cargo handling capacity and/or ports/ harbours ≥10,000 TPA of fish handling capacity	^v "General Condition shall apply. Note: 1. Capital dredging inside and outside the ports or harbors and channels are included; 2. Maintenance dredging is exempt provided it formed part of the original proposal for which Environment Management Plan (EMP) was prepared and environmental clearance obtained."
7(f)	Highways	i) New National High ways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	^v " i) All State Highway Project; and ii) State Highway expansion projects in hilly terrain (above 1,000 m AMSL) and or ecologically sensitive areas."	General Condition shall apply. Note: Highways include expressways."
7(g)	Aerial ropeways	^{v(xvi)(a)} "(i) All projects located at altitude of 1,000 mtr. And above. (ii) All projects located in notified ecologically sensitive areas."	^{v(xvi)(b)} "All projects except those covered in column (3)."	General Condition shall apply
7(h)	Common Effluent Treatment Plants (CETPs)		All projects	General Condition shall apply
7(i)	Common Municipal Solid Waste Management Facility (CMSWMF)		All projects	General Condition shall apply
8		Building /Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥20000 sq.mtrs and <1,50,000 sq.mtrs. of built-up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects.		Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq .mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

Note:-**V(xvii) "General Condition (GC):**

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.Ts sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

Specific Condition (SC):

If any Industrial Estate/Complex / Export processing Zones /Special Economic Zones/Biotech Parks / Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre –defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates /complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate).

[No. J-11013/56/2004-IA-II (I)]
(R.CHANDRAMOHAN)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

APPENDIX I
(See paragraph – 6)
FORM 1

VI(a) “(I) Basic Information

Serial Number	Item	Details
1.	Name of the project/s	
2.	S. No. in schedule	
3.	Proposed capacity/area/length/tonnage to be handled/command area/lease area/number of wells to be drilled	
4.	New/Expansion/Modernization	
5.	Existing Capacity/Area etc.	
6.	Category of Project i.e. 'A' or 'B'	
7.	Does it attract the general condition? If Yes, please specify.	
8.	Does it attract the specific condition? If Yes, please specify.	
9.	Location	
	Plot/Survey/Khasra No.	
	Village	
	Tehsil	
	District	
	State	
10.	Nearest railway station/airport along with distance in kms.	
11.	Nearest Town, city, District Headquarters along with distance in kms.	
12.	Village Panchayats, Zilla Parishad, Municipal Corporation, Local body (complete postal addresses with telephone nos. to be given)	
13.	Name of the applicant	
14.	Registered Address	
15.	Address for correspondence:	
	Name	
	Designation (Owner/Partner/CEO)	
	Address	
	Pin Code	
	E-mail	
	Telephone No.	
	Fax No.	
16	Details of Alternative Sites examined, if any. Location of these sites should be shown on a topo sheet.	Village-District-State 1. 2. 3.
17.	Interlinked Projects	
18	Whether separate application of interlinked project has been submitted?	

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

19.	If yes, date of submission	
20.	If no, reason	
21.	Whether the proposal involves approval/clearance under: If yes, details of the same and their status to be given. (a) The Forest (Conservation) Act, 1980 ? (b) The Wildlife (Protection) Act, 1972 ? (c) The C.R.Z. Notification, 1991 ?	
22.	Whether there is any Government Order/Policy relevant/ relating to the site ?	
23.	Forest land involved (hectares)	
24.	Whether there is any litigation pending against the project and/or land in which the project is propose to be set up ? (a) Name of the Court. (b) Case No. (c) Orders/directions of the Court, if any and its relevance with the proposed project.	

(II) Activity

1. **Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)**

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Clearance of existing land, vegetation and buildings?		
1.3	Creation of new land uses?		
1.4	Pre-construction investigations e.g. bore houses, soil testing?		
1.5	Construction works?		
1.6	Demolition works?		
1.7	Temporary sites used for construction works or housing of construction workers?		
1.8	Above ground buildings, structures or earthworks including linear structures, cut And fill or excavations		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

4. Production of solid wastes during construction or operation or decommissioning (MT/month)

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
4.1	Spoil, overburden or mine wastes		
4.2	Municipal waste (domestic and or commercial wastes)		
4.3	Hazardous wastes (as per Hazardous Waste Management Rules)		
4.4	Other industrial process wastes		
4.5	Surplus product		
4.6	Sewage sludge or other sludge from effluent treatment.		
4.7	Construction or demolition wastes		
4.8	Redundant machinery or equipment		
4.9	Contaminated soils or other materials		
4.10	Agricultural wastes		
4.11	Other solid wastes		

5. Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources.		
5.2	Emissions from production processes		
5.3	Emissions from materials handling including storage or transport		
5.4	Emissions from construction activities including plant and equipment		
5.5	Dust or odours from handling of materials including construction materials, sewage and waste		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

1.30	Loss of native species or genetic diversity?		
1.31	Any other actions?		

2. Use of Natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply):

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
2.1	Land especially undeveloped or agricultural land (ha)		
2.2	Water (expected source & competing users) unit: KLD		
2.3	Minerals (MT)		
2.4	Construction material – stone, aggregates, sand / soil (expected source – MT)		
2.5	Forests and timber (source – MT)		
2.6	Energy including electricity and fuels (source, competing users) Unit: fuel (MT), energy (MW)		
2.7	Any other natural resources (use appropriate standard units)		

3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health.

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
3.1	Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)		
3.2	Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)		
3.3	Affect the welfare of people e.g. by changing living conditions?		
3.4	Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.,		
3.5	Any other causes		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

4. Production of solid wastes during construction or operation or decommissioning (MT/month)

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
4.1	Spoil, overburden or mine wastes		
4.2	Municipal waste (domestic and or commercial wastes)		
4.3	Hazardous wastes (as per Hazardous Waste Management Rules)		
4.4	Other industrial process wastes		
4.5	Surplus product		
4.6	Sewage sludge or other sludge from effluent treatment.		
4.7	Construction or demolition wastes		
4.8	Redundant machinery or equipment		
4.9	Contaminated soils or other materials		
4.10	Agricultural wastes		
4.11	Other solid wastes		

5. Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources.		
5.2	Emissions from production processes		
5.3	Emissions from materials handling including storage or transport		
5.4	Emissions from construction activities including plant and equipment		
5.5	Dust or odours from handling of materials including construction materials, sewage and waste		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

5.6	Emissions from incineration of waste		
5.7	Emissions from burning of waste in open air (e.g. slash materials, construction debris)		
5.8	Emissions from any other sources		

6. Generation of Noise and Vibration, and Emissions of Light and Heat:

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
6.1	From operation of equipment e.g. engines, ventilation plant, crushers		
6.2	From industrial or similar processes		
6.3	From construction or demolition		
6.4	From blasting or piling		
6.5	From construction or operational traffic		
6.6	From lighting or cooling systems		
6.7	From any other sources		

7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea:

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
7.1	From handling, storage, use or spillage of hazardous materials		
7.2	From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)		
7.3	By deposition of pollutants emitted to air into the land or into water		
7.4	From any other sources		
7.5	Is there a risk of long term build up of pollutants in the environment from these sources?		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

8. Risk of accidents during construction or operation of the Project, which could affect human health or the environment

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
8.1	From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances		
8.2	From any other causes		
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?		

9. Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
9.1	Lead to development of supporting. ities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: • Supporting infrastructure (roads, power supply, waste or waste water treatment, etc.) • housing development • extractive industries • supply industries • other		
9.2	Lead to after-use of the site, which could have an impact on the environment		
9.3	Set a precedent for later developments		
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(III) Environmental Sensitivity

S.No.	Areas	Name/ Identity	Aerial distance (within 15 km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value		
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests		
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, esting, foraging, resting, over wintering, migration		
4	Inland, coastal, marine or underground waters		
5	State, National boundaries		
6	Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas		
7	Defence installations		
8	Densely populated or built-up area		
9	Areas occupied by sensitive man-made land uses (<i>hospitals, schools, places of worship, community facilities</i>)		
10	Areas containing important, high quality or scarce Resources (<i>ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals</i>)		
11	Areas already subjected to pollution or environmental damage. (<i>those where existing legal environmental standards are exceeded</i>)		
12	Areas susceptible to natural hazard which could cause the project to present environmental Problems (<i>earthquakes, subsidence, landslides, erosion, Flooding or extreme or adverse climatic conditions</i>)		

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(IV). Proposed Terms of Reference for EIA studies

^{VI(b)} "I hereby given undertaking that the data and information given in the application and enclosures are true to the best of my knowledge and belief and I am aware that if any part of the data and information submitted is found to be false or misleading at any stage, the project will be rejected and clearance give, if any to the project will be revoked at our risk and cost."

Date: _____

Place: _____

Signature of the applicant
With Name and Full Address
(Project Proponent/Authorised Signatory)

NOTE:

1. The projects involving clearance under Coastal Regulation Zone Notification, 1991 shall submit with the application a C.R.Z. map duly demarcated by one of the authorized agencies, showing the project activities, w.r.t. C.R.Z. (at the stage of TOR) and the recommendations of the State Coastal Zone Management Authority (at the stage of EC). Simultaneous action shall also be taken to obtain the requisite clearance under the provisions of the C.R.Z. Notification, 1991 for the activities to be located in the CRZ.
2. The projects to be located within 10 km of the National Prks, Sancturries, Biosphere Reserves, Migratory Corridors of Wile Animals, the project proponenet shall submit the map duly authenticated by Chief Wildlife Warden showing these features vis-à-vis the project location and the recommendations or comments of the Chief Wildlife Warden thereon (at the stage of EC)."
3. All correspondence with the Ministry of Environment & Forests including aubmission of application for TOR/Environmental Clearance, subsequent clarifications, as may be required from time to time, participation in the EAC Meeting on behalf of the project proponenet shall be made by the authorized signatory only. The authorized signatory should also submit a document in support of his claim of being and authorized signatory for the specific project."

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

APPENDIX II
(See paragraph 6)

FORM-1 A (only for construction projects listed under item 8 of the Schedule)

CHECK LIST OF ENVIRONMENTAL IMPACTS

(Project proponents are required to provide full information and wherever necessary attach explanatory notes with the Form and submit along with proposed environmental management plan & monitoring programme)

1. LAND ENVIRONMENT

(Attach panoramic view of the project site and the vicinity)

- 1.1. Will the existing landuse get significantly altered from the project that is not consistent with the surroundings? (Proposed landuse must conform to the approved Master Plan / Development Plan of the area. Change of landuse if any and the statutory approval from the competent authority be submitted). Attach Maps of (i) site location, (ii) surrounding features of the proposed site (within 500 meters) and (iii) the site (indicating levels & contours) to appropriate scales. If not available attach only conceptual plans.
- 1.2. List out all the major project requirements in terms of the land area, built up area, water consumption, power requirement, connectivity, community facilities, parking needs etc.
- 1.3. What are the likely impacts of the proposed activity on the existing facilities adjacent to the proposed site? (Such as open spaces, community facilities, details of the existing landuse, disturbance to the local ecology).
- 1.4. Will there be any significant land disturbance resulting in erosion, subsidence & instability? (Details of soil type, slope analysis, vulnerability to subsidence, seismicity etc may be given).
- 1.5. Will the proposal involve alteration of natural drainage systems? (Give details on a contour map showing the natural drainage near the proposed project site)
- 1.6. What are the quantities of earthwork involved in the construction activity-cutting, filling, reclamation etc. (Give details of the quantities of earthwork involved, transport of fill materials from outside the site etc.)

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- 1.7. Give details regarding water supply, waste handling etc during the construction period.
- 1.8. Will the low lying areas & wetlands get altered? (Provide details of how low lying and wetlands are getting modified from the proposed activity)
- 1.9. Whether construction debris & waste during construction cause health hazard? (Give quantities of various types of wastes generated during construction including the construction labour and the means of disposal)

2. WATER ENVIRONMENT

- 2.1. Give the total quantity of water requirement for the proposed project with the breakup of requirements for various uses. How will the water requirement met? State the sources & quantities and furnish a water balance statement.
- 2.2. What is the capacity (dependable flow or yield) of the proposed source of water?
- 2.3. What is the quality of water required, in case, the supply is not from a municipal source? (Provide physical, chemical, biological characteristics with class of water quality)
- 2.4. How much of the water requirement can be met from the recycling of treated wastewater? (Give the details of quantities, sources and usage)
- 2.5. Will there be diversion of water from other users? (Please assess the impacts of the project on other existing uses and quantities of consumption)
- 2.6. What is the incremental pollution load from wastewater generated from the proposed activity? (Give details of the quantities and composition of wastewater generated from the proposed activity)
- 2.7. Give details of the water requirements met from water harvesting? Furnish details of the facilities created.
- 2.8. What would be the impact of the land use changes occurring due to the proposed project on the runoff characteristics (quantitative as well as qualitative) of the area in the post construction phase on a long term basis? Would it aggravate the problems of flooding or water logging in any way?

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- 2.9. What are the impacts of the proposal on the ground water? (Will there be tapping of ground water; give the details of ground water table, recharging capacity, and approvals obtained from competent authority, if any)
- 2.10. What precautions/measures are taken to prevent the run-off from construction activities polluting land & aquifers? (Give details of quantities and the measures taken to avoid the adverse impacts)
- 2.11. How is the storm water from within the site managed?(State the provisions made to avoid flooding of the area, details of the drainage facilities provided along with a site layout indication contour levels)
- 2.12. Will the deployment of construction labourers particularly in the peak period lead to unsanitary conditions around the project site (Justify with proper explanation)
- 2.13. What on-site facilities are provided for the collection, treatment & safe disposal of sewage? (Give details of the quantities of wastewater generation, treatment capacities with technology & facilities for recycling and disposal)
- 2.14. Give details of dual plumbing system if treated waste used is used for flushing of toilets or any other use.

3. VEGETATION

- 3.1. Is there any threat of the project to the biodiversity? (Give a description of the local ecosystem with it's unique features, if any)
- 3.2. Will the construction involve extensive clearing or modification of vegetation? (Provide a detailed account of the trees & vegetation affected by the project)
- 3.3. What are the measures proposed to be taken to minimize the likely impacts on important site features (Give details of proposal for tree plantation, landscaping, creation of water bodies etc along with a layout plan to an appropriate scale)

4. FAUNA

- 4.1. Is there likely to be any displacement of fauna- both terrestrial and aquatic or creation of barriers for their movement? Provide the details.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- 4.2. Any direct or indirect impacts on the avifauna of the area? Provide details.
- 4.3. Prescribe measures such as corridors, fish ladders etc to mitigate adverse impacts on fauna

5. AIR ENVIRONMENT

- 5.1. Will the project increase atmospheric concentration of gases & result in heat islands? (Give details of background air quality levels with predicted values based on dispersion models taking into account the increased traffic generation as a result of the proposed constructions)
- 5.2. What are the impacts on generation of dust, smoke, odorous fumes or other hazardous gases? Give details in relation to all the meteorological parameters.
- 5.3. Will the proposal create shortage of parking space for vehicles? Furnish details of the present level of transport infrastructure and measures proposed for improvement including the traffic management at the entry & exit to the project site.
- 5.4. Provide details of the movement patterns with internal roads, bicycle tracks, pedestrian pathways, footpaths etc., with areas under each category.
- 5.5. Will there be significant increase in traffic noise & vibrations? Give details of the sources and the measures proposed for mitigation of the above.
- 5.6. What will be the impact of DG sets & other equipment on noise levels & vibration in & ambient air quality around the project site? Provide details.

6. AESTHETICS

- 6.1. Will the proposed constructions in any way result in the obstruction of a view, scenic amenity or landscapes? Are these considerations taken into account by the proponents?
- 6.2. Will there be any adverse impacts from new constructions on the existing structures? What are the considerations taken into account?
- 6.3. Whether there are any local considerations of urban form & urban design influencing the design criteria? They may be explicitly spelt out.
- 6.4. Are there any anthropological or archaeological sites or artefacts nearby? State if any other significant features in the vicinity of the proposed site have been considered.

7. SOCIO-ECONOMIC ASPECTS

- 7.1. Will the proposal result in any changes to the demographic structure of local population? Provide the details.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- 7.2. Give details of the existing social infrastructure around the proposed project.
- 7.3. Will the project cause adverse effects on local communities, disturbance to sacred sites or other cultural values? What are the safeguards proposed?

8. BUILDING MATERIALS

- 8.1. May involve the use of building materials with high-embodied energy. Are the construction materials produced with energy efficient processes? (Give details of energy conservation measures in the selection of building materials and their energy efficiency)
- 8.2. Transport and handling of materials during construction may result in pollution, noise & public nuisance. What measures are taken to minimize the impacts?
- 8.3. Are recycled materials used in roads and structures? State the extent of savings achieved?
- 8.4. Give details of the methods of collection, segregation & disposal of the garbage generated during the operation phases of the project.

9. ENERGY CONSERVATION

- 9.1. Give details of the power requirements, source of supply, backup source etc. What is the energy consumption assumed per square foot of built-up area? How have you tried to minimize energy consumption?
- 9.2. What type of, and capacity of, power back-up to you plan to provide?
- 9.3. What are the characteristics of the glass you plan to use? Provide specifications of its characteristics related to both short wave and long wave radiation?
- 9.4. What passive solar architectural features are being used in the building? Illustrate the applications made in the proposed project.
- 9.5. Does the layout of streets & buildings maximise the potential for solar energy devices? Have you considered the use of street lighting, emergency lighting and solar hot water systems for use in the building complex? Substantiate with details.
- 9.6. Is shading effectively used to reduce cooling/heating loads? What principles have been used to maximize the shading of Walls on the East and the West and the Roof? How much energy saving has been effected?
- 9.7. Do the structures use energy-efficient space conditioning, lighting and mechanical systems? Provide technical details. Provide details of the transformers and motor efficiencies, lighting intensity and air-conditioning load assumptions? Are you using CFC and HCFC free chillers? Provide specifications.
- 9.8. What are the likely effects of the building activity in altering the micro-climates? Provide a self assessment on the likely impacts of the proposed construction on

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

creation of heat island & inversion effects?

- 9.9. What are the thermal characteristics of the building envelope? (a) roof; (b) external walls; and (c) fenestration? Give details of the material used and the U-values or the R values of the individual components.
- 9.10. What precautions & safety measures are proposed against fire hazards? Furnish details of emergency plans.
- 9.11. If you are using glass as wall material provides details and specifications including emissivity and thermal characteristics.
- 9.12. What is the rate of air infiltration into the building? Provide details of how you are mitigating the effects of infiltration.
- 9.13. To what extent the non-conventional energy technologies are utilised in the overall energy consumption? Provide details of the renewable energy technologies used.

10. Environment Management Plan

The Environment Management Plan would consist of all mitigation measures for each item wise activity to be undertaken during the construction, operation and the entire life cycle to minimize adverse environmental impacts as a result of the activities of the project. It would also delineate the environmental monitoring plan for compliance of various environmental regulations. It will state the steps to be taken in case of emergency such as accidents at the site including fire.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

APPENDIX III

(See paragraph 7

GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESMENT DOCUMENT

S.NO	EIA STRUCTURE	CONTENTS
1.	Introduction	<ul style="list-style-type: none"> • Purpose of the report • Identification of project & project proponent • Brief description of nature, size, location of the project and its importance to the country, region • Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)
2.	Project Description	<ul style="list-style-type: none"> • Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following: <ul style="list-style-type: none"> • Type of project • Need for the project • Location (maps showing general location, specific location, project boundary & project site layout) • Size or magnitude of operation (incl. Associated activities required by or for the project) • Proposed schedule for approval and implementation • Technology and process description • Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose • Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope) • Assessment of New & untested technology for the risk of technological failure

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

3.	Description of the Environment	<ul style="list-style-type: none"> • Study area, period, components & methodology • Establishment of baseline for valued environmental components, as identified in the scope • Base maps of all environmental components
4.	Anticipated Environmental Impacts & Mitigation Measures	<ul style="list-style-type: none"> • Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final decommissioning or rehabilitation of a completed project • Measures for minimizing and / or offsetting adverse impacts identified • Irreversible and Irretrievable commitments of environmental components • Assessment of significance of impacts (Criteria for determining significance, Assigning significance) • Mitigation measures
5.	Analysis of Alternatives (Technology & Site)	<ul style="list-style-type: none"> • In case, the scoping exercise results in need for alternatives: • Description of each alternative • Summary of adverse impacts of each alternative • Mitigation measures proposed for each alternative and • Selection of alternative
6.	Environmental Monitoring Program	<ul style="list-style-type: none"> • Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)
7.	Additional Studies	<ul style="list-style-type: none"> • Public Consultation • Risk assessment • Social Impact Assessment. R&R Action Plans
8.	Project Benefits	<ul style="list-style-type: none"> • Improvements in the physical infrastructure • Improvements in the social infrastructure

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

		<ul style="list-style-type: none"> • Employment potential –skilled; semi-skilled and unskilled • Other tangible benefits
9.	Environmental Cost Benefit Analysis	If recommended at the Scoping stage
10.	EMP	<ul style="list-style-type: none"> • Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA
11	Summary & Conclusion (This will constitute the summary of the EIA Report)	<ul style="list-style-type: none"> • Overall justification for implementation of the project • Explanation of how, adverse effects have been mitigated
12.	Disclosure of Consultants engaged	<ul style="list-style-type: none"> • The names of the Consultants engaged with their brief resume and nature of Consultancy rendered

APPENDIX III A

(See paragraph 7)

CONTENTS OF SUMMARY ENVIRONMENTAL IMPACT ASSESSMENT

The Summary EIA shall be a summary of the full EIA Report condensed to ten A-4 size pages at the maximum. It should necessarily cover in brief the following Chapters of the full EIA Report: -

1. Project Description
2. Description of the Environment
3. Anticipated Environmental impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) . (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

APPENDIX IV

(See paragraph 7)

PROCEDURE FOR CONDUCT OF PUBLIC HEARING

1.0 The Public Hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or in its close proximity District-wise, by the concerned State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC).

2.0 The Process:

2.1 The Applicant shall make a request through a simple letter to the Member Secretary of the SPCB or Union Territory Pollution Control Committee, in whose jurisdiction the project is located, to arrange the public hearing within the prescribed statutory period. In case the project site is covering more than one District or State or Union Territory, the public hearing is mandated in each District, State or Union Territory in which the project is located and the applicant shall make separate requests to each concerned SPCB or UTPCC for holding the public hearing as per this procedure.

2.2 The Applicant shall enclose with the letter of request, at least 10 hard copies and an equivalent number of soft (electronic) copies of the draft EIA Report with the generic structure given in Appendix III including the Summary Environment Impact Assessment report in English and in the official language of the state/local language, prepared strictly in accordance with the Terms of Reference communicated after Scoping (Stage-2). Simultaneously the applicant shall arrange to forward copies, one hard and one soft, of the above draft EIA Report along with the Summary EIA report to the following authorities or offices, within whose jurisdiction the project will be located:

- (a) District Magistrate/District collector/Deputy commissioner/s
- (b) Zila Parishad or Municipal Corporation or Panchayats Union
- (c) District Industries Office
- (d) Urban Local Bodies (ULBs) / PRIs Concerned / Development authorities.
- (d) Concerned Regional Office of the Ministry of Environment and Forests

2.3 On receiving the draft Environmental Impact Assessment report, the abovementioned authorities except the Regional Office of MoEF, shall arrange to widely publicize it within their respective jurisdictions requesting the interested persons to send their comments to the concerned regulatory authorities. They shall also make available the draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the Public Hearing is over.

2.4 The SPCB or UTPCC concerned shall also make similar arrangements for giving publicity about the project within the State/Union Territory and make available the Summary of the draft Environmental Impact Assessment report (Appendix III A) for

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

inspection in select offices or public libraries or any other suitable location etc. They shall also additionally make available a copy of the draft Environmental Impact Assessment report to the above five authorities/offices as given in para 2.2.

3.0 Notice of Public Hearing:

3.1 The Member-Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7(seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent, and advertise the same in one major National Daily and one Regional vernacular Daily / Official State Language. A minimum notice period of 30(thirty) days shall be provided to the public for furnishing their responses;

3.2 The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing. In places where the newspapers do not reach, the Competent Authority should arrange to inform the local public about the public hearing by other means such as by way of beating of drums as well as advertisement / announcement on radio / television.

3.3 No postponement of the date, time, venue of the public hearing shall be undertaken, unless some untoward emergency situation occurs and then only on the recommendation of the concerned District Magistrate/District collector/Deputy Commissioner, the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Committee;

3.4 In the above exceptional circumstances, fresh date, time and venue for the public consultation shall be decided by the Member – Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate/District collector/Deputy Commissioner and notified afresh as per procedure under 3.1 above.

4.0 Supervision and Presiding over the Hearing:

4.1 The District Magistrate/District collector/Deputy Commissioner or his or her representative not below the rank of an Additional District Magistrate assisted by a representative of SPCB or UTPCC, shall Supervise and preside over the entire public hearing process.

5.0 Videography

5.1 The SPCB or UTPCC shall arrange to video film the entire proceedings. A copy of the videotape or a CD shall be enclosed with the public hearing proceedings while Forwarding it to the Regulatory Authority concerned.

6.0 Proceedings

6.1 The attendance of all those who are present at the venue shall be noted and annexed with the final proceedings.

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- 6.2 There shall be no quorum required for attendance for starting the proceedings.
- 6.3 A representative of the applicant shall initiate the proceedings with a presentation on the project and the Summary EIA report.
- 6.4 Persons present at the venue shall be granted the opportunity to seek information or clarifications on the project from the Applicant. The summary of the public hearing proceedings accurately reflecting all the views and concerns expressed shall be recorded by the representative of the SPCB or UTPCC and read over to the audience at the end of the proceedings explaining the contents in the local/vernacular language and the agreed minutes shall be signed by the District Magistrate/District collector/Deputy Commissioner or his or her representative on the same day and forwarded to the SPCB/UTPCC concerned.
- 6.5 A Statement of the issues raised by the public and the comments of the Applicant shall also be prepared in the local language or the Official State language, as the case may be, and in English and annexed to the proceedings:
- 6.6 The proceedings of the public hearing shall be conspicuously displayed at the office of the Panchyats within whose jurisdiction the project is located, office of the concerned Zila Parishad, District Magistrate/District collector/Deputy Commissioner, and the SPCB or UTPCC . The SPCB or UTPCC shall also display the proceedings on its website for general information. Comments, if any, on the proceedings which may be sent directly to the concerned regulatory authorities and the applicant concerned.
- 7.0 Time period for completion of public hearing**
- 7.1 The public hearing shall be completed within a period of 45 (forty five) days from date of receipt of the request letter from the Applicant. Thereafter the SPCB or UTPCC concerned shall sent the public hearing proceedings to the concerned regulatory authority within 8(eight) days of the completion of the public hearing. Simultaneously, a copy will also be provided to the project proponent. The applicant may also directly forward a copy of the approved public hearing proceedings to the regulatory authority concerned along with the final Environmental Impact Assessment report or supplementary report to the draft EIA report prepared after the public hearing and public consultations incorporating the concerns expressed in the public hearing along with action plan and financial allocation, item-wise, to address those concerns.”.
- 7.2 If the SPCB or UTPCC fails to hold the public hearing within the stipulated 45(forty five) days, the Central Government in Ministry of Environment and Forests for Category 'A' project or activity and the State Government or Union Territory Administration for Category 'B' project or activity at the request of the SEIAA, shall engage any other agency or authority to complete the process, as per procedure laid down in this notification.

APPENDIX –V

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

(See paragraph 7)

PROCEDURE PRESCRIBED FOR APPRAISAL

1. The applicant shall apply to the concerned regulatory authority through a simple communication enclosing the following documents where public consultations are mandatory:

- Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy]
- A copy of the video tape or CD of the public hearing proceedings
- A copy of final layout plan (20 copies)
- A copy of the project feasibility report (1 copy)

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the Members of the EAC /SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1or Form 1A and scheduled date of the EAC /SEAC meeting for considering the proposal.

3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance.”

4. Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents / details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC /SEAC meeting for considering the project proposal.

6. The minutes of the EAC /SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533 (E), dated 14th September, 2006 and amended vide S.O. 1737 (E), dated the 11th October, 2007.

APPENDIX VI

(See paragraph 5)

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

COMPOSITION OF THE SECTOR/ PROJECT SPECIFIC EXPERT APPRAISAL COMMITTEE (EAC) FOR CATEGORY A PROJECTS AND THE STATE/UT LEVEL EXPERT APPRAISAL COMMITTEES (SEACs) FOR CATEGORY B PROJECTS TO BE CONSTITUTED BY THE CENTRAL GOVERNMENT

1. The Expert Appraisal Committees (EAC(s) and the State/UT Level Expert Appraisal Committees (SEACs) shall consist of only professionals and experts fulfilling the following eligibility criteria:

Professional: The person should have at least (i) 5 years of formal University training in the concerned discipline leading to a MA/MSc Degree, or (ii) in case of Engineering /Technology/Architecture disciplines, 4 years formal training in a professional training course together with prescribed practical training in the field leading to a B.Tech/B.E./B.Arch. Degree, or (iii) Other professional degree (e.g. Law) involving a total of 5 years of formal University training and prescribed practical training, or (iv) Prescribed apprenticeship/article ship and pass examinations conducted by the concerned professional association (e.g. Chartered Accountancy),or (v) a University degree , followed by 2 years of formal training in a University or Service Academy (e.g. MBA/IAS/IFS). In selecting the individual professionals, experience gained by them in their respective fields will be taken note of.

Expert: A professional fulfilling the above eligibility criteria with at least 15 years of relevant experience in the field, or with an advanced degree (e.g. Ph.D.) in a concerned field and at least 10 years of relevant experience.

Age: Below 70 years. However, in the event of the non-availability of /paucity of experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed up to 75 years

2. The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields /disciplines. In the event that persons fulfilling the criteria of "Experts" are not available, Professionals in the same field with sufficient experience may be considered:

- **Environment Quality Experts:** Experts in measurement/monitoring, analysis and interpretation of data in relation to environmental quality
- **Sectoral Experts in Project Management:** Experts in Project Management or Management of Process/Operations/Facilities in the relevant sectors.
- **Environmental Impact Assessment Process Experts:** Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process
- **Risk Assessment Experts**
- **Life Science Experts in floral and faunal management**
- **Forestry and Wildlife Experts**

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b) , (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006

- **Environmental Economics Expert with experience in project appraisal**
 - 3. The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However the Chairperson may co-opt an expert as a Member in a relevant field for a particular meeting of the Committee.
 - 4. The Chairperson shall be an outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector.
 - 5. The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman /Chairperson.
 - 6. A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.
 - 7. The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.
 - 8. The Chairman / Members may not be removed prior to expiry of the tenure without cause and proper enquiry.
-



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Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

I; II; III (i), (ii); IV (a), (b); V (i), (ii), (iii)(a), (b), (c), (iv), (v), (vi) (a), (b), (vii), (viii) (a), (b), (ix), (x), (xi), (xii) (a), (b), (xiii), (xiv) (a), (b), (xv) (a), (b), (xvi) (a), (b), (xvii); VI (a), (b); VII & VIII of the Notification, S.O. 3067(E) dated 01.12.2009 of the Ministry of Environment and Forests, (Published in the Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii), No. 2002] New Delhi, Tuesday, November 1, 2009; an amendment to EC notification S.O.1533(E) dated 14.09.2006



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 28 फरवरी, 2014

का.आ. 637(अ).—केंद्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 23 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम की धारा 5 के अधीन इसमें निहित शक्तियों को पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उप-धारा (3) के अधीन केंद्रीय सरकार द्वारा गठित किए गए सभी राज्य और संघराज्यक्षेत्र पर्यावरण समाघात प्राधिकरणों (जिन्हें इसमें इसके पश्चात् उक्त प्राधिकरण कहा गया है) को उक्त प्राधिकरणों द्वारा अपनी अधिकारिता के भीतर परियोजनाओं या क्रिया कलापों को जारी पर्यावरण अनापत्तियों की शर्तों के अतिक्रमण की दशा में परियोजना प्रस्तावकों को कारण बताओ नोटिस जारी करने तथा इस शर्त के अधीन कि केंद्रीय सरकार शक्तियों के ऐसे प्रत्यायोजन का प्रतिसंहरण कर सकेगी या उक्त अधिनियम की धारा 5 के उपबंधों को स्वयं अवलंब ले सकेगी, यदि केंद्रीय सरकार की राय में लोक हित में ऐसी कार्यवाही आवश्यक है, यदि अपेक्षित हो तो अतिक्रमणों के लिए उक्त परियोजना प्रस्तावकों को ऐसी पर्यावरण अनापत्तियों को उन्हें प्रास्थगित रखने या वापस लिए जाने हेतु निदेश जारी करने की शक्तियों का प्रत्यायोजन करती है।

[सं. जे-11013/2/2013-आई ए (आई)]

अजय त्यागी, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 28th February, 2014

S.O. 637(E).—In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under section 5 of the said Act to all the State and Union Territory Environment Impact Assessment Authorities (Hereinafter referred to as the said Authorities) constituted by the Central Government under sub-section (3) of section 3 of Environment (Protection) Act, 1986, to issue show cause notice to project proponents in case of violation of the conditions of the environment clearances issued by the said Authorities to projects or activities within their jurisdiction and to issue directions to the said project proponents for keeping such environment clearances in abeyance or withdrawing them, if required, for violations, subject to the condition that the Central Government may revoke such delegations 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.

[No. J-11013/2/2013-IA. (I)]

AJAY TYAGI, Jt. Secy.

अधिसूचना

नई दिल्ली, 28 फरवरी, 2014

का.आ. 638(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 19 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त की धारा के प्रयोजन के लिए इससे उपाबद्ध उस सारणी के स्तंभ (3) में उनमें से प्रत्येक के सामने उल्लिखित अधिकारिता के साथ उस सारणी के स्तंभ (2) में उल्लिखित प्राधिकरण या अधिकारी को प्रातिकृत करती है:

सारणी

क्रम संख्यांक	प्राधिकरण/अधिकारी	अधिकारिता
(1)	(2)	(3)
1.	पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) के अधीन केंद्रीय सरकार द्वारा गठित राज्य या संघ राज्यक्षेत्र स्तर पर्यावरण समाघात प्राधिकरण (एस.ई.आई.ए.ए.)	संपूर्ण राज्य या संघ राज्यक्षेत्र
2.	पर्यावरण और वन मंत्रालय (एम.ओ.ई.एफ.) के किन्हीं प्रादेशिक कार्यालयों में तैनात कोई निदेशक, वन संरक्षक या अपर प्रधान मुख्य वन संरक्षक	पर्यावरण और वन मंत्रालय द्वारा यथा-विनिश्चित प्रादेशिक कार्यालय की अधिकारिता

[सं. जे-11013/2/2013-आई ए (आई)]

अजय त्यागी, संयुक्त सचिव

NOTIFICATION

New Delhi, the 28th February, 2014

S.O. 638(E).—In exercise of the powers conferred by clause (a) of section 19 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby authorises the Authority or officer mentioned in column (2) of the Table hereto for the purpose of the said section with the jurisdiction mentioned against each of them in column (3) of that Table:

TABLE

S. No.	Authority/Officer	Jurisdiction
(1)	(2)	(3)
1.	State or Union Territory level Environment Impact Assessment Authority (SEIAA) constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.	Whole of State or Union Territory
2.	Any Director, Conservator of Forests or Additional Principal Chief Conservator of Forests Posted in any of the Regional Offices of the Ministry of Environment and Forests (MoEF).	Jurisdiction of the Regional Office as decided by the Ministry of Environment and Forests

[No. J-11013/2/2013-IA. (I)]

AJAY TYAGI, Jt. Secy.


(डॉ. एस. प्रभु)
(Dr. S. PRABHU)वैज्ञानिक 'डी' / Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 6TH DAY OF MARCH 2024 / 16TH PHALGUNA, 1945

WP(C) NO. 3097 OF 2016

PETITIONER/S:

ONE EARTH ONE LIFE
AGED 57 YEARS
REPRESENTED BY ITS LEGAL CELL DIRECTOR, SRI.TONY
THOMAS K., IRUMBAKACHOLA, MANNARKAD P.O.,
PALAKKAD DISTRICT.
BY ADVS.
SRI.RAJAN VISHNURAJ
SRI.P.CHANDRASEKHAR
SRI.V.HARISH
RENJITH THAMPAN (SR.)

RESPONDENT/S:

- 1 MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE
CHANGE
FORESTS AND CLIMATE CHANGE, PARYAVARAN BHAVAN,
CGO COMPLEX, LODHI ROAD, NEW DELHI - 110 003,
REPRESENTED BY ITS SECRETARY.
- 2 STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE,
PALLIMUKKU, PETTAH P.O., THIRUVANANTHAPURAM - 695
024.
BY ADVS.
SHRI.BABU P.L., CGC
MANU S., DSG OF INDIA
S. BIJU
V. TEKCHAND, SR. GP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06.03.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

A. J. Desai, C. J.

The question involved in this public interest litigation is ‘whether a notification can be issued by the Government different than the draft notification issued for the purpose involved therein?’.

2. The petitioner, an organization registered under the Travancore-Cochin Scientific, Literary and Charitable Societies Registration Act, 1955, working with the sole intention to protect and improve the forests and safeguard the environment, challenged Ext. P1 notification dated 22.12.2014 issued by the Ministry of Environment, Forests and Climate Change on various grounds, but mainly on the ground that the notification is contrary to the draft notification issued on 11.09.2014 and the observation in the notification that no objections or suggestions were received by the Department in response to the draft notification is factually incorrect.

3. Though notice was issued by this Court, no counter



affidavit came to be filed on behalf of the respondents for a considerably long time. Thereafter, a Division Bench of this Court passed the following order on 08.09.2020:-

“Though orders were passed in the year 2018 directing the respondents to respond to the prayers sought for and though on several occasions, time was also granted by this court, no counter affidavit has been filed to the writ petition from 2016 onwards.

2. Mr.R.Prasanthkumar, learned Central Government Counsel for the respondents seeks some more time to file counter affidavit. Though considerable time has been granted for the above said purpose, even a statement/counter affidavit is not filed.

3. Mr.V.Harish, learned counsel for the petitioner submitted that on account of non-grant of stay of the impugned notification, several buildings have been constructed without any environmental clearance. It is also brought to the notice of this court that under similar circumstances, taking note of the failure in filing the counter affidavit despite considerable time being granted, High Court of Karnataka has granted interim stay of the impugned notification No.3252(E) dated 22.12.2014. Learned counsel for the petitioner also submitted that when the present writ



petition came up for hearing, after perusal of the files produced by the Ministry of Environment, Forest and Climate Change, New Delhi, a Hon'ble Division Bench of this court noticed that there was a letter of the Ministry of Environment, Forest and Climate Change, addressing the Law Ministry, accepting the mistake in the impugned notification and on the directions of the Division Bench, copy of the said letter was also furnished to the learned counsel for the petitioner.

4. On the above said aspect, learned counsel for the petitioner is directed to produce a copy of the letter of Ministry of Environment, Forest and Climate Change, New Delhi addressed to the Law Department. He is further directed to produce a copy of the order of stay granted by the High Court of Karnataka.”

4. Thereafter, the matter was again called by the Division Bench on 17.09.2020 and the following order passed by which a stay came to be granted against the modification to the definition of built up area brought about by Ext. P1 notification dated 22.12.2014;

“The writ petition is filed by a voluntary organisation challenging an amendment to the Environmental Impact



Assessment Notification dated 22.12.2014 produced as Ext. P1 issued by the Ministry of Environment, Forest and Climate Change, Government of India, New Delhi.

2. The grievance of the petitioner is that vide Ext.P1, the first respondent has modified the definition of 'built up area' providing exemptions to clause 8(a) and (b) from the application of general conditions contained under the Notification in question. It is also the case of the petitioner that the impugned order is in contravention of sub-Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 ('Rules, 1986' for brevity). With the above backdrop, the petitioner seeks to quash Ext.P1 notification to the extent to which it inserts an amended Note that tinkers the impact and scheme of the amending Notification No. SO1533(E) dated 14.09.2006 issued under sub-Rule (3) of Rules, 1986, by inter alia modifying/diluting the definition of 'built up area' and thus, providing exemption to clause (8)(a) by way of Note 1 and further to the extent to which the amended Notification exempts the entries under clause 8(a) and (b) from the application of general conditions contained under the original EIA Notification, 2006, and for other consequential reliefs.

3. When the matter came up for admission on 27.01.2016, respondents were granted four weeks' time to file counter affidavit and thereafter, the case was being listed



periodically. On 05.10.2016, this court has granted three weeks' time as a last chance to file counter affidavit, if any, and further the Ministry of Environment was directed to place on record the files relating to the decision making process. Even though such a peremptory direction was issued, no counter was filed in spite of periodical postings of the case. On 14.06.2018, at the request of the respondents, four weeks' time was again granted by this court and in spite of the same, it was not filed. Thereupon, on 31.07.2018, when the matter was posted, the Standing Counsel sought further time for additional instructions for a period of three weeks and the same was granted as a last chance. On 27.05.2019, the learned Standing Counsel for the Government of India submitted before the Court that he has received instructions and had undertaken to file the counter affidavit within three weeks. Accordingly, the matter was adjourned for a further period of three weeks. Subsequently, when the matter was posted, there was no representation for the respondents and therefore, the case was adjourned. The case was posted before us on 29.05.2020 and it was adjourned to 16.06.2020 at the request of the respondents. On 16.06.2020, again time was sought for for filing counter affidavit and accordingly, two weeks' time was granted, on which day it was recorded that the counsel for the respondent submitted that counter affidavit has been sent for filing and due to Pandemic Covid -19, there is some delay.



Accordingly, time was extended by a further period of two weeks to file the counter affidavit and the case was posted to 14.08.2020. On 14.08.2020, time was again sought and posted the case to 08.09.2020. On 08.09.2020, a detailed order was passed by this Court expressing dissatisfaction due to the non-compliance of the directions to file counter affidavit. However, the matter was posted to this day. Today also, no counter affidavit is filed. However a statement is filed by the counsel and submitted that the statement filed is not authenticated by the concerned authority and the same was filed on telephonic instructions. Learned counsel for the petitioner has produced additional documents along with I.A. No. 2 of 2020, inter alia various orders passed by this Court, the National Green Tribunal, Principal Bench, New Delhi and other notifications/order issued by the Government of India etc..

4. We have heard the respective counsel for the purpose of interim orders since the interim orders was being pressed for the Counsel for the petitioner on the ground that in the guise of Ext. P1 notification, permits are granted in absolute violation of the Environment (Protection) Act, and the original EIA Notification issued in the year 2006. it is also pointed out that the drastic amendment to section 8(a) was brought without an appropriate draft notification, which is a mandatory requirement under the notification issued by the Government of India and therefore, Ext. P1 notification



to that extent cannot be sustained and so also, the same is in violation of the sub-Rule (3) of Rule 5 of the) Rules, 1986. Learned counsel representing the central Government Counsel submitted that further time is required to place the counter affidavit and make submissions in respect of the contentions advanced by the petitioner

5. We have evaluated the rival submissions and is of the opinion that the subject matter requires serious consideration, since we find that there is some force prima facie in the contentions advanced by the petitioner. Therefore, the balance of convenience requires that undue advantage is not taken by the builders by carrying out constructions, in the guise of that part of Ext.P1 notification, which is seriously under challenge being violative of the Notification of the Government of India and the Rules, 1986. Therefore, we are of the opinion that in order to protect the environmental issues, an interim order is granted effective from today onwards. Therefore, there will be a stay of Ext. P1 notification to the extent of modification by the definition of built up area provided to clause 8(a) by way of Note 1 to the effect that the projects or activities shall not include industrial shed, school, college, hostel for Educational Institutions, but such buildings shall ensure environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials, such as fly ash, bricks, for a period of two months.”



5. Thereafter, the matter was listed for final hearing. Ultimately, on 10.01.2024, a counter affidavit was filed by the respondents to which there is no rejoinder.

6. The case put forth by the petitioner is that the 1st respondent Ministry of Environment, Forests and Climate Change, by issuing a draft notification dated 11.09.2014, had called upon the persons interested in making any objection or suggestion to the proposed amendment to the original notification dated 14.09.2006 issued by the Central Government with respect to the requirement of getting environment clearance for different types of construction. It is the case of the petitioner that, in spite of receiving several suggestions and objections to the draft notification, the respondent Department issued final notification under Rule 5 of the Environment (Protection) Rules, 1986, stating that no objections or suggestions were received by the Department.

7. Learned Senior Counsel appearing for the petitioner would submit that, for the first time, by filing a counter affidavit in



the month of January 2024, the respondents tried to clarify that there was a typographical error in issuing the notification dated 22.12.2014, stating that no objections or suggestions were received. He would submit that, even though suggestions or objections were received, as admitted by the respondent Department, there is no discussion about the same in the final notification. He would further submit that, even otherwise, the final notification is totally different from the draft notification earlier issued on 11.09.2014. He would submit that, in the draft notification, it is specifically mentioned that the project or activities covered under the notification will be residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks, Information Technology / Software Development Units / Parks, whereas by the final notification, certain buildings like industrial sheds, schools, colleges and hostel for educational institutions are excluded, which was not the intention of the Department while issuing the draft notification. He therefore would submit that, on both these grounds, the notification dated



22.12.2014 is required to be quashed and set aside.

8. He would further submit that, under Section 23 of the General Clauses Act, 1897, if any changes are to be made after previous publication of rules or bye-laws, certain conditions are required to be followed and the most important condition is to invite objections from the public at large. He would submit that, publishing a draft notification inviting objections or suggestions and thereafter, issuing final notification totally different from the draft notification, would vitiate the process, since there was no occasion for the public to know about the changes made to the final notification. It is submitted that, even in the absence of any objections or suggestions to the draft notification, the Government cannot issue a different final notification.

9. Relying upon a decision of the Bombay High Court in **Avinash Ramakrishna Kashiwar and Others v. State of Maharashtra and Others [AIR 2015 NOC 535]** in PIL No. 72 of 2013 dated 10.12.2014, learned Senior Counsel would submit that the Bombay High Court, on a similar set of facts, quashed and



set aside a final notification which was different from the draft notification. Reliance is also placed upon a decision of this Court in **Kerala State Road Transport Corporation v. Saju Varkey and Others [2018 (4) KHC 617]**. He therefore would submit that the writ petition requires to be allowed on these grounds.

10. On the other hand, learned Central Government Counsel would submit that, since there was a mistake on the part of the authority while issuing the final notification dated 22.12.2014, in stating that no objections or suggestions were received to the draft notification, they tried to correct the same by informing the Ministry of Law and Justice. However, the Legislative Department of the Ministry of Law and Justice by communication dated 29.09.2016, informed that it is not possible to amend the notification. By taking us through the counter affidavit, he would submit that the objections received by the Department have been considered and thereafter, the notification has been issued. In answer to the contention regarding the change in the final notification, he would submit that, earlier, almost all the buildings



having specified built up area were required to obtain environmental clearance certificate. However, buildings like industrial sheds, schools, colleges and hostel for educational institutions have been exempted by final notification. He would submit that, the change was brought about considering the nature of activity carried out in these buildings. Therefore, there is no adverse effect on the public at large as far as the environment is concerned. He would submit that, under Rule 5 of the Environment (Protection) Rules, 1986, the Government is empowered to modify the Rules and therefore, the petition may be dismissed.

11. We have heard the learned Advocates appearing for the respective parties.

12. The draft notification issued on 11.09.2014 reads as under:-

**“MINISTRY OF ENVIRONMENT, FORESTS AND
CLIMATE CHANGE**



NOTIFICATION

New Delhi, the 11th September, 2014

S.O. 2319(E). The following draft notification further to amend the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1553(E), dated 14th September, 2006 which the Central Government proposes to issue, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), is hereby published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 for the information of the public likely to be affected thereby, and notice is hereby given that the said notification will be taken into consideration by the Central Government on or after the expiry of sixty days from the date on which copies of the Gazette of India containing this notification are made available to the public;

Any person interested in making any objection or suggestion on the proposals contained in the draft notification may do so in writing within the period so specified through post to the Secretary, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110 003 or electronically at email address: ad.raju@nic.in



Draft Notification

In the Schedule to the said notification, for items 8(a) and 8(b), and the entries relating thereto, the following items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8		Building / Construction projects / Area Development projects and Townships		
8(a)	Building and Construction Projects		≥ 20000 sq.mtrs and $< 1,50,000$ sq.mtrs of built-up area#	The built up area for the purpose of this Notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.
				Note: (i) The projects or activities covered are residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks and information technology / software development units / Parks (ii) "General Condition" is not applicable.
8(b)	Townships	Covering	an	++All projects under



and Area
Development
projects

area \geq 50 ha
and or built up
area \geq 1,50,000
sq.mtrs++

Item 8(b) shall be
appraised as Category
B1

Note:

“General Condition” is
not applicable.”

[F. No. 19-2/2013-IA.III]

AJAY TYAGI, Jt. Secy.”

13. In the said notification, in the second paragraph, the public at large was invited to raise objections or suggestions. Accordingly, the Department had received many objections and suggestions from various institutions or individuals throughout the country, evident from the counter filed by the respondents. However, if we see the language of the final notification dated 22.12.2014, it has been specifically stated that no objections or suggestions were received in response to the earlier notification dated 11.09.2014. Final notification dated 22.12.2014 reads as under:-

**“MINISTRY OF ENVIRONMENT, FORESTS AND
CLIMATE CHANGE**



NOTIFICATION

New Delhi, the 22nd December, 2014

S.O. 3252(E).-Whereas, a draft notification further to amend the notification number S.O 1555(E), dated the 14th September, 2006 (hereinafter referred to as the principal notification), was published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide number S.O. 2319, (E) dated the 11th September, 2014 (hereinafter referred to as the said notification), 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;

And whereas, copies of the said notification were made available to the public on 11th September, 2014;

And whereas, no objections or suggestions have been received in response to the said notification within the specified period of sixty days;

Now, therefore, in exercise of the powers conferred by Sub-section (1) and clause (v) of Sub-section (2) of Section 3 of the said Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central



Government hereby makes the following amendments in the said notification, namely:-

In the principal notification, in the Schedule, under Column (1), for item 8 relating to Building / Construction Projects / Area Development Projects and Townships and sub-items 8 (a) and 8 (b) and the entries relating thereto, specified there under, the following item, sub-items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
“8		Building or Construction projects or Area Development projects and Townships		
8(a)	Building and Construction Projects		≥20000 sq.mtrs and <1,50,000 sq.mtrs of built-up area	<p>The term “built up area” for the purpose of this notification the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects.</p> <p>Note 1:- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste</p>



management, rain water harvesting and may use recycled materials such as fly ash bricks.

(ii) "General Conditions" shall not apply.

8 Townships and Area Development projects

Covering an area of >50ha and or built up area > 1,50,000 sq.mtrs.

A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project.

Note.- "General Conditions" shall not apply.

[F. No. 19-2/2013-IA-III]
MANOJ KUMAR SINGH, Jt. Secy."

In the above notification, it is specifically stated in paragraph 3 that no objections or suggestions were received.

14. It is true that the authority had requested the Ministry of Law and Justice to permit them to amend the notification, however, the same was refused by Ext. P11 communication dated 29.09.2016. If the authority had received such communication, instead of amending the notification, the authority should have



considered the objections and suggestions in detail and could have issued a fresh notification which is not the case on hand.

15. As far as the proposal made in column 5 of both notifications is compared, there is a vast difference in the final notification, by which certain buildings are exempted from getting environmental clearance certificates. People at large were not aware about the intention of the authority to modify the draft notification and therefore, in our considered opinion, there is a breach of Section 23 of the General Clauses Act, 1897, which reads as under:-

“23. Provisions applicable to making of rules or bye-laws after previous publication.—

Where, by any [Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons



likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government concerned] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [Official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.”

16. Sub-sections (1) to (4) of Section 23 makes it clear that the public should be aware about the changes in the Rules, bye-



laws etc. In the present case, the public was not aware about the difference between the draft and the final notifications.

17. Rule 5 of the Environment (Protection) Rules, 1986 is relevant to the case on hand, wherein also there is a requirement of public notice. The said Rule, as it then stood, reads as under:-

“5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas.- (1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the



opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or



restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within five hundred forty five days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.



(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).”

18. Considering the above aspect, we are of the considered opinion that the decisions relied upon by the learned Senior Counsel appearing for the petitioner in **Avinash** (supra) and **Kerala State Road Transport Corporation** (supra) are applicable.

19. Paragraphs 16 and 17 of the decision in **Avinash**'s case are relevant for our consideration, which are reproduced hereunder:-

“16. It will also be relevant to refer to the observations of the Apex Court in the case of the Municipal Corporation Bhopal, M.P. v. Misbahul Hasan and Others reported in (1972) 1 Supreme Court Cases 696. The Apex Court while construing the provisions of Section 24 of the M.P. General Clauses Act, 1955 which is pari materia with Section 24 of the Bombay General Clauses Act, has observed thus:-



“13. The legislative procedure envisaged by Section 24, set out above, is in consonance with notions of justice and fair-play as it would enable persons likely to be affected to be informed so that they may take such steps as may be open to them to have the wisdom of a proposal duly debated and considered before it becomes law. This mandatory procedure was not shown to have been complied with area.”

17. It could thus be seen that it appears to be settled position of law that the requirement of previous publication inviting objections and suggestions is not an empty formality. It is with an intention to enable persons likely to be affected, to be informed, so that they may take steps as may be open to them and the objections/suggestions made would be required to be taken into consideration by the authorities before issuing a final notification. In the present case, the draft notification provided for establishment of headquarter of the sub-division at Sadak-Arjuni. However, the final notification provides for establishment of the headquarter at Morgaon-Arjuni. It could thus be seen that insofar as the establishment of headquarter is concerned, the final notification is totally different from the draft notification.”

20. Paragraph 14 of the decision in **Kerala State Road**



Transport Corporation's case is also relevant to the case on hand, which is reproduced hereunder:-

“14. The provisions of Sections 99, 100 and 102 indicate that the procedure to be followed, while introducing a scheme, or modifying an existing one, is one that is designed to ensure transparency and fairness in a matter involving pre-existing rights of private transport operators. It follows, therefore, that there cannot be any finalization of a scheme, which is different from the one that was proposed, and in respect of which objections were invited. The introduction of a restrictive element (in the instant case, the stipulation that the maximum distance limit would apply to the saved permits), while finalising a draft that did not contain such a stipulation has, therefore, to be seen as breaching the aforesaid statutory safeguard. A question arises, however, as to whether, in these cases, the petitioners had a pre-existing right, relating to Ext.P5 scheme, to operate ordinary and OLS services without any restriction as regards distance? Although the learned counsel for the respondent KSRTC would vehemently contend that the said rights accrued to the private operators, not through Ext.P5 scheme, but only through Ext.P9 G.O., we are of the view that the rights/privileges granted to the petitioners through Ext.P9 G.O. cannot be seen as divorced from Ext.P5.”



In such circumstances, we are of the considered opinion that the writ petition requires consideration. Accordingly, the same is allowed. Notification dated 22.12.2014 is hereby quashed and set aside. Needless to say, the respondent authority may issue fresh notification, in accordance with law. It is made clear that the petition is entertained only on the above ground. Other contentions raised in this writ petition have not been examined on merits.

Pending Interlocutory Applications, if any, shall stand closed.

**Sd/-
A. J. DESAI
CHIEF JUSTICE**

**Sd/-
V. G. ARUN
JUDGE**

APPENDIX OF WP(C) 3097/2016

PETITIONER EXHIBITS

- EXHIBIT P1. A TRUE PHOTOCOPY OF THE GAZETTE NOTIFICATION NO.3252 (E) DATED 22.12.2014.
- EXHIBIT P2. A TRUE PHOTOCOPY OF THE DRAFT NOTIFICATION NO.S.O.2319 (E) DATED 11.09.2014.
- EXHIBIT P3. A TRUE PHOTOCOPY OF THE MINUTES OF THE 39TH MEETING OF THE 2ND RESPONDENT HELD ON 18.06.2015.
- EXHIBIT P4. A TRUE PHOTOCOPY OF THE LETTER OF REJECTION OF EC DATED 16.10.2007 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5. A TRUE PHOTOCOPY OF THE OFFICE MEMORANDUM DATED 09.06.2015.

(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)
Original Application No. 93/2024(CZ)**

Pranjal Karera

Applicant(s)

Vs.

Union of India & Ors.

Respondent(s)

Date of completion of hearing and reserving of order : 05.08.2024**Date of uploading of order on website : 09.08.2024****CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A SENTHIL VEL, EXPERT MEMBER**

For Applicant(s): Mr. Vanshdeep Dalmia, Adv.

For Respondent(s): Mr. Rohit Sharma, Adv.
Mr. Dharamvir Sharma, Adv.
Mr. Yadvendra Yadav, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Gaurvanvit Jain, Adv**ORDER**

1. The present application has been filed with the prayer for issue of direction to the MoEF&CC, to appraise all those Building and Construction Projects that are located in whole or in part within 5 km of a (i) protected area notified under the Wild life Protection Act, 1972 (ii) Critically Polluted Areas and Severely Polluted Areas as identified by the CPCB (iii) Eco-Sensitive areas notified under S. 3(2) of the EP Act, (iv) located on interstate boundaries, as Category A projects by and appraise the same at the Central level by the sectoral Expert Appraisal Committees and further to apply General Conditions [GC] to Item 8 of the Schedule of the EIA, 2006 for located in a Critically and Severally polluted areas as identified by the CPCB as per letter dated 10.04.2019 and implement the

directions passed by this Tribunal vide its Orders dated 10.07.2019, 23.08.2019 and 14.11.2019 in OA No. 1038 of 2018 titled In re: News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" & the OM dated 31.10.2019, and appraise Building and Construction Projects located in CPA/SPA areas as Category A projects, de hors whether GC applies or not.

2. The contention of the applicant is that MoEF&CC issued an OM dated 31.10.2019 devising a Mechanism for new activities/expansion by Red & Orange Category of industries in CPA's and SPA's. The relevant portion of the OM is extracted as below:

"B: Considerations of proposals for grant of Environmental Clearance for new and expansion activities in 'Red' and 'Orange' Categories located in Critically Polluted Areas and Severely Polluted areas:

- i. *Any project or activity specified in Category B1 will be appraised at the Central level, if located in whole or in part within 5 Km from the Boundary of Critically Polluted Areas or Severely Polluted Areas. However, Category B2 projects shall be considered at state level stipulating Environmental Clearance conditions as applicable for the Category 'B1' project/activities."*

However, Building and constructions projects located in CPA/SPA, are still being continued to be appraised at the State level, in complete dissonance with the abovementioned Orders.

The Environment Impact Assessment Notification dated 14.09.2006 was issued by the Respondent MOEF under Section 3 of the EP Act categorizing projects and activities as Category 'A' and 'B', wherein Category 'A' projects would require a prior Environmental Clearance [EC] from the sector

specific EACs at the Central level whereas Category 'B' projects would require the same from the State i.e. by the respective SEACs. This categorization is based on the potential impacts on the human health, nature and man-made resources, wherein, the projects and activities of a higher and larger magnitude in terms of the potential adverse impact on the environment as a whole are appraised at the central level by sector specific EACs that constitute of experts in the particular field, and those of relatively lesser potential impact, at the State level.

- ii. *The Hon'ble Supreme Court in the case of IN RE: Construction of Park at Noida Okhla Bird Sanctuary while considering the issue as to whether General Conditions apply to Building and Construction projects directed that "...the question of application of the general conditions to the projects/ activities listed in the Schedule also needs to be put beyond any debate or dispute".*

3. In Writ Petition (C) No. 3097/2016 titled One Earth One Life Vs. MOEF Hon'ble the High Court of Kerala, made it clear that general condition is applicable in all such projects in item 8 of the Schedule located in CPA/SPA, eco-sensitive areas and are to be appraised and evaluated at the central level by sector-specific EAC.
4. Notices were issued to the respondents and in compliance thereof, the respondents have filed the reply. Heard the argument and perused the record.
5. The EIA Notification dated 14.09.2006 issued by the Ministry of Environment, Forest and Climate Change with subsequent amendments after 8A and 8B prescribed note with general conditions and specific conditions which are quoted below :-

“General Condition (GC)”¹

Any project or activity specified in Category ‘B’ will be appraised at the Central Level as Category ‘A’, if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as identified by the Central Pollution Control Board² constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986, and (iv) inter-State boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates/ parks/complexes/areas, export processing zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7 (d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above.

Specific Condition (SC):

If any Industrial Estate/Complex / Export processing Zones /Special Economic Zones/Biotech Parks / Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre -defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within

¹ GC substituted vide S.O. 3067(E) dated 1 st December, 2009; substituted all entries substituted vide S.O. 1599(E) dated 25th June, 2014

² Amended vide S.O. 1939 dated 13th November, 2006

such estates /complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

6. Vide notification dated 07.03.2016 issued by the CPCB which modified directions under section 18(1)(b) of the water (prevention & control of pollution) act, 1974 and the air (prevention and control of pollution) act, 1981 regarding harmonization of classification of industrial sectors under red / orange / green / white categories prescribed the categories as follows :-

"WHEREAS, based on the series of consultations with SPCBs, different Government / Non- government Institutions including industries and MoEFCC, the following criteria on Range of Pollution Index for the purpose of categorization of industrial sectors has been finalized:

- Industrial Sectors having Pollution Index score of 60 and above – Red Category*
- Industrial Sectors having Pollution Index score of 41 to 59 – Orange Category*
- Industrial Sectors having Pollution Index score of 21 to 40 – Green Category*
- Industrial Sectors having Pollution Index score incl. & upto 20 - White Category*

WHEREAS, based on relative Pollution Index, the number of industries in various categories are as under:

- i. The Red category of industrial sectors: 60*
- ii. The Orange category of industrial sectors: 8*
- iii. The Green category of industrial sectors: 63 and*
- iv. The Newly introduced White category: 36*

WHEREAS, there shall be no necessity of obtaining the consent to operate for White Category of industries and an intimation to concerned SPCB/PCC shall suffice."

7. Notification dated 11.09.2014 and 22.12.2014 was notified by the MoEF&CC which are as follows :-

i. *"The draft notification issued on 11.09.2014 reads as under:-*

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

New Delhi, the 11th September, 2014

S.O. 2319(E). The following draft notification further to amend the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1553(E), dated 14th September, 2006 which the Central Government proposes to issue, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), is hereby published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 for the information of the public likely to be affected thereby, and notice is hereby given that the said notification will be taken into consideration by the Central Government on or after the expiry of sixty days from the date on which copies of the Gazette of India containing this notification are made available to the public;

Any person interested in making any objection or suggestion on the proposals contained in the draft notification may do so in writing within the period so specified through post to the Secretary, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi 110 003 or electronically at email address: ad. raju@ni.

Draft Notification

In the Schedule to the said notification, for items 8(a) and 8(b), and the entries relating thereto, the following items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building / Construction projects / Area Development Project and Township			
8(a)	Building and Construction Projects	≥20000 sq.mtrs and <1,50,000 sq.m. of built up area#	The built up area for the purpose of this Notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.	
			Note: (i) The projects or activities covered are residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks and information technology / software development units / Parks (ii) "General Condition" is not applicable.	
8(b)	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq.mtrs++	++All projects under Item 8(b) shall be appraised as Category B1 Note: "General Condition" is not applicable."	

ii. In the said notification, in the second paragraph, the public at large was invited to raise objections or suggestions. Accordingly, the Department had received many objections and suggestions from various institutions or individuals throughout the country, evident from the counter filed by the respondents. However, if we see the language of the final notification dated 22.12.2014, it has been specifically stated that no objections or suggestions were received in

response to the earlier notification dated 11.09.2014. Final notification dated 22.12.2014 reads as under:

**“MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE
CHANGE
NOTIFICATION**

New Delhi, the 22nd December, 2014

S.O. 3252(E).-Whereas, a draft notification further to amend the notification number S.O 1555(E), dated the 14th September, 2006 (hereinafter referred to as the principal notification), was published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 in the Gazette of India, Extraordinary, Part II, Section 3, subsection (ii) vide number S.O. 2319, (E) dated the 11th September, 2014 (hereinafter referred to as the said notification), 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;

And whereas, copies of the said notification were made available to the public on 11th September, 2014;

And whereas, no objections or suggestions have been received in response to the said notification within the specified period of sixty days;

Now, therefore, in exercise of the powers conferred by Sub-section (1) and clause (v) of Sub-section (2) of Section 3 of the said Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

In the principal notification, in the Schedule, under Column (1), for item 8 relating to Building / Construction Projects / Area Development Projects and Townships and sub-items 8 (a) and 8 (b) and the entries relating thereto, specified there under, the following item, sub-items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development projects and Townships			
8(a)	Building and Construction Projects	≥20000 sq.mtrs and <1,50,000 sq.m. of built up area#	<p>The term "built up area" for the purpose of this notification the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects.</p> <p>Note 1:- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.</p> <p>(ii) "General Conditions" shall not apply.</p>	
8	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area ≥1,50,000 sq.mtrs++	<p>A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category 'B1' Project.</p> <p>Note.- "General Conditions" shall not apply.</p>	

8. In light of the order passed in O.A. No. 1038/2018 dated 19.08.2019, Ministry of Environment, Forest and Climate Change issued a notification dated 24.10.2019 with the matter listed in red and orange categories located in critically polluted areas prescribing as follows :-

1. *“Consideration of proposals for grant of Environmental clearance for new and expansion activities listed in 'Red' and 'Orange' Categories located in Critically Polluted Areas and Severely Polluted areas:*

i. *Any project or activity specified in Category B1 will be appraised at the Central Level, if located in whole or in part within 5 km from the boundary of Critically Polluted Areas or Severely Polluted Areas. However, Category B2 projects shall be considered at state level stipulating Environmental Clearance conditions as applicable for the Category 'B1' project/activities.*

ii. *Proposals located in CPAs and SPAs may be examined by the sectoral Expert Appraisal Committee (EAC) during scoping/appraisal based on the CEPI scores of Air/Water/Land Environment as published by CPCB from time to time. In such proposals, appropriate mitigation measures for the environment possessing higher CEPI score may be made by EAC in the form of recommendations/decision. These recommendations may be explicitly mentioned in the Terms of Reference/Environmental Clearance letter and to be ensured by the member secretary concerned.*

9. The notification dated 22.12.2014 was matter under consideration which was challenged before the High Court of Kerala in W.P.(C) No. 3097/2016 and vide Order dated 06.03.2024 the court, after considering the above facts, found that the notification dated 22.12.2014 was not in accordance with the law and quashed the notification dated 22.12.2014.

10. The contention of the applicant is that after quashing the notification dated 22.12.2014 the general condition as note of the original notification, 2006 will apply.
11. The submissions of the Learned Counsel for the applicant are that as per the EIA Notification dated 14.09.2006, projects and activities are categorized as Category A and B wherein Category A projects require Environmental Clearance from the Sector specific EACs at the Central level, whereas Category B projects which relatively have a lower potential impact on the Environment would require the same from the State i.e. by the respective State SEACs/ SEIAAs. This categorization is based on the '*extend of potential impacts on human health and natural and manmade resources*'. Apropos, the projects and activities of a higher and larger magnitude in terms of the potential adverse impact on the environment as a whole are appraised at the central level by sector specific EACs that constitute of Experts in the particular field. Whereas, such projects and activities having a relatively lesser impact, are appraised at the State level by respective State SEACs/ SEIAAs that consist of homogeneous mix of experts and professionals from different sectors. The schedule of the EIA 2006 notification categorizes Building and Construction Projects and Townships and Area Development Projects as Category B1 projects under item 8(a) and item 8(b) of the Schedule and thus, the appraisal is being done at the State level i.e. by respective SEACs, however it is to be appraised at the Central level if it falls in an ecologically sensitive area/ Critically polluted area or other areas as indicated in the General Conditions.
12. It is submitted that Building and Construction Projects and Townships and Area Development Projects carried out in a critically/ severally polluted area, eco-sensitive areas etc. have a higher and larger magnitude

in terms of the potential adverse impact on the environment as a whole and thus need to be appraised at the central level by sector specific EACs that constitute of experts in the particular field.

13. While considering the matter in the O.A. No. 1038/2018, Principal Bench of this Tribunal vide order dated 14.11.2019, observed as follows:-

i. *“After considering the said data, this Tribunal in the order dated 10.07.2019 held that the Rule of Law required prohibiting polluting activities to protect the environment and public health. While remedial action may certainly be planned, current violation of law could not be ignored and was actionable by way of stopping polluting activities, initiating prosecution and recovering compensation on ‘Polluter Pays’ principle. The statutory authorities are accountable for performing their statutory duties. Referring to some of the earlier orders on the subject, this Tribunal observed:*

“7. Ill effects of industrial pollution on the environment and public health are well acknowledged. This has made it necessary to strictly apply the principles of ‘Sustainable Development’ and permit any activity to be carried out without degrading the environment. The statutory scheme under the Air Act, the Water Act and the EPA Act provides for standards for air and water quality which must be maintained and violation thereof is a criminal offence³. Any violation has to be visited with stopping of polluting activity, prosecution and compensation for restoration of environment. Accordingly, in the order dated 13.12.2018 this Tribunal observed:

³ Section 7 read with Section 15 of the EPA Act, Section 24 read with Section 41 and Section 45A of the Water Act, Section 21 and Section 22 read with Section 37 of the Air Act

“5. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

6. Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferrow alloys, petroleum and chemicals unless right technology is used and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment’s carrying capacity, adversely affecting public health.

7. In Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors.⁴ the Hon’ble Supreme Court observed, as guiding rules for Sustainable Development, that humanity must take no more from nature than man can replenish

⁴ (2006) 6 SSC 383

and that people must adopt lifestyles and development paths that work within the nature's limit. In Vellore Citizens Welfare Forum Vs. Union of India, the Hon'ble Supreme Court recognized the Precautionary Principle and explained that environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

8. This Tribunal has applied the same principles in deciding matters before it in terms of Section 20 of the National Green Tribunal Act 2010.

9 to 12..... xxxx.....xxxx.....xxxx

13. The action plan to be prepared in the States may be done by the Committee constituted by the Chief Secretary within one month from today as several Departments may be involved in the exercise. The final preparation of the action plan including its execution may be overseen by the Chief Secretary of the concerned State, along with the other connected major environmental issues of the States, such as pollution of river stretches, nonattainment cities in terms of air quality and solid waste management, utilization of treated sewage, covered by order of this Tribunal dated 20.09.2018 in Original Application No. 673/2018, News Item Published in 'The Hindu' authored by Shri. Jacob Koshy titled "More river stretches are now critically polluted: CPCB",

order dated 08.10.2018 in Original Application No. 681/2018, News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15", order dated 20.08.2018 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 27.11.2018 in Original Application No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. The Chief Secretary will take meetings on all these issues once in three months (quarterly) and will forward Report to NGT by e-mail."

8. We may also note that on 16.01.2019, while considering the issue of compliance of Solid Waste Management Rules, 2016 and other Waste Management Rules in O.A. No. 606/2018, Compliance of MSW Rules, 2016, the Tribunal required the presence of the Chief Secretaries in person after monitoring the subjects mentioned in the said order which included polluted industrial clusters.

9. Accordingly, the Chief Secretaries appeared before this Tribunal and filed their respective versions on the subject. They have been asked to take necessary steps to enforce the environment norms and furnish periodical reports to this Tribunal. The directions include monitoring of important environmental issues including the issue of polluted industrial clusters by a Central Monitoring Committee with representatives from the Central Government and the Chief Secretaries

of the States, undertaking carrying capacity study of the areas where violation of environmental norms is established, training programme of the officers concerned with the enforcement of the environmental norms, preparation of annual environmental plan for the country giving status of gaps in compliance of environmental norms⁵. The Tribunal noted the private studies which may need to be verified assessing the number of deaths and diseases from pollution⁶.

“38. Death attributable to pollution to be 2.51 million in 2015, highest in the world. Air pollution, the number of deaths in India from ambient air pollution was 1.09 million, while deaths from household air pollution from solid fuels were 0.97 million. In the case of water pollution, 0.5 million deaths were caused by unsafe water source, while unsafe sanitation caused 0.32 million deaths. Deaths from air pollution were a result of diseases such as heart disease, stroke, lung cancer, and chronic obstructive pulmonary disease (COPD). Pollution has been responsible for the most non communicable disease deaths. India ranks a dismal 110 of 149 countries on the Sustainable Development Index. With rapid urbanization, the country is facing massive waste management challenge. Over 377 million urban people live in 7,935 towns and cities and generate 62 million tonnes of municipal solid waste per annum. Only 43 million tonnes (MT) of the waste is collected, 11.9 MT is treated and 31 MT is dumped in landfill sites. An alarming 80% of India’s surface water is polluted. Indian cities generate 10 billion gallons or 38 billion litres of

⁵ O.A 606/2018, order dated 17.05.2019, at para 27

⁶ Ibid

municipal waste water every day, out of which only 29% of it is treated.

40. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to be revised on that pattern. Such review of policy cannot be left to the Local Bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution.”

14. In reply to above averments the Respondent No. 1 MoEF&CC filed the counter affidavit and argued that the Environment (Protection) Act, 1986 authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any projects/activity on environmental grounds.
15. That, the answering respondent in exercise of its powers under sub-section (1) and clause (v) of Section 3(2) of Environment (Protection) Act, 1986 (EPA, 1986) had vide S.O. 1533(E) issued the Environment Impact Assessment Notification dated 14/09/2006 for mandating prior Environmental Clearance (EC) for certain category of projects covered in

- the Schedule of the notification. The EC is granted following the due EIA process as mentioned in the notification.
16. That under the provisions of the EIA Notification, 2006, EC for Building and Construction Projects, Townships and Area Development Projects are covered under entry 8 (a) & (b) of the Schedule to the EIA Notification, 2006. Further, entries 8(a) and 8(b) are category 'B' projects under the EIA Notification, 2006 and the said projects are appraised by the concerned State/ UT Level Expert Appraisal Committees (SEACs) and the EC is granted by the State Environmental Impact Assessment Authorities (SEIAAs/UTEIA's).
17. That the EIA Notification 2006, provides for General Conditions which relate to categorization of the projects as Category 'A' if such projects are located in whole or in part, within either 5 km or 10 km, as the case may be, from the boundary of Protected Areas notified under the Wild Life (Protection) Act, 1972, Critically Polluted areas as notified by the Central Pollution Control Board from time to time, Notified Eco-sensitive areas and inter-State boundaries and international boundaries. GC in the EIA Notification, 2006, as amended reads as under:

"Any project or activity specified in Category 'B' will be appraised at the Central Level as Category 'A', if located in whole or in part within 5 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (53 of 1972); (ii) Critically Polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from after (Pretime: (i) Eco-sensitive areas as notified under sub. Sectioning of section 3 of the Environment (Protection) Act, 1986, and (iv) one afs boundaries and international boundaries; provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial Estates/ parks/complexes/areas,

export processing zones (EPZ), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7 (c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7 (d), the appraisal shall be made at Central level even if located within 10 km.

Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5 km or 10 km, as the case may be of the areas mentioned at item (i), (ii), and (iii) above.”

18. Further contentions of the Learned Counsel for Respondent No. 1 are that the submission of the applicant is that after the quashing of the notification general condition will apply is unfounded and not supported by the order since that order was based only on the principle of natural justice and it is further submitted that there is no difference in the qualification, eligibility criteria of the EAC and the SEACs.
19. The contention of the applicant is that the directions passed in OA No. 1038/2018 must be strictly complied with, with regard to the projects and health, projects and polluting activities which are in CPA/SPA red and orange category, and no further industrial activities or expansion be allowed with regard to red and orange category units till the said areas are brought within the prescribed parameter or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms.
20. The same was clarified by the notification dated 23.08.2019 where it was observed that the MoEF&CC can forthwith devise an appropriate mechanism to ensure that new legitimate activity or expansion can take

place after due precautions are taken in the areas in question by red and orange category of units.

21. Further contentions of the applicant are that the OM dated 31.10.2019 was issued by the MoEF&CC in exercise of powers conferred under Section 5 of the Environment (Protection) Act, 1986, requiring appraisal of all projects in CPA/SPA at the central level and it is binding on the MoEF&CC while it is not being fully observed by the authorities concerned. Projects located in the CPA/SPA requires to be appraised as Category A projects at the central level by the Sectoral Expert Committee, even otherwise building construction projects located in CPA/SPA have to be appraised at the central level due to the applicability of general conditions as stipulated in the EIA Notification, 2006.
22. As per Para 7(i)III(i)(d), of the EIA, 2006 (Original - unamended), all Category A and B, Building and Construction projects or Area Development Projects and Townships (Item 8) were exempted from '*Public Consultation*'. The EIA, 2006 was amended by the MoEF&CC vide Notification dated 1.12.2009 wherein the MoEF&CC withdrew the complete exemption from public consultation granted to building and constructed projects. And whereinafter such public consultation were made mandatory for Category A Building Construction Projects. That building construction projects as *per se* are Category B projects and the only manner in which they can be Category A is by the application of GC and in no other manner.
23. Para 7(i)III(i)(d) of the EIA, 2006 – before Amendment, All category A and Category B projects or activities shall undertake public consultation, except the following:

“d. all building and construction projects or Area development projects and Townships (item 8)”

Para 7(i)III(i)(d) of the EIA, 2006 – Post Amendment, All category A and Category B projects or activities shall undertake public consultation, except the following:

“d. all building and construction projects or Area development projects (which do not contain any Category A projects and activities) and Townships (item 8(a) and 8 (b) in the Schedule to the notification”

Thus, the 2009 Amendment indicates the understanding of the Respondent MOEF itself that certain Building projects would be Category A, and hence require a Public Consultation. Any other interpretation would render the said Amendment qua Para 7(i)III(i)(d) as redundant, superfluous and nugatory.

24. The Hon'ble Supreme Court in the case of *IN RE: Construction of Park at Noida Okhla Bird Sanctuary, (2011) 1 SCC 744* felt the need that certain entries in the Schedule to the EIA, 2006 were described ambiguously and while considering the issue as to whether General Conditions apply to Building and Construction projects directed that -

“...the question of application of the general conditions to the projects/ activities listed in the Schedule also needs to be put beyond any debate or dispute”.

EIA, 2006 (2014 Amendment)

The MOEF thereafter issued Notification dated 22.12.2014 whereby the EIA, 2006 was amended and interalia a Note 2 was inserted in the 5th Column of Item 8, Schedule EIA which specifically stated that '*General Conditions shall not apply*'. The said Notification dated 22.12.2014 was quashed vide Judgment dated 6.03.2024 by the Hon'ble High Court of Kerala in '*One Earth One life v. MOEF*', WP (C) No. 3097 of 2016.

The Relevant portion of the said Judgment dated 6.03.2024 is extracted as under:

“In such circumstances, we are of the considered opinion that the writ petition requires consideration. Accordingly, the same is allowed. Notification dated 22.12.2014 is hereby quashed and set aside. Needless to say, the respondent authority may issue fresh notification, in accordance with law. It is made clear that the petition is entertained only on the above ground. Other contentions raised in this writ petition have not been examined on merits.”

Therefore, the Applicant submits that post the quashing of the MOEF Notification dated 22.12.2014, *General Conditions* are undisputedly applicable, and all such projects in Schedule 8 located in a CPA/SPA, Eco sensitive areas ought to be appraised and evaluated at the Central Level.

25. It is further contended that the mandate of the EIA, 2006 is to ensure Environmental protection and uphold citizens' fundamental rights under Article 21 of the Constitution of India. The aim and objective of the EIA, 2006 is to assess the impact that a project or activity would have upon the environment and to ensure protection of the environment in the face of development. Thus, the rule of reasonable interpretation in conjunction with liberal/ purposive construction ought to be applied whereby that approach for interpretation must be applied which advances the objectives and legislative intent behind issuance of the EIA, 2006.

This Tribunal in *Vikrant Tongad v. DTTC*, [2015 SCC Online NGT 3 (judgment dated 12.02.2015)], *Karukampally Vijayan Biju v. UOI*, [2017 SCC Online NGT 1296 (Judgment dated 27.07.2017)] and *M/s Ardent Steel Limited v. MoEF*, Appeal No. 05/2014 (Judgment dated 27.05.2014) have accepted

this approach of liberal interpretation of the entries mentioned in the Schedule to the EIA, 2006 and held as under:

Vikrant Tongad v. DTTC (2015 SCC Online NGT 3)

“18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of The Authorised Officer, Thanjavur v. S. Naganatha Ayyar, (1979) 3 SCC 466, the Court held that:

“1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to ‘destination social justice’ should be helped, and not hampered, by judicial interpretation.”

In the case of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985) 4 SCC 71, the Court held that:

“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and ‘Human Rights’ legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the ‘colour’, the ‘content’ and the ‘context’ of such statutes.”

In the case of Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765, the Court held that:

“41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.”

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., salus populi est suprema lex. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied...

33. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage. ”

Karukampally Vijayan Biju v. UOI, (2017 SCC Online NGT 1296)

“22. The reasoning given by the High Court can be safely adopted by the Tribunal to arrive at the conclusion that the expression ‘pesticide’ takes within its ambit insecticides as well. The expression ‘pesticide’ appearing in Entry-5(b) must receive liberal construction. The Act of 1986 and the Notification of 2006 is social welfare legislation and has been primarily enacted to protect the environment and public health. An interpretation which would further the cause and object

should be adopted in contradistinction to an interpretation which would frustrate the object of the Act.”

M/s Ardent Steel Limited v. MoEF & Anr., (Appeal No. 05/2014)

“13... From the above discussion, it is clear that to an Entry of the Schedule of a social welfare legislation, the principle of reasonable and/or liberal construction should be adopted to ensure that the object and purpose of the Act is undefeated by such interpretation. Most suitable interpretation would be one which would further the cause of the Act and ensure prevention and control of pollution rather than provide escape route to the industry from taking anti-pollution measures and complying with the provisions of the Act.”

26. The contention of the applicant is that there is no ambiguity on the issue as to whether ‘General Conditions’ apply to Item 8 of the Schedule to the EIA, 2006, in as much as, the intention vide the 2009 Amendment ostensibly indicates and supports the same, and the 22.12.2014 Amendment stating that GC does not apply has been quashed. However, even otherwise, a view that GC apply is in consonance with the intent and purpose of the EIA, 2006 which is a social welfare legislation, and also the directions passed by this Tribunal in OA No. 1038 of 2018 wherein certain areas requires a higher degree of scrutiny and expert appraisal.
27. That Building and constructions projects located in CPA/SPA, Eco-sensitive areas were being continued to be appraised at the State level due to the operation of the MOEF Amendment Notification dated 22.12.2014 whereby GC was made not applicable to Schedule 8, however post the quashing of the Notification dated 22.12.2014, GC is undisputedly applicable, and all such projects in Schedule 8 located in a CPA/SPA, eco-sensitive areas ought to be appraised and evaluated at the Central Level by sector specific EACs.

28. The EIA, 2006 categorizes projects into Category 'A' and 'B'. Category 'A' projects require EC from Central sector-specific EAC, while Category 'B' projects require EC from State SEACs/ SEIAAs. This classification is based on potential environmental impacts, with projects having higher environmental impacts being assessed centrally and those with lesser impacts assessed at the State level.
29. The members of the EAC/SEACs comprise of Expert and Professionals who are appointed on the basis of the qualifications mentioned in Appendix VI, EIA, 2006, whereby the members of the EAC shall be experts and only in the event that Experts are not available, professionals made be considered. Conversely, the members of the State SEACs are not required to be Experts as such, and can constitute professionals, despite the availability of Experts.
30. The Respondent, MOEF has constituted 8 (eight) Expert Appraisal Committees which deal with sector specific projects under the EIA Notification, 2006 that are of more serious and significant in nature. The EACs at the Central level constitutes of members with greater competence and knowledge than the State Level Expert Appraisal Committee. A Higher level of expertise is needed for appraisal of building and construction projects in CPA/SPA areas, and sector specific EAC would be much better suited to appraise potential ecological damage and considered the impact assessment of the project submitted by the project proponent, as the said sector specific EAC would include all expert members qua the sector for which EC is being sought.
31. It is further contended that by allowing the Category 'A' projects to be appraised at the SEAC level, substantially dilutes the standard of assessment, evaluation and appraisal of violation projects that were initially sought to be done by sector specific Expert appraisal committees

which are only available at the central level. The sector specific EACs constitute of experts in the particular sector and opposed to the SEACs at the state level which do not constitute experts from a particular sector, but comprises of a homogeneous mix of experts and professionals from different sectors. Since building and construction projects located in a CPA/SPA have a higher and larger magnitude in terms of the potential adverse impact on the environment, an expert scrutiny with a higher level of expertise is needed for appraisal of building and construction projects in CPA/SPA areas.

32. Sectoral specific EAC for Infrastructural projects would be much better suited to appraise the Environmental Impact Assessment Report (EIA)/ Environmental Management Plan (EMP) submitted by the project proponent, as the said sector specific EAC would include all expert members qua the Building sector. It is submitted that the said Building sector specific would correctly and more accurately identify the possible ramifications on the Environment damage and recommend measures to mitigate the same.
33. The submission of the MoEF&CC are that the scrutiny by at the central and state level is the same but the notification dated 14.09.2006 issued by the MoEF&CC prescribes different criteria and qualification which is quoted as below :-

“COMPOSITION OF THE SECTOR/ PROJECT SPECIFIC EXPERT APPRAISAL COMMITTEE (EAC) FOR CATEGORY A PROJECTS AND THE STATE/UT LEVEL EXPERT APPRAISAL COMMITTEES (SEACs) FOR CATEGORY B PROJECTS TO BE CONSTITUTED BY THE CENTRAL GOVERNMENT

The Expert Appraisal Committees (EACs) and the State/UT Level Expert Appraisal Committees (SEACs) shall consist of

only professionals and experts fulfilling the following eligibility criteria:

Professional: The person should have at least (i) 5 years of formal University training in the concerned discipline leading to a MA/MSc Degree, or (ii) in case of Engineering /Technology/Architecture disciplines, 4 years formal training in a professional training course together with prescribed practical training in the field leading to a B.Tech/B.E./B.Arch. Degree, or (iii) Other professional degree (e.g. Law) involving a total of 5 years of formal University training and prescribed practical training, or (iv) Prescribed apprenticeship/article ship and pass examinations conducted by the concerned professional association (e.g. Chartered Accountancy), or (v) a University degree , followed by 2 years of formal training in a University or Service Academy (e.g. MBA/IAS/IFS). In selecting the individual professionals, experience gained by them in their respective fields will be taken note of.

Expert: A professional fulfilling the above eligibility criteria with at least 15 years of relevant experience in the field, or with an advanced degree (e.g. Ph.D.) in a concerned field and at least 10 years of relevant experience.

Age: Below 70 years. However, in the event of the non-availability of /paucity of experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed up to 75 years.

2.7 The Members of the EAC shall be Experts with the requisite expertise and experience in the following fields or /disciplines. In the event that persons fulfilling the criteria of "Experts" are not available, Professionals in the same field with sufficient experience may be considered:

- *Environment Quality: Experts in measurement, monitoring, analysis and interpretation of data in relation to environmental quality.*
- *Sectoral Project Management: Experts in Project Management or Management of Process or Operations or Facilities in the relevant sectors.*

⁷ Para substituted vide S.O. 1737 (E) dated 11th October, 2007; word in Para-2 amended & point-4 inserted vide S.O. 2600(E) 9th October, 2014 and amended vide S.O. 3752 dated 20.10.2020

- *Environmental Impact Assessment Process: Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process*
- *Risk Assessment*
- *Life Science (Floral and Faunal Management)*
- *Forestry and Wildlife*
- *Environmental Economics with experience in project appraisal*
- *Public Administration or Management covering various developmental sectors and environmental issues.*

3. *The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However, the Chairperson may co-opt an expert as a Member in a relevant field for a particular meeting of the Committee.*

4.⁸ *The Chairperson shall be an eminent person having experience in environmental policy related issues, in management or in public administration dealing with various developmental sectors.*

5. *The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman / Chairperson.*

6. *A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.*

7. *The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.*

Provided that wherever considered necessary and expedient, the Central Government may extend the term of such member for a further period not exceeding twelve months⁹.

8. *The Chairman / Members may not be removed prior to expiry of the tenure without cause and proper enquiry.”*

34. The notification says that the members of the EAC shall be experts with the requisite expertise and experiences in the field quoted in the notification which is different from the minimum qualification of the

⁸ Omitted vide S.O. 1737 dated 11th October, 2007; and inserted vide S.O. 2600(E) dated 9th October, 2014

⁹ Entry inserted vide notification number S.O 1562 (E) dated 21st May 2020; Substituted word vide S.O 3752 (E) dated 20th Oct, 2020

professionals. In the EAC there are Expert Appraisal Committee while SEAC shall consists the professionals and it shall fulfilling the conditions which are different in category in professional and the experts. The Experts eligibility criteria are at-least 15 years of relevant experience in the field are with an advance degree i.e. Ph.D in a concerned field and at-least 10 years of relevant experience while the qualification of the professionals are 5 years of formal university training in the concerned discipline leading to a M.A./M.Sc. degree. Which is lesser qualification than the experts.

35. The submission of the learned counsel for the RSPCB Mr. Rohit Sharma are that the matter is with regard to the work of issuing EC which is to be dealt by the MoEF&CC and SEIAA and PCB has no concern with the above activities. Similarly, the CPCB has submitted that the CPCB has revised CEPL evaluation methodology that Central Pollution Control Board (C.P.C.B.) carried out a Comprehensive Environmental Pollution Index (C.E.P.L.) Monitoring of the Industrial Clusters in the country in association with I.LT. Delhi in 2009. Based on C.E.P.I., a total of 88 industrial clusters were identified as Polluted Industrial Areas (P.I.As). Out of the identified 88 P.LAs, 43 industrial clusters were having a CEP.1. score of more than 70 and are categorized as Critically Polluted Areas (CPAs); and 32 industrial clusters with C.E.PL. scores between 60 & below 70 are categorized as Severely Polluted Areas (S.P.As)
36. Further, the CPCB revised C.E.P.I. evaluation methodology in concurrence with the MoEF&CC and issued directions on 26/4/2016 to all SPCBS/PCCs for adoption of the revised C.E.P.I. methodology, which also includes preparation of action plans for C.P.As and S.P.As by respective SPCBs/PCCs and it is further submitted that the CPCB is not involved the

- process of granting Environmental Clearance, thus, no further reply is required.
37. Submission of the learned counsel Ms. Parul Bhadoria - State Pollution Control Board, Madhya Pradesh are that the compliance of the EIA Notification, 2006 or to the Ministry of Environment, Forest and Climate Change and PCB are not involved in the grant of environmental clearance and the imposition of conditions of the EC and further that the same is within the domain of MoEF&CC and SEIAA.
38. Hon'ble the Supreme Court of India, in re-construction of park at Noida Okhla Bird Sanctuary (2011), 1SCC Page 744, felt the need of the entries in the schedule to the EIA 2006 and described the ambiguity while considering the issue as to whether general condition apply to building and construction projects directed that the question of application of the general condition to the projects activities listed in the schedule also needs to be put beyond any debate or dispute and referred the construction of the park project to MoEF&CC to appraised by Sectoral Specific Expert Appraisal Committee at Central Level considering the importance of location of the project near the Okhla Bird Sanctuary, an ecologically protected area and thereby indirectly applied general condition to the project. The EIA 2006 categorizes projects activities into Category A and B. Category A projects are appraised at Central Level by Sectoral Specific EAC, while Category B Projects are appraised at State Level by SEAC and not by a Sectoral Specific SEAC.
39. The classification is based on potential environmental impacts, with projects having higher environmental impacts assessed at central level and those with lesser impacts are assessed at the state level. Building and construction projects which are located within 5 km within of (i) Ecologically protected areas (ii) CPA/SPA (iii) Eco-sensitive areas (iv) Inter-

state boundaries and international boundaries and have a higher and larger magnitude in terms of potential adverse impacts on the environmental and therefore, a greater level of in-depth scrutiny is needed for appraisal of such building and construction projects and for which sectoral specific appraisal is needed at central level by sectorial specific experts who are part of sectorial specific EAC. There are eight (8) sectoral specific EAC at central level and each of the sectoral specific EAC appraises and deals with specific project activity as per the EIA 2006.

40. In view of the above submissions, arguments and records and notification, we are of the view that after quashing the notification dated 22.12.2014, vide order dated 06.03.2024, in W.P.(C) No. 3097/2016, GC is undisputedly applicable and all such projects in Schedule 8 of EIA 2006 located within 5 km. of ecologically protected areas, CPA/SPA, eco-sensitive areas, inter-state boundaries and international boundaries are to be appraised and evaluated at the central level by sector specific EAC.
41. Accordingly, we direct the MoEF&CC to strictly enforce the notification dated 14.09.2006 attached to Category 8 in the note general conditions and we direct the MoEF&CC to appraise all those building and construction projects that are located in whole or in part within 5 km. of the protected area notified under the Wildlife (Protection) Act, 1972, critically polluted areas and severely polluted areas as identified by the CPCB, eco-sensitive areas notified under Section 3(2) of the Environment (Protection) Act, and the projects located at inter-state boundaries as Category A projects and to be appraised by the central level by the Sectoral Expert Appraisal Committee.
42. The MoEF&CC is directed to strictly comply the notification or to make a clarity by issue of notification. The copy of the order be communicated to

the MoEF&CC for clarification and issue of necessary notification or to comply the EIA, Notification, 2006 in letter and spirit.

43. With these observations the application is allowed and **Original Application no. 93/2024** stands **disposed of** accordingly.

Sheo Kumar Singh, JM

Dr. A Senthil Vel, EM

09th August, 2024
O.A No. 93/2024(CZ)
PN


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भारत का राजपत्र

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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

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अधिसूचना

नई दिल्ली, 29 जनवरी, 2025

का. आ . 523(अ)— भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय ने अपनी अधिसूचना संख्या का.आ. 60 (अ), तारीख 27 जनवरी, 1994 के द्वारा भारत के किसी भी हिस्से में कोई नई परियोजना शुरू करने या अधिसूचना में शामिल किसी विद्यमान उद्योग या परियोजना के विस्तार या आधुनिकीकरण के लिए पूर्व पर्यावरणीय मंजूरी की आवश्यकता के साथ-साथ कतिपय निर्बंधन और प्रतिषेध भी अधिरोपित थे;

और भारत के उच्चतम न्यायालय ने 'हिंदुस्तान टाइम्स' एंड क्वार्ट फ्लोस दा मैली यमुना बनाम सेन्ट्रल पोल्यूशन कंट्रोल बोर्ड और अन्य के मामले में रिट याचिका (सिविल) संख्या 1994 का 725 और रिट याचिका (सिविल) संख्या 1985 का 4677 में अपने तारीख 12 दिसंबर 2003 के आदेश में कहा था कि भवन निर्माण से पर्यावरण को नुकसान होता है और इसलिए, ऐसी निर्माण परियोजनाओं को 1994 की उक्त अधिसूचना के दायरे में लाने पर विचार किया जा सकता है, इसलिए, उक्त अधिसूचना को संख्या का.आ. 801(अ), तारीख 7 जुलाई, 2004, द्वारा संशोधित किया गया था जिसके अंतर्गत भवन और प्रतिषेध परियोजनाओं की कुछ श्रेणियों को इसके दायरे में लाया गया था तथा पूर्व पर्यावरणीय मंजूरी को आवश्यक बनाया गया था;

और तत्पश्चात केन्द्रीय सरकार ने उक्त अधिसूचना को, संख्या का. आ. 1533 (अ), तारीख 14 सितम्बर, 2006 (जिसे इसमें इसके पश्चात ईआईए अधिसूचना कहा गया है) के अधीन अधिक्रमण कर दिया था, जिसमें अन्य बातों के साथ-साथ इसकी अनुसूची की मद 8 (क) और (ख) के अधीन आने वाली भवन और निर्माण परियोजनाओं तथा नगरी और क्षेत्र विकास परियोजनाओं पर कतिपय निर्बंधन और विनिर्माण लगाए गए थे तथा ऐसे किसी भी क्रियाकलाप के लिए पूर्व पर्यावरण मंजूरी को आवश्यक बनाया गया था;

और तत्पश्चात् केन्द्रीय सरकार ने पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के अधीन 11 सितम्बर, 2014 को एक प्रारूप अधिसूचना प्रकाशित की थी, जिसमें ईआईए अधिसूचना की अनुसूची में मद 8 (क) और (ख) तथा उससे संबंधित प्रविष्टियों के संबंध में संशोधन के लिए सभी संबंधितों से सुझाव और आपत्तियां आमंत्रित की गई थीं तथा प्रारूप अधिसूचना के संबंध में प्राप्त सभी सुझावों और आपत्तियों पर विचार करने और उन्हें सम्मिलित करने के पश्चात् संख्या का.आ. 3252 (अ), तारीख 22 दिसम्बर, 2014 के अधीन अंतिम अधिसूचना जारी की गई थी;

और केरल उच्च न्यायालय, एर्नाकुलम ने रिट याचिका (सिविल) संख्या 2016 की 3097 के मामले में अपने तारीख 6 मार्च 2024 के आदेश के अधीन 'वन अर्थ वन लाइफ बनाम पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय और अन्य' में 22 दिसंबर, 2014 की अधिसूचना को इस आधार पर रद्द कर दिया था कि अंतिम अधिसूचना प्रारूप अधिसूचना से अलग थी, हालांकि मंत्रालय को विधि के अनुसार एक नई अधिसूचना जारी करने की स्वतंत्रता प्रदान की गई थी;

और केरल उच्च न्यायालय के निर्णय के आलोक में, राष्ट्रीय हरित अधिकरण ने मूल आवेदन संख्या 2024 का 93 में 9 अगस्त, 2024 के अपने आदेश के अधीन, अन्य बातों के साथ-साथ, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय को ईआईए अधिसूचना की अनुसूची के मद 8 (क) और (ख) के संबंध में सामान्य शर्तों की प्रयोज्यता से संबंधित उपबंधों का अनुपालन करने या इस संबंध में स्पष्टीकरण अधिसूचना जारी करने का निर्देश दिया था;

और केरल उच्च न्यायालय के निर्णय और राष्ट्रीय हरित अधिकरण के आदेश के मद्देनजर, विभिन्न भवन निर्माण परियोजनाओं के लिए पूर्व पर्यावरणीय मंजूरी की प्रयोज्यता के संबंध में उच्चतम न्यायालय के तारीख 12 दिसंबर 2003 के निर्णय का पालन करने के लिए एक नई अधिसूचना जारी करने की तत्काल आवश्यकता है

प्रारूप अधिसूचना उक्त अधिसूचना में संशोधन करने के लिए अधिसूचना संख्या का. आ. 4844 (अ) तारीख 7 नवम्बर, 2024 द्वारा भारत के राजपत्र, असाधारण, भाग 2, खण्ड 3, उपखण्ड (ii) में प्रकाशित की गई थी जिसमें उन सभी से जिनका उससे प्रभावित होना सम्भाव्य है, उस तारीख से, जिसको उक्त प्रारूप अधिसूचना में अन्तर्विष्ट राजपत्र की प्रतियां जनता को उपलब्ध कराई गई थी, साठ दिनों की अवधि के भीतर आक्षेप और सुझाव आमंत्रित किए गए थे।

और उक्त अधिसूचना की प्रतियां 7 नवंबर, 2024 को जनता को उपलब्ध करा दी गई थी।

और केन्द्रीय सरकार द्वारा, उक्त अधिसूचना के उत्तर में प्राप्त आक्षेपों और सुझावों पर साठ दिनों की अवधि के भीतर सम्यक रूप से विचार कर लिया गया है।

अतः अब केन्द्रीय सरकार, पर्यावरण संरक्षण नियम 1986 के नियम 5 के उप नियम (3) के साथ पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (1) और उपधारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना संख्या का.आ. 1533 (अ), तारीख 14 सितम्बर, 2006 में और निम्नलिखित संशोधन करती है, अर्थात:-

उक्त अधिसूचना की, अनुसूची में, मद 8 और उससे संबंधित प्रविष्टियों के स्थान पर, निम्नलिखित मद और प्रविष्टियों को रखा जाएगा, अर्थात:-

परियोजना या गतिविधि		सीमा रेखा वाली श्रेणी		शर्तें, यदि कोई हों
		क	ख	
(1)	(2)	(3)	(4)	(5)
"8		भवन या संनिर्माण परियोजनाएं या नगरी और क्षेत्र विकास परियोजनाएं		
8(क)	भवन और संनिर्माण परियोजनाएं	> 20000 वर्ग मीटर और < 1,50,000 वर्ग मीटर निर्मित क्षेत्र	इस अधिसूचना के प्रयोजन के लिए "निर्मित क्षेत्र" को, सभी तलों पर इकट्ठे निर्मित या आच्छादित क्षेत्र के रूप में परिभाषित किया गया है जिसके अधीन बेसमेंट और अन्य सेवा क्षेत्र भी हैं जिनका भवन या संनिर्माण परियोजनाओं के लिए प्रस्ताव किया गया है।	टिप्पण1 .- परियोजना या कार्यकलापों में औद्योगिक शेड, विद्यालय, महाविद्यालय, शैक्षिक संस्थाओं, के लिए छात्रावास शामिल नहीं होंगे किंतु ऐसे भवन भरणीय पर्यावरणीय प्रबंधन, ठोस और द्रव अपशिष्ट प्रबंधन, वर्षा जल संरक्षण का सुनिश्चय करेंगे और वे पुनः चक्रित सामग्रियों जैसे भस्म ईटों का उपयोग कर सकेंगे।

				टिप्पण2 .- "सामान्य शर्तें "लागू नहीं होंगी।
8(ख)	नगरी और क्षेत्र विकास परियोजनाएं		जो >50 हेक्टेयर के क्षेत्र और या >1,50,000 वर्ग मीटर क्षेत्र को कवर कर रही हैं	इस मद के अधीन आने वाली नगरी और क्षेत्र विकास परियोजनाओं से पर्यावरण समाघात रिपोर्ट अपेक्षित होगी और उनका निर्धारण श्रेणी "ख1" परियोजना के रूप में किया जाएगा। टिप्पण.- साधारण शर्तें "लागू नहीं होंगी।"

[फा.सं.आईए3-3/46/2024- आईए.III]

रजत अग्रवाल, संयुक्त सचिव

टिप्पण: मूल अधिसूचना संख्या का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में प्रकाशित किए गए थे और इसमें अंतिम बार अधिसूचना संख्या का.आ. 2215(अ) तारीख 7 जून 2024 द्वारा संशोधन किया गया था।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 29th January, 2025

S.O. 523(E).— WHEREAS the Government of India in the erstwhile Ministry of Environment and Forests *vide* its notification number S.O.60(E) dated the 27th January, 1994 imposed certain restrictions and prohibitions and requiring prior environmental clearance for undertaking any new project in any part of India or the expansion or modernisation of any existing industry or project covered in the notification;

AND WHEREAS the Supreme Court of India in its order dated the 12th December 2003 in WP (C) No. 725 of 1994 and WP (C) No. 4677 of 1985 in the matter of news item published in Hindustan Times titled "And Quiet Flows the Maily Yamuna" *Vs* Central Pollution Control Board and Others observed that building construction causes damage to the environment and, therefore, such construction projects may be considered to be brought within the purview of the said notification of 1994, hence, the said notification was amended *vide* number S.O 801(E), dated the 7th July, 2004 bringing within its purview certain categories of building and construction projects and requiring prior environmental clearance;

AND WHEREAS subsequently the Central Government superseded the said notification, *vide* number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification), *inter alia*, imposing certain restrictions and prohibitions on building and construction projects and township and area development projects covered under item 8 (a) and (b) of the Schedule thereof and required prior environment clearance for undertaking any such activities;

AND WHEREAS the Central Government under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, subsequently published a draft notification on the 11th September, 2014, inviting suggestions and objections of all concerned to the amendment in the Schedule of the EIA Notification in respect of items 8 (a) and (b) and the entries relating thereto and after considering and incorporating all the

suggestions and objections received in respect of the draft notification, made the final notification *vide* number S.O.3252(E) dated the 22nd December, 2014;

AND WHEREAS the High Court of Kerala, Ernakulam, *vide* its order dated the 6th March 2024, in the matter of WP (C) No. 3097 of 2016 titled One Earth One Life *vs.* the Ministry of Environment, Forest and Climate Change and Anr., quashed and set aside the notification dated the 22nd December, 2014 on the ground that the final notification was different from the draft notification while granting liberty to the Ministry to issue a fresh notification, in accordance with the law;

AND WHEREAS in the light of judgement of Kerala High Court, the National Green Tribunal, *vide* order dated the 9th August, 2024, in Original Application No. 93 of 2024, *inter alia*, directed the Ministry of Environment, Forest and Climate Change to either comply with the provisions related to the applicability of General Conditions in respect of items 8 (a) and (b) of the Schedule to the EIA notification or to issue a clarificatory notification in this regard;

AND WHEREAS in view of the judgment of the Kerala High Court and the order of the National Green Tribunal, there is an urgent need to issue a fresh notification clarifying the issues for adhering to the judgement of the Supreme Court dated the 12th December, 2003 regarding applicability of prior environmental clearance for various building construction projects;

AND WHEREAS a draft notification for making amendments in the said notification was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), *vide* number S.O. 4844(E), dated the 7th November, 2024, inviting objections and suggestions from all the persons likely to be affected thereby, within a period of sixty days from the date on which copies of the Gazette containing the said draft notification were made available to the Public;

AND WHEREAS copies of the said notification were made available to the public on the 7th November, 2024;

AND WHEREAS the objections and suggestions received in response to the said notification within the period of sixty days have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Environment and Forests, number S.O.1533(E), dated the 14th September, 2006, namely:—

In the said notification, in the Schedule, for item 8 and the entries relating thereto, the following item and the entries shall be substituted, namely:—

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
"8	Building or Construction projects or Area Development Projects and Townships			
8(a)	Building and Construction projects		≥ 20,000 sq.m. and < 1,50,000 sq. m. of built up area	The term "built up area" for the purpose of this notification is defined as the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects. Note 1.— The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental

				management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks. Note 2.— General Conditions shall not apply.
8 (b)	Townships and Area Development Projects		Covering an area \geq 50 ha and/or built up area \geq 1,50,000 sq. m.	A project of Township and Area Development Projects covered under this item shall require an Environment Impact Assessment report and be appraised as Category 'B1' Project. Note. — General Conditions shall not apply.”.

[F.No. IA3-3/46/2024-IA. III]

RAJAT AGARWAL, Jt. Secy.

Note.-The principal notification was published in the Gazette of India, *vide* number S.O. 1533(E), dated the 14th September, 2006 and was last amended *vide* the notification number S.O. 2215(E) dated 7th June 2024.



(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
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Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

613*Annexure - R/6*

File No. IA3-3/46/2024-IA.III [E239970]

Government of India
Ministry of Environment, Forest and Climate Change
(IA Division)

129

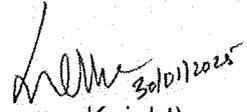
Indira Paryavaran Bhawan
Jor Bagh Road, Aligarj,
New Delhi – 110003Dated: 30th January, 2025**OFFICE MEMORANDUM****Subject: Clarification on the applicability of the Notification S.O. 523(E) dated 29th January, 2025 – regarding.**

In view of the judgment of the Hon'ble High Court of Kerala, Ernakulam, dated 6th March 2024, in WP (C) No. 3097 of 2016 titled One Earth One Life vs. the Ministry of Environment, Forest and Climate Change and Anr., the Ministry following due process has issued final Notification vide S.O.523(E) dated 29th January, 2025.

2. The Ministry now deems it necessary to inform that the clarifications issued vide OMs dated 19th May, 2022 and 4th October, 2022, shall continue to apply in respect of the notification S.O. 523(E) dated 29th January, 2025. The clarifications shall also be applicable within the territorial jurisdiction of High Court of Kerala.

3. Further, it is clarified that the guidelines issued vide OM dated 9th June 2015, to be followed by the building projects to ensure sustainable environmental management, shall continue to apply in respect of the notification S.O.523(E) dated 29th January, 2025.

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


(Dr. J. D. Marcus Knight)
Scientist E

To

1. Chairman/Member Secretary, CPCB.
2. Chairperson/Member Secretaries of all the State/UT, PCBs/PCCs
3. Chairperson/Member Secretaries of all the EACs.
4. Chairperson/Member Secretaries of all the SEIAAs/ SEACs.
5. All Officers of IA Division

Copy to:

1. PS to Hon'ble MEFCC
2. PS to Hon'ble MoS (EF&CC)
3. Sr PPS to Secretary (EF&CC)
4. Sr PPS to DGF&SS (EF&CC)
5. Sr PPS to AS(AG)/Sr PPS to JS(RA)
6. Website, MoEF&CC/Guard File



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Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

ITEM NO.70

COURT **614** No. 4

Annexure - R/7
SECTION PIL-W

S U P R E M E C O U R T O F I N D I A 130
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 166/2025

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(IA No. 48655/2025 - STAY APPLICATION)

Date : 24-02-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) :

Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Vanshdeep Dalmia, AOR
Ms. Anisha Jain, Adv.
Ms. Shambhavi Singh, Adv.
Mr. Don Mathew, Adv.
Ms. Ishita Choudhary, Adv.

For Respondent(s) :

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

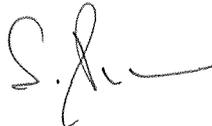
Issue notice returnable on 28th March, 2025.

In the meanwhile, there will be stay of operation
and implementation of the impugned Notification dated 29th
January, 2025 (Annexure P-24) as well as Office
Memorandum dated 30th January, 2025 (Annexure P-25).

Signature Not Verified
Digitally signed by
ANITA MALHOTRA
Date: 2025.02.25
18:44:16 IST
Reason: —

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER



(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

Item No. 02

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)

Tanaji B. Gambhire

Appellant

Versus

Chief Secretary Government of Maharashtra & Ors.

Respondent(s)

Date of hearing: 24.05.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Nitin Lonkar, Advocate

ORDER

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m² with FSI 34,804.98m² and non-FSI 32,898.07 m². Building configuration is as follows:-

Building Name	Number of floors	Height (Mtrs.)
Wing D	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing E	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing F	LG + GR + 4	18.90
Club House	G+1	6.45

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area

of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. *Ex-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon'ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*¹. There are further judgements of the Hon'ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*² and *Keystone developers v. Anil Tharthare*³. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

³ (2020) 2 SCC 666

4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon'ble Supreme Court and violations frequently being alleged, including the present case. 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. In this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee

may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.

6. The applicant may serve set of papers on the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to facilitate the compliance of the above order.

A copy of this order be forwarded to the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB by email for compliance.

List for further consideration on 10.11.2021.

In view of order in the main appeal, no order is called for in I.A.s. which stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 24, 2021
Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)
A



(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
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पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

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:

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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**

SA

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]

SA

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:-

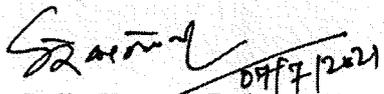
- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

SA

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).


 (डॉ. एस. प्रभु)
 (Dr. S. PRABHU)
 वैज्ञानिक 'डी'/Scientist 'D'
 पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
 Min.of Environment, Forest and Climate Change
 भारत सरकार, नई दिल्ली
 Govt. of India, New Delhi



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2024

DATE OF DECISION : 30.08.2024

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.(MD)Nos.8866 and 11757 of 2021
and

W.P.No.18829 of 2021

and

W.M.P.(MD)Nos.6666 and 12052 of 2021
in W.P.(MD)No.8866 of 2021

W.M.P.(MD)No.9241 of 2021 and W.M.P.No.6193 of 2022
in W.P.(MD)No.11757 of 2021

W.M.P.Nos.20128 and 20130 of 2021
in W.P.No.18829 of 2021

AND

Contempt Petition No.56 of 2022

and

Sub Application No.629 of 2023 in Cont.P.No.56 of 2022

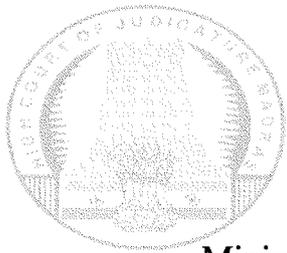
W.P.(MD)No.8866 of 2021 :

Fatima

.. Petitioner

Vs.

The Union of India,
rep by its Secretary to the Government,



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

Ministry of Environment, Forest and Climate Change,

Paryavaran Bhawan,

Jor Bagh, New Delhi-110 003.

.. Respondent

W.P.(MD)No.11757 of 2021 :

Fatima

.. Petitioner

Vs.

The Union of India,

rep by its Secretary to the Government,

Ministry of Environment, Forest and Climate Change,

Paryavaran Bhawan,

Jor Bagh, New Delhi-110 003.

.. Respondent

W.P.No.18829 of 2021 :

K.Bharathi

.. Petitioner

Vs.

1.The Union of India,

rep by Joint Secretary to the Government of India,

Ministry of Forest, Environment and Climate Change,

Paryavaran Bhawan, Jor Bagh,

New Delhi-110 003.

2.State of Tamil Nadu,

rep by the Principal Secretary,

Department of Environment, Climate Change and Forests,

No.1, Jeenis Road,

Panagal Building,

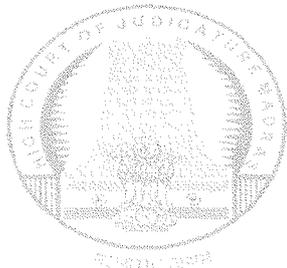
Ground Floor, Saidapet,

Chennai-600 015.

.. Respondents



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



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Contempt Petition No.56 of 2022 :

Puduchery Environment Protection Association,
Reg. No.98/2007,
rep by its Honorary President, R.Kothandaraman
No.18, S.V.Koil Street,
Koodapakkam and Post,
Puducherry – 605 502. .. Petitioner

Vs.

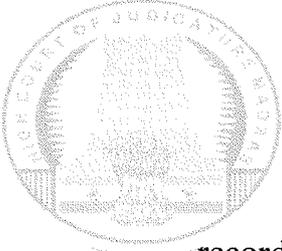
Shri Rameshwar P.Gupta,
Secretary,
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhavan,
Jor Bagh, New Delhi. .. Respondent

W.P.(MD) No.8866 of 2021 has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the respondent culminating in Office Memorandum dated 19.02.2021 bearing number F.No.19-27/2015-IA.III, quash the same and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

W.P.(MD) No.11757 of 2021 has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



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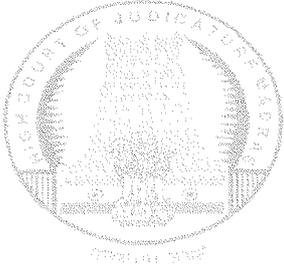
records of the respondent culminating in Office Memorandum dated 07.07.2021 bearing number F.No.22-21/2020-IA.III, quash the same and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

W.P.No.18829 of 2021 has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the first respondent culminating in Office Memorandum dated 19.02.2021 bearing number F.No.19-27/2015-IA.III, quash the same and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

Contempt Petition No.56 of 2022 has been filed under Section 11 of the Contempt of Court Act, 1971 seeking to punish the respondent under the Contempt of Courts Act, 1971 for wilful disobedience and non compliance of the order of this Hon'ble High Court dated 13.10.2017 in W.P.No.11189 of 2017 and pass such further order or orders as may be fit, proper and necessary in the facts and circumstances of the case and thus render justice.

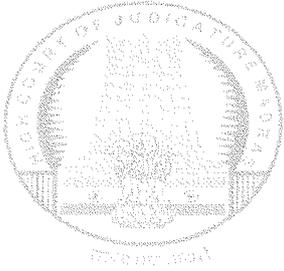


W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



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For Petitioner in Cont.P.No.56/2022 W.P.(MD)Nos.8866 and 11757 of 2021	Mr.A.Yogeshwaran Ms.B.Poongkhulali along with Mr.Nagesh Nakhul Mr.Iraiyambu Prasad
For Petitioner in W.P.No.18829 of 2021	Mr.M.V.Swaroop
For Respondent in Cont.P.No.56 of 2022 W.P.(MD)Nos.8866 and 11757 of 2021 and for 1 st respondent in W.P.No.18829 of 2021	Mr.AR.L.Sundaresan, Addl.Solicitor General of India assisted by Dr.G.Babu, Senior Panel Counsel Mr.V.Chandrasekaran, Senior Panel Counsel
For 2 nd respondent in W.P.No.18829 of 2021	Mr.R.Shunmugasundaram then Advocate General instructed by Mr.P.Muthukumar, State Government Pleader assisted by Ms.A.G.Shakeena Ms.Sona Sathish Kumar Mr.J.Ravindran, Additional Advocate General instructed by Dr.T.Seenivasan, Spl.G.P.
For Intervenors	Mr.P.S.Raman, Senior Counsel and Mr.Satish Parasaran, Senior Counsel for Mr.Karthik Sundaram along with Ms.Deepika Murali Mr.P.Wilson, Senior Counsel for Mr.M.Pradeep Shankar Mr.Naveen Kumar Murthi along with Ms.M.Mahamani



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

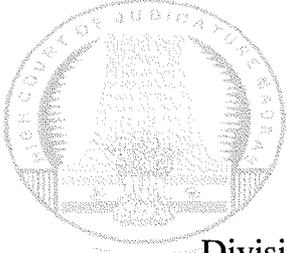
COMMON ORDER

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M.SUNDAR, J.

This common order will govern the captioned three 'Writ Petitions' ('W.Ps' in plural and 'W.P.' in singular for the sake of brevity), captioned 'writ miscellaneous petitions' thereat ('W.M.Ps' in plural and 'W.M.P' in singular for the sake of brevity), captioned Contempt Petition and Sub Application thereat.

2.In 'captioned W.P.(MD)No.8866 of 2021' (hereinafter 'I Fatima WP' for the sake of convenience) inter-alia a 'Office Memorandum' [hereinafter 'OM' in singular and 'OMs' in plural, though plural of 'memorandum' is 'memoranda' for the sake of brevity] dated 19.02.2021 issued by the sole respondent thereat ['Ministry of Environment, Forest and Climate Change' (hereinafter 'MoEF' for the sake of brevity)] has been assailed. This 19.02.2021 OM issued by MoEF shall hereinafter be referred to as 'I impugned OM' for the sake of convenience. In this I Fatima WP, vide an interim order dated 30.04.2021 made in W.M.P.(MD)No.6666 of 2021, another Hon'ble



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

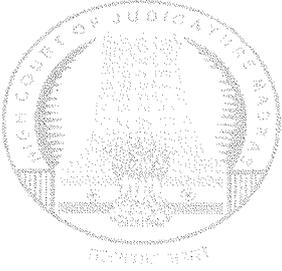
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Division Bench has stayed this I impugned OM prospectively, this interim order has been assailed in Hon'ble Supreme Court by 'Union of India' {hereinafter 'UOI' for the sake of brevity} vide S.L.P.(C)Diary No.33840 of 2023, notice has been issued and interim stay {interim stay qua interim stay order of Madras High Court Division Bench, i.e., in effect suspending the interim stay granted by another Division Bench of Madras High Court} had been granted by Hon'ble Supreme Court vide order dated 04.09.2023 which is operating and Hon'ble Supreme Court is in seizin of the SLP.

3.In 'captioned W.P.(MD)No.11757 of 2021' (hereinafter 'II Fatima WP' for the sake of convenience), inter-alia a OM dated 07.07.2021 issued by the sole respondent thereat, i.e., MoEF has been assailed and an interim order dated 15.07.2021 made in W.M.P.(MD)No.9241 of 2021 in this II Fatima WP reported in **2021 SCC OnLine Mad 12936** staying the operation of this 07.07.2021 OM issued by MoEF {hereinafter 'II impugned OM' for the sake of convenience and clarity} is operating.



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



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4.The aforementioned II impugned OM along with a notification dated 28.01.2022 issued by MoEF has been assailed in Hon'ble Supreme Court by way of a writ petition under Article 32 of the Constitution by a 'Non Governmental Organization' ('NGO' for the sake of brevity) which goes by the name 'Vanashakti', Hon'ble Supreme Court has issued notice, granted an interim order (subsequently clarified the interim order saying that the same will not come in the way of the competent authorities considering proposals for modifications / alterations in Environmental Clearances) and therefore, Hon'ble Supreme Court is in seizin of challenge to aforementioned II impugned OM.

5.In 'captioned W.P.No.18829 of 2021' (hereinafter 'III WP' and/or 'Bharathi WP' for the sake of convenience) inter-alia aforesaid I impugned OM (dated 19.02.2021) issued by first respondent thereat, i.e., MoEF has been assailed. In other words, the prayer is same as in I Fatima WP and III WP.

6.Captioned Contempt Petition No.56 of 2022 has been filed complaining of violation of an order dated 13.10.2017 made by a



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



Division Bench of the Madras High Court in 'W.P.No.11189 of 2017'

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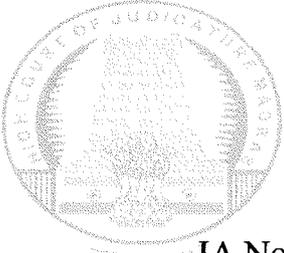
(hereinafter 'Puducherry WP' for the sake of convenience) wherein inter-alia a notification dated 14.03.2017 issued by MoEF was called in question. To be noted, in this Puducherry WP, an undertaking given by the Union of India represented by the then learned Solicitor that ex post facto clearance shall be a one time measure was recorded.

7. When the pendency of the aforementioned matters in Hon'ble Supreme Court were brought to the notice of this Court, this Court as a matter of judicial discipline in the hierarchy of Courts, made it clear that it would be appropriate to adjourn the captioned matters *sine die* and await the verdict of Hon'ble Supreme Court.

8. However, the parties in the matters on hand approached Hon'ble Supreme Court and sought clarification as to whether this Court can hear the main matters when the aforementioned matters are pending in Hon'ble Supreme Court, i.e., when Hon'ble Supreme Court is in seisin of aforementioned matters. To state with specificity, parties to the captioned matters approached Hon'ble Supreme Court vide



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



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IA.No.195200 of 2023 in SLP (C) No.20061 of 2023, applications in W.P.(Civil) No.1394 of 2023 and sought clarification about whether this Court can proceed with the hearing of captioned main W.Ps. In these clarification applications, Hon'ble Supreme Court made two separate orders, one in the aforementioned S.L.P. (SLP(C)No.20061 of 2023) against the interim order made by another Hon'ble Division Bench of this Court and the other in the Vanashakti W.P. (W.P.(Civil)No.1394 of 2023 being Article 32 Writ Petition), clarifying that Hon'ble Supreme Court being in seizin and/or granting interim orders which are operating will not come in the way of High Court hearing out main W.Ps. These clarificatory orders of Hon'ble Supreme Court have been captured in proceedings made in earlier listings of captioned matters (vide proceedings dated / made in the listings on 16.10.2023 and 15.02.2024). It is on this basis that captioned main W.Ps and the captioned contempt petition (together with WMPs and sub application thereat) were heard out.

9.Before we proceed further, we scan and/or reproduce the prayers in aforementioned clarification applications and clarificatory



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

orders of Hon'ble Supreme Court and the same are as follows:

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Prayer in I.A.No.195200 of 2023 in SLP (C)No.20061 of 2023 :

'PRAYER

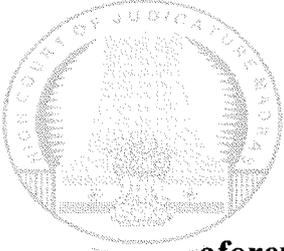
In the light of the above, it is prayed that this
Hon'ble Court may be pleased to:

- a) Clarify that the Order dated 04.09.2023 passed by this Hon'ble Court in Special Leave Petition (Civil) No.20061 of 2023 is limited to a stay of the Interim Order dated 30.04.2021 passed by the High Court of Judicature at Madras at Madurai in WMP(MD)No.6666 of 2021 in WP(MD)No.8866 of 2021, and does not prevent the Hon'ble High Court from proceeding with the final arguments in WP(MD)No.8866 of 2021 and connected matters, and to pass its final judgment in the said matters; and
- b) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.'

Clarificatory order of Hon'ble Supreme Court (dated 13.10.2023) in



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



aforementioned I.A.:

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ITEM NO.62 COURT NO.7 SECTION XII
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 20061/2023
(Arising out of impugned final judgment and order dated 13-04-2021
in WMP(MD) No. 6666/2021 passed by the High Court of Judicature at
Madras At Madurai)

UNION OF INDIA Petitioner(s)

VERSUS

FATIMA Respondent(s)

(IA No. 195200/2023 - CLARIFICATION/DIRECTION)

Date : 13-10-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Tushar Mehta, Solicitor General
Mr. K M Nataraaj, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Dgivijay Dam, Adv.
Mr. Sharath Nambiar, Adv.
Ms. Ruchi Kohli, Adv.
Ms. Swarupama Chaturvedi, Adv.

For Respondent(s) Mr. T. V. S. Raghavendra Sreyas, AOR
Mr. Naveen Hegde, Adv.
Mr. Siddharth Vasudev, Adv.

UPON hearing the counsel the Court made the following
O R D E R
IA No. 195200/2023 is filed seeking clarification of the
order dated 04.09.2023.

Having perused the same, we make it clear that the order
passed by this Court on 04.09.2023 staying the interim order passed
by the High Court would not be an impediment for the High Court to
consider and dispose of the writ petition on its own merits and in
accordance with law.

In that regard, all contentions are left open to be
considered by the High Court.

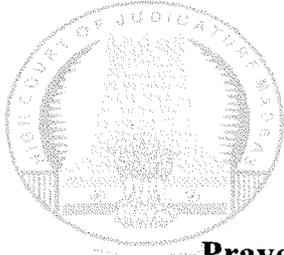
IA No. 195200/2023 is disposed of accordingly.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR



W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022



Prayer in the I.A. filed in W.P.(Civil) No.1394 of 2023 :

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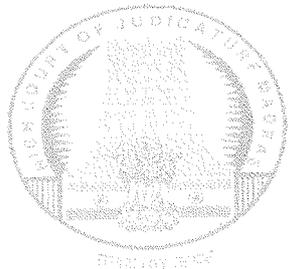
'PRAYER

In the light of the above, it is prayed that this

Hon'ble Court may be pleased to:

a)Clarify that the Order dated 02.01.2024 passed by this Hon'ble Court in Writ Petition (Civil) No.1394 of 2023 would not be an impediment for the Hon'ble High Court from proceeding with the final arguments in Contempt petition No.56 of 2022 and connected matters (including WP(MD)No.8866 of 2021, WP(MD)No.11757 of 2021 and WP No.18829 of 2021), and to pass its final judgment in the said matters; and

b)Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.'



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W.P.(MD)Nos.8866 and 11757 of 2021
and W.P.No.18829 of 2021 and Cont.P.No.56 of 2022

2

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

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

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

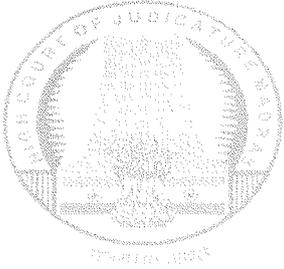
UPON hearing the counsel the Court made the following
O R D E R

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

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



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

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

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

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

8. The applications are, accordingly, disposed of.

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

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

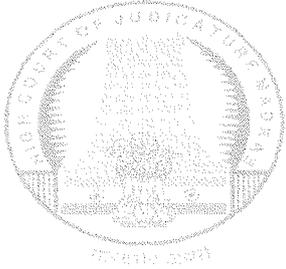
2. List these applications alongwith main matter after four weeks.

(DEEPAK SINGH)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)



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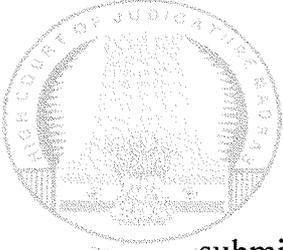


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10. Adverting to aforementioned clarificatory orders of Hon'ble Supreme Court, learned Advocate General, learned Solicitor, learned Additional Advocate General, learned senior counsel and all learned counsel requested nay urged this Court in unison, in one voice to hear out captioned three writ petitions, one contempt petition, writ miscellaneous petitions and sub application thereat and dispose of the same. In deference to aforementioned clarificatory orders of Hon'ble Supreme Court, this common request was acceded to. This takes this matter to the hearing out of captioned matters.

11. Reverting to the legal drill at hand qua captioned matters, the kernel of the issue is whether 'Environmental Clearances' [hereinafter 'ECs' in plural and 'EC' in singular for the sake of brevity] which are imperative for certain projects / activities can be given ex post facto, i.e., post project or post commencement of project?

12. In Puducherry WP, i.e., WP.No.11189 of 2017 when a notification of MoEF dated 14.03.2017 providing for ex post facto EC was assailed, learned Solicitor representing UOI, on instructions,



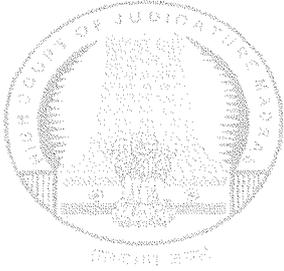
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submitted that it is a one time measure. Puducherry WP was disposed of by a Hon'ble Division Bench of this Court vide order dated 13.10.2017 by recording the stated position of UOI. Thereafter, when II impugned OM providing for ex post facto EC was issued, captioned contempt petition was filed.

13.In the hearing, though a plethora of case laws were pressed into service and elaborate arguments were advanced by senior counsel and counsel for various parties (including three intervenors), we find that the crux and gravamen of the issue at hand i.e., the question as to whether ex post facto EC can be made permissible by way of instruments (to be noted, notifications, OMs, circulars, Standing Orders (SOs), General Statutory Rules (GSRs), etc., are being collectively referred to as 'instruments') and a search for an answer to this question, primarily perambulates (as it unfurls from the submissions made before us) inside the jurisprudential perimeter sketched by *rationes decidendi* qua six case laws of Hon'ble Supreme Court and an adumbration of these six case laws in chronological order is as follows:



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(i)Lafarge [*Lafarge Umiam Mining Private Limited Vs. T.N.Godavarman Thirumulpad* reported in (2011) 7 SCC 338] rendered by a three member Bench on 06.07.2011;

(ii)Common Cause [*Common Cause Vs. Union of India* reported in (2017) 9 SCC 499] rendered by a two member Bench on 02.08.2017;

(iii)Alembic [*Alembic Pharmaceuticals Limited Vs. Rohit Prajapati* reported in (2020) 17 SCC 157 rendered by a two member bench on 01.04.2020;

(iv)Electrosteel [*Electrosteel Steels Limited Vs. Union of India and others* reported in (2023) 6 SCC 615] rendered by a two member bench on 09.12.2021;

(v)Pahwa Plastics [*Pahwa Plastics Pvt. Ltd. Vs. Dastak NGO and others* reported in 2022 SCC OnLine SC 362] rendered by a two member bench on 25.03.2022; and

(vi)D.Swamy [*D.Swamy Vs. Karnataka State*



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Pollution Control Board reported in **2022 SCC OnLine**

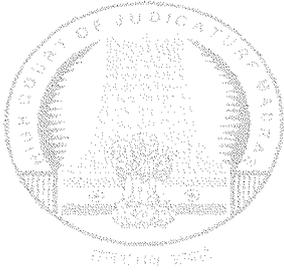
SC 1278] rendered by a two member Bench on
22.09.2022.

14. Therefore, while we would be alluding to other case laws, as sheet anchor submissions on either side were qua jurisprudential perimeter sketched by *rationes decidendi* vide aforementioned six case laws, we deem it appropriate to set out, tersely though, the facts and what is the *ratio decidendi* of these six case laws. We do so infra and this adumbration is as follows:

(i) In *Lafarge*, a company (Lafarge Umiam Mining Private Limited, i.e., '*Lafarge*' for the sake of brevity) was carrying on limestone mining activities in Meghalaya and for this purpose, it had obtained necessary ECs from MoEF but issues arose when it came to light that mining activities are being carried out in an area surrounded by thick natural vegetation cover with sizeable number of tall trees and further when it surfaced that Lafarge has misrepresented as regards nature of the land



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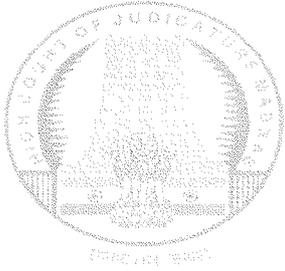
and therefore it should have obtained forest clearance, Lafarge contended that there was no diversion of forest land for non-forestry purposes. Hon'ble Supreme Court, after extensively examining the issue, acceded to plea of *Lafarge* but issued a set of guidelines to be followed in future cases.

(ii) In *Common Cause*, which was rendered in a Article 32 writ petition, there was a complaint of rapacious mining (in State of Odisha) to the detriment of environment and tribal inhabitants. In this writ petition, Hon'ble Supreme Court made it clear that it is unable to agree with the submission / argument of mining lease holders that the possibility of getting ex post facto EC was a signal that (a) EC is not mandatory and (b) the default is retrospectively condonable.

(iii) *Alembic* arose out of an order made by the National Green Tribunal (NGT), Western Zone, wherein it quashed a MoEF circular envisaging ex post facto EC. NGT, Western Zone on quashing the circular of MoEF



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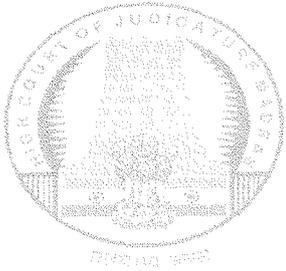
also ordered revocation of EC besides closure and to be noted, when review of this order was sought, the review application was also dismissed by NGT, Western Zone.

Three industrial units were affected by this order, the matter was carried in appeal to Hon'ble Supreme Court and Hon'ble Supreme Court while setting aside the order of NGT, Western Zone made it clear that on the facts of that case, revocation of ECs, direction for closure was not warranted and dismissal of review application was also set aside but the three industries were directed to deposit Rs.10 Crores each as penalties for environmental degradation caused by the three industries and made it clear that this is a facet of preserving the environment in accordance with precautionary principle.

(iv)*Electrosteel* is an appeal against an order of a learned Single Judge of Jharkhand High Court discontinuing interim orders which permitted operation of a steel plant under the supervision of 'Jharkhand State Pollution Control Board' (JSPCB). Hon'ble Supreme Court



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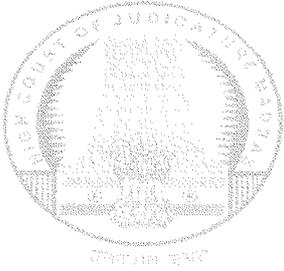
set aside the order of Jharkhand High Court primarily on the ground that about 1000 workmen (permanent and on contractual), would be affected if the steel plant which is being run under the supervision of JSPCB is shut.

(v)*Pahwa Plastics* is a statutory appeal to Hon'ble Supreme Court under Section 22 of 'the National Green Tribunal Act, 2010' [hereinafter 'NGT Act' for the sake of brevity and convenience] assailing an order made by NGT, Principal Bench (New Delhi) holding that industrial units without prior ECs cannot operate. In this appeal, Hon'ble Supreme Court set aside the order of NGT Principal Bench holding that ex post facto EC is not prohibited under 'the Environment (Protection) Act, 1986' [hereinafter '1986 Act' for the sake of brevity and convenience] but made it clear that ex post facto EC should ordinarily not be given and that it should be given only in exceptional circumstances.

(vi)*D.Swamy* is also a statutory appeal under Section 22 of NGT Act. In this appeal, an order made by



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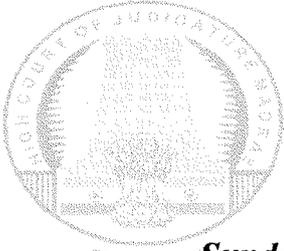
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NGT, Southern Zone, Chennai (dismissing an application under Section 18(1) of NGT Act seeking closure of a Bio-medical waste treatment facility) was assailed. Hon'ble Supreme Court sustained the NGT order and reiterated that ex post facto EC should ordinarily not be given and that it should be resorted to only in exceptional circumstances. In *D.Swamy*, it was pointed out that in *Alembic*, though closure was not warranted on the facts of that case, ex post facto EC was deprecated and penalty for environmental degradation was imposed as a facet of precautionary principle.

15.Before we proceed further, we remind ourselves of Lord Morris and the declaration of law by a Constitution Bench of Hon'ble Supreme Court in *Padma Sundara Rao Vs. State of Tamil Nadu* reported in (2002) 3 SCC 533 as regards how case laws have to be relied on and how a citation should be adverted to. Lord Morris said that judicial utterances are in the fact setting of particular case (in Herrington) and this was reiterated by Hon'ble Supreme Court in *Padma*



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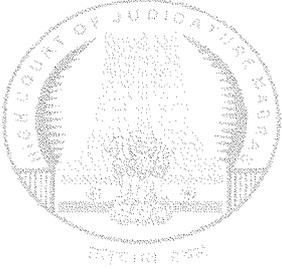


Sundara Rao, wherein the factual matrix is, a notification issued under

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Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in (1996) 3 SCC 88 held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws / precedents. Relevant paragraph in *Padma Sundara Rao* is paragraph 9 and the same reads as follows :

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between



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conclusions in two cases.'

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16.It is in the light of aforesaid *Padma Sundara Rao* principle that we have deemed it appropriate to capture a thumbnail sketch of facts of each case law while setting out the significant findings supra, we now summarise the *rationes decidendi* / observations in the aforementioned six case laws together with most relevant codified statutory principles and the same are as follows:

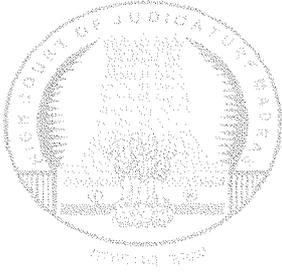
(i)Ex post facto EC has not been explicitly prohibited by 1986 Act but there is no enabling provision providing for ex post facto clearance;

(ii)EIA notification, 2006 and the CRZ notification, 2011 clearly mandate that prior EC before commencement of any project activity at site is imperative;

(iii)The eco system of hierarchy qua codification and instruments is (a) parent statute, (b) rules {subordinate legislation}, (c) any other instruments, notifications made under Rules, i.e., OMs, circulars, SOs,



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GSRs, etc.,;

(iv)As already alluded to, there is neither a bar nor a enabling provision in the 1986 Act but notifications say prior EC is imperative;

(v)Rule 5 of the Environment (Protection) Rules, 1986 sets out the manner in which notification could be made;

(vi)Law is well settled that when legal requirement is 'prior', it cannot be post facto and this is vide *Life Insurance Corporation of India Vs. Escorts Ltd. and others* reported in (1986) 1 SCC 264;

(vii)Possibility of getting ex post facto EC put in place by way of instruments of different kind [notifications, OMs, circulars, SOs, GSRs, etc.,] does not directly mean that EC is not mandatory and therefore, the commencement of project or commencement of activity without EC is retrospectively condonable;

(viii)It has been repeatedly held that ex post facto EC should not ordinarily be given and that it should

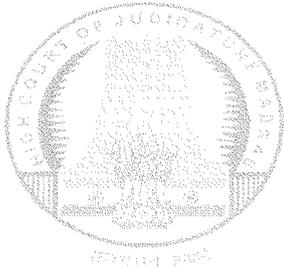


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be given only in exceptional circumstances;

(ix) Ex post facto EC has been deprecated but a window has been provided saying it is one which can be resorted to only in exceptional circumstances.

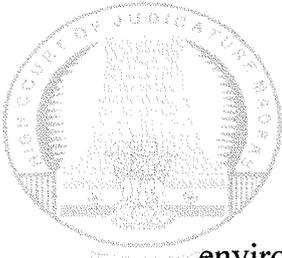
17. Primary contention of the protagonist of captioned WPs is that when aforementioned EIA/CRZ notifications (2006 and 2011) make it clear that EC should be 'prior', ex post facto EC is impermissible; the UOI having given a categorical and unambiguous undertaking that the 14.03.2017 notification providing for ex post facto EC assailed in Puducherry WP is a one time measure cannot now issue a barrage of instructions vide a slew of instruments [notifications, OMs, circulars, SOs, GSRs, etc.,] and permit ex post facto EC as a routine; ex post facto clearance affects public hearings as project proponents commence activity without any public hearing banking on ex post facto ECs. It was emphasized that ex post facto EC is a device to derail and ultimately detonate the environmental protection mechanism. It was emphatically argued that the sanctity of Rio declaration on Environment and Development, 1992 is being diluted; it has a irreversible detriment on the



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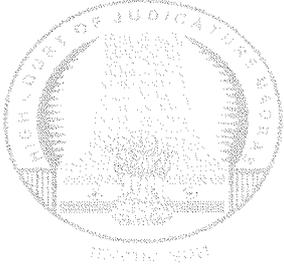


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environment, the local populace / citizenry is further emphatic say of PIL protagonists. It was inter-alia set out in the Rio declaration that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations, that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. This was pointed out and it was submitted that the environmental issues are best handled with the participation of all concerned citizens at the relevant level and at the national level, each individual shall have appropriate access to information concerning environment that is available with public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available, besides providing effective access to judicial and administrative proceedings, including redressal and remedy is ingrained thereat is further pointed say of protagonist of PIL



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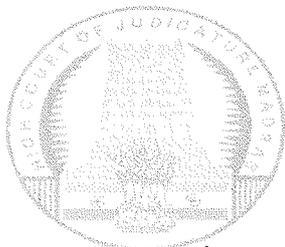
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18.Learned Solicitor submitted to the contrary by saying that instruments [notifications, OMs, circulars, SOs, GSRs, etc.,] are effectively notifications and State has powers to issue such notifications under Sections 3 and 5 of 1986 Act more particularly Sections 3(2)(iv), 3(2)(v) and 3(2)(xiv). It was emphasized that Hon'ble Supreme Court in ***Pahwa Plastics*** has also made an observation about the interim order granted by predecessor Division Bench in II Fatima WP. It was submitted that the one time measure as recorded in Puducherry WP does not mean not more than once as long as the power to modify / relax exists and it was also argued that a statement by a counsel cannot denude the authority of MoEF.

19.Learned counsel for intervenors, namely Federation of Indian Mineral Industries and Tamil Nadu Small Mine Owners Federation, submitted that in the light of ***Electrosteel*** and ***Pahwa Plastics*** supra, both of which have referred to ***Alembic***, it cannot be gainsaid that ex post facto EC is impermissible. Interestingly and intriguingly, two of the intervenors, i.e., Federation of Indian Mineral Industry and ELCOT defended the making of impugned OMs, i.e., I



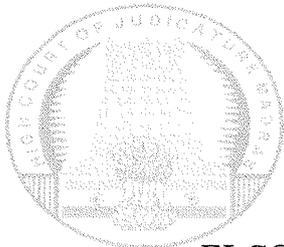
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impugned OM dated 19.02.2021 and II impugned OM 07.07.2021. In this regard, we deem it relevant to record that then learned Advocate General appearing for State of Tamil Nadu (R2 in W.P.No.18829 of 2021) very fairly submitted that the State will also be in the shoes of a project proponent. Likewise, Mr.Naveen Kumar Murthi, learned counsel appearing for another intervenor, namely, Tamil Nadu Small Mine Owners Federation, limited his submissions to what according to him are difficulties of intervenor he represents. We are of the view that it is for learned Solicitor to defend impugned OMs made by MoEF and as regards the manner / procedure adopted for making impugned OMs, project proponents should not have had any role in making of OMs. We are also conscious that there is a subtle but certain distinction between defending OMs and defending 'making of OMs'.

20.ELCOT, a company wholly owned by Government of Tamil Nadu entered the fray at the eleventh hour nay fifty ninth minute of eleventh hour (when all oral arguments had concluded and when the captioned matter was listed for parties to bring on board written submissions if any) {vide W.M.P.No.18099 of 2024} and intriguingly



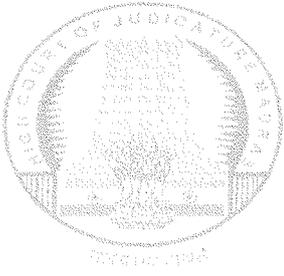
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ELCOT also defended the impugned OMs and making of impugned OMs {we are writing intriguingly because then learned Advocate General for State of Tamil Nadu had fairly and in our view rightly too submitted that State of Tamil Nadu is also in the shoes of project proponent as far as this case is concerned} by making the following submissions:

i) *Electrosteel, Pahwa Plastics, D.Swamy and Vedanta [Vedanta Limited Vs. State of Tamil Nadu and others reported in 2024 SCC OnLine SC 230]* principles were reiterated. Adverting to these case laws and drawing the attention of this Court to *Barak Upatyaka* case law [*State Of Assam vs Barak Upatyaka D.U. Karmachari Sanstha* reported in (2009) 5 SCC 694] and more particularly paragraph 21 thereat, it was submitted that these case laws would serve as judicial decisions containing a principle. Attention of this court was also drawn to *M.R.Apparao* case [*Director of Settlements, A.P and others Vs. M.R.Apparao and another* reported in (2002) 4 SCC 638] more particularly paragraph 7 thereat, to say that on a reading of



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case laws as a whole in the light of the questions before the Court, if there is a ratio, that would be declared law;

ii) Adverting to 09.10.2017 G.O.(Ms)No.18, Information Technology (B3) Department, it was submitted that it is an executive fiat as regards the clearance for putting up IT towers;

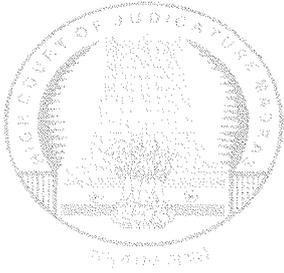
iii) Multiple projects remain stalled;

iv) Attention was drawn to S.O.804E to say that 07.07.2021 is more in the nature of SOP qua an earlier standing order;

v) With regard to Sholinganallur and Vilankurichi IT Towers, there is employment potential for about 6000 workmen {to be noted, as regards IT Towers, then learned Advocate General already made submissions well within the perimeter of a project proponent about which there is allusion infra and we shall consider elsewhere infra submissions of then learned Advocate General reiterated by learned Additional Advocate General}.



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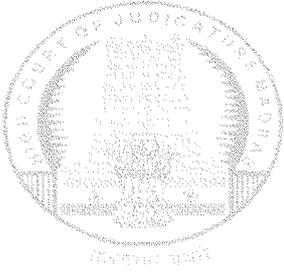


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21.Learned counsel for one of the intervenors submitted that the validity of the impugned OM cannot be tested against EIA notification of the year 2006 which is also one issued under Section 3 of 1986 Act. It is well settled law that the vires of a delegated legislation cannot be tested against another delegated legislation and that it can only be tested using the provisions of Parent Act (besides Constitutionality and manifest arbitrariness) as touch stones. The presumption of constitutionality will equally apply to the impugned OM is further say. It is also submitted and argued that it cannot be said that the Government does not have the power to bring the concept of ex post facto EC merely because there is no provision specifically providing for the same; that the Government being the protector of State's interest has powers to plug in laches and lacunae in the legislations considering the changing needs and situations of the society; that the concept of public hearing can also be read into the OM. The directions issued in *Alembic* qua compensation is traceable to Article 142 of the Constitution and that it is well settled law that directions issued under Article 142 cannot be contrary to substantive law.



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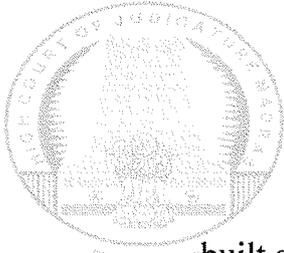
22.It is submitted by one of the writ petitioners that Article 142 directions cannot be construed as across the board directions in all cases as Article 142 is used to do complete justice in any cause or matter pending before Supreme Court. Administrative orders such as OMs cannot be issued contrary to the EIA and CRZ notifications which mandate prior EC was the extension of this argument.

23.Submission of learned counsel for petitioner in captioned contempt petition is that a clear undertaking was given in Court that it was certainly a one time measure but the MoEF has willfully disobeyed its undertaking given before this Court and had issued OM dated 07.07.2021 providing for ex post facto EC under EIA notification, 2006. The information obtained under the RTI Act shows that the impugned OM dated 07.07.2021 was issued much before the orders of NGT and it was not because of the orders of NGT.

24.As regards State of Tamil Nadu, learned Advocate General submitted that IT Towers have been put up and but for prior EC, constructions are compliant; they are lying idle though they have been



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built at huge costs incurred by ploughing in public money.

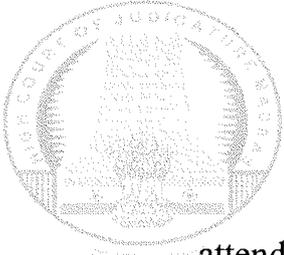
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25.By way of reply, learned counsel for writ petitioners submitted that when project proponents commence construction or commence operation, questions such as livelihood of workmen are brought up and in all the cases where ex post facto EC has been condoned, the same has been done only by taking into account such interest of workmen and money that has been sunk but with a caveat that it should not ordinarily be resorted to and that it should be resorted to only in exceptional circumstances. Sanctity of India's commitment to Rio declaration was emphasised.

26.We have carefully considered the rival submissions, i.e., bipolar opposite stated positions of parties, case laws, the scheme of 1986 statute, Rules thereunder, notifications, instructions, etc., and we find that the impugned OMs {to be noted, I impugned OM and II impugned OM shall be collectively referred to as 'impugned OMs' for the sake of convenience} do not pass muster in the instant legal drill. However, we would be moulding the relief taking into account various



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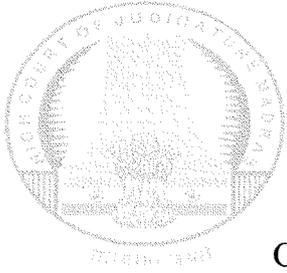
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attendant circumstances. Reasons for us to write that impugned OMs do not pass muster qua legal drill at hand as well as reasons for moulding of relief shall be set out infra one after the other. In the adumbration infra, we shall be rolling into one, the point, discussion on the same and dispositive reasoning qua each point and set out each such bundle one after the other for convenience and ease for appreciating this order. The adumbration is as follows:

(i) There can be no doubt or two opinions that 1986 Act does not prohibit ex post facto EC but what is of significance is that there is no enabling provision for giving ex post facto EC. We put it to learned Solicitor that if the law makers, i.e., Parliamentary wisdom is to the effect that ex post facto EC is permissible nay a norm and not an exception, an enabling provision in this regard could have been brought into 1986 Act by way of an amendment. Learned Solicitor fairly submitted that there has been no attempt in this direction. This means that we have to look into the hierarchy of codification / instructions which has already been set out supra, namely, Parent Act, Rules thereunder and instruments [notifications,



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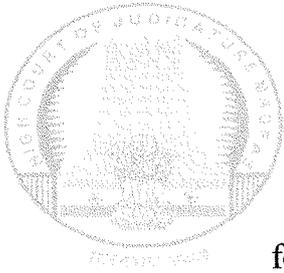


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OMs, circulars, SOs, GSRs, etc.,]. In this hierarchy, impugned OMs are executive instructions. There is no difficulty in accepting the argument of learned Solicitor that power to issue notifications is available under Sections 3(2)(iv), 3(2)(v) and 3(2)(xiv) and 5 of 1986 Act but the point is three fold. (a)One is, it should be for environment protection and (b)two is earlier EIA notification of the year 2006, i.e., EIA notification, 2006 and CRZ notification, 2011 mandate 'prior EC' and impugned OMs proceed on the basis that project proponents commencing work without EC is clearly a violation / breach and it provides for certain Standard Operating Procedures [SoPs] and grounds for ex post facto EC. The third facet is (c) it is not a case of one or two instrument/s but it is a case of a slew of instruments making ex post facto the norm and prior clearance an exception while Hon'ble Supreme Court has repeatedly held that ex post facto clearance should be resorted to as an exception. Be that as it may, the underpinning philosophy is, this power can be used only for protecting the environment and abating environmental pollution. It is axiomatic that it cannot be used



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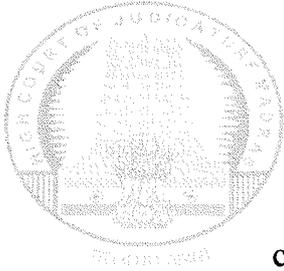
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for nullifying the 2006 EIA notification which makes prior consent imperative.

(ii) We deem it appropriate to deal with the sheet anchor argument of learned Solicitor that ex post facto EC is given only to those projects which are 'otherwise permissible'. This argument though attractive at first blush, on a closer scrutiny is clearly an argument which defies logic and is clearly self defeating. The reason is, there can be only two kinds of projects / industries, i.e., those which are 'prohibited' and those which are 'permissible'. To put it differently, the other option when we talk of options qua 'otherwise permissible', is a mirage as the options are binary, i.e., either prohibited or permissible. The logic is, if it is prohibited, the question of applying for prior EC does not arise at all. To be noted, in the prior EC being mandatory scenario also prohibited industries cannot apply, only industries which are permissible can apply for prior EC. Therefore, otherwise permissible is not a third category. The categories remain binary. When prior EC is mandatory and when some projects / industries commence operation or



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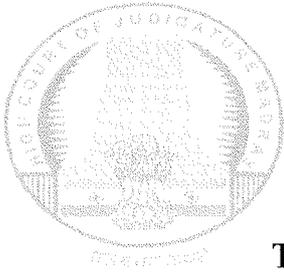


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commence the projects without applying for prior EC that creates an illusion that there is a third category, i.e., a mirage that it creates a category where but for applying for prior EC, the projects / industries is permissible. This is nothing but permissible category or in other words, this is nothing but a category which is not prohibited. In this regard, the arguments of petitioners are convincing and they persuade us to conclude that not applying for prior EC is clearly a violation as crucial determinants such as distance from habitats, forest, wild life corridor, ground water table, transport route, etc., would have been altered by the time ex post facto EC application is taken up. This is akin to taking blood samples or doing other tests on a patient after commencing the course of medication for the disease / ailment. The test result / values would obviously get altered as the medication would have started working. For an illustration, if the diagnosis is gravitating towards disease 'X', if test samples are drawn after putting the patient on medication for some time qua disease 'X', the values would be altered, i.e, skewed as they would have been altered by the medication.



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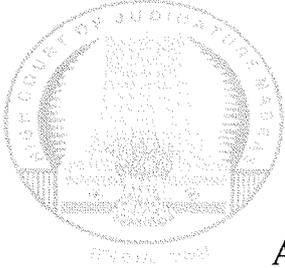
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Therefore, by taking this illustrative approach, we find the argument of petitioners that prior EC is imperative and ex post facto EC is a case of putting the cart before the horse is convincing.

(iii) We find from the counter, written submissions and submissions made before us that MoEF / UOI has not given any reason much less a convincing reason as to why ex post facto EC should be permitted and as to why the impugned OMs were made. To be noted, sheet anchor argument was hinged on the point that MoEF has powers under Section 3 read with Section 5 of 1986 Act to make notifications. There are two facets of this matter. The power is only for protecting environment and for abating environmental pollution. Therefore, MoEF while defending impugned OMs should set out (a) the reason for / objective behind making impugned OMs, (b) demonstrate that reason / objective is such that it is for abating environment pollution and for protection. We find both have not been done. No reason much less convincing reason as to why impugned OMs were made has been given.



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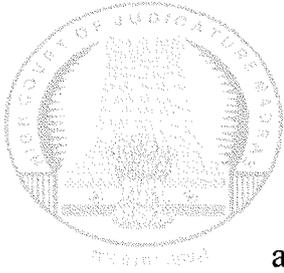
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As the first facet itself has not been met, the second facet of demonstrating that the reason / objective is for abating environmental pollution / for environment protection does not arise at all. In this regard, we deem it appropriate to write that one of the important point of challenge to impugned OMs is that it neither protects environment nor abates environmental pollution and therefore, in defending impugned OMs, it is imperative to set out the reason and demonstrate that the reason is for environment protection / abating environmental pollution. Both have not been done and therefore, this is another reason for us to say without any hesitation that impugned OMs deserve to be set side.

(iv)We also further resort to this illustrative approach and take a illustration of a area which is prone to land slides. If mining activity to a prohibited extent or if any other activity which is prohibited in that area is commenced, parameters / determinants for grant of EC would have no doubt got altered, as in the earlier illustration, the more significant point is the damage would have been done and in the illustration which we



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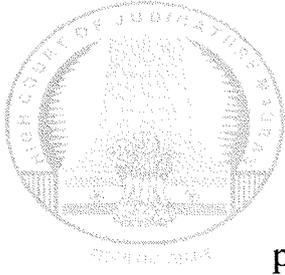
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are examining, the land would have become completely prone and susceptible to land slides making the same imminent. If ex post facto EC applications are thereafter taken up, even if the EC is not given, i.e., even if ex post facto EC applications are rejected, the damage to environment would have happened and many a times, it can be a irreversible damage which can lead to human catastrophes and environmental / natural disaster.

(v)Therefore, the scheme of the statute, subordinate legislation, i.e., rules thereunder and instruments read in its entirety and in the light of the unambiguous view of Hon'ble Supreme Court in *Pahwa Plastics* as well as *Alembic* that ex post facto EC should not ordinarily be resorted to and that it should be resorted to only in exceptional circumstances, this court by respectfully following Hon'ble Supreme Court has no hesitation in writing that impugned OMs making ex post facto EC a routine across the board affair, i.e., a norm, clearly do not pass muster qua legal drill on hand. To put it differently, when a particular procedure can be resorted to, only as a matter of exception if it is extended across the board for all project



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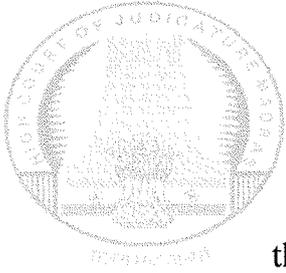


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proponents who have commenced or completed projects without EC and made a norm (besides providing a window for project proponents to commence projects without EC under the assumption that ex post facto EC can in anyway be resorted to) by issuing a slew of instruments, it tantamounts to making the exception a rule/norm. If what Hon'ble Supreme Court says should be an exception is made a rule/norm, we have no hesitation in writing that it does not pass muster and this is more so as making this exception a rule/norm is not owing to a one time affair but it is a product of a barrage / slew of instructions which have been issued one after the other in succession making it a 'new normal', more so after giving undertaking to the Court in Puducherry WP that it will be a one time measure. We are acutely conscious that Hon'ble Supreme Court in *Pahwa Plastics* (paragraph 46) has adverted to Puducherry WP, it has also adverted to Puducherry WP in *D.Swamy* (paragraphs 35 and 36) and said that one time measure does not mean not more than once as long as the power to modify / relax exists and that the statement made by



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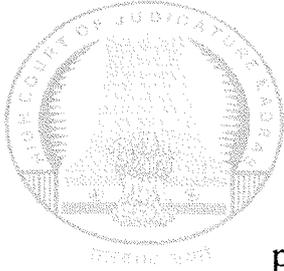
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the counsel cannot denude this authority. Therefore, it shall not be construed that we are saying that impugned OMs do not pass muster owing to undertaking given by learned Solicitor in Puducherry WP but we are saying this by placing strong reliance on the ratio in *Pahwa Plastics* [Paragraph 66] as well as *D.Swamy* [Paragraphs 40, 41, 47 to 49], wherein Hon'ble Supreme Court has said in no uncertain terms that ex post facto EC should not ordinarily be resorted to and that it should be resorted to only in exceptional cases. In this regard, we would also be applying Wambaugh inversion test in *Pahwa Plastics* and *D.Swamy* as regards narratives qua Puducherry WP as well as the observation of Hon'ble Supreme Court regarding interim order in W.M.P.(MD)No.9241 of 2021 in II Fatima WP (interim stay dated 15.07.2021) vide paragraph 85 of *Electrosteel* case.

(vi) Before we proceed further, we need to set out what the Wambaugh inversion test. In very simple terms, in a judgment, to test whether a particular observation or a particular part of a judgment forms part of the ratio or not, that



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particular portion or observation should be removed and thereafter, the judgment should be read to find out whether the conclusion changes. Those portions / observations in a judgment which even if removed do not in any manner impact the conclusion, do not form part of the ratio. This inversion test / Wambaugh test was elucidatively explained by Hon'ble Supreme Court in *State of Gujarat Vs. Utility Users' Welfare Association and others* reported in (2018) 6 SCC 21. On facts, *Utility Users'* is a case where the Electricity Act which provided for Central and State Regulatory Commissions said that Chairpersons of such Commissions may be a Judge of a High Court for State Commission and a Judge of Supreme Court or Chief Justice of a High Court for Central Commission and there were divergent views taken by Hon'ble Division Benches of different High Courts as to whether this 'may' should be read as 'shall' and it is imperative that such Chairman / Chairpersons should be a Judge and persons with judicial mind presiding over these Commissions is imperative. The relevant paragraphs in *Utility Users' Welfare Association* are



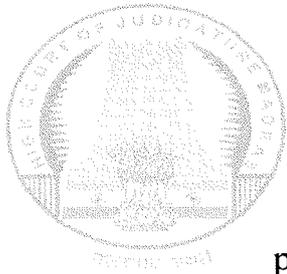
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paragraphs 113 and 114 and the same read as follows:

'113. In order to determine this aspect, one of the well-established tests is “the Inversion Test” propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called *The Study of Cases* [Eugene Wambaugh, *The Study of Cases* (Boston : Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the “Wambaugh Test” or “the Inversion Test” as the means of judicial interpretation. “the Inversion Test” is used to identify the *ratio decidendi* in any judgment. The central idea, in the words of Professor Wambaugh, is as under:

“In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also. [Eugene Wambaugh, *The Study of Cases* (Boston : Little, Brown & Co., 1892) at p. 17.]”

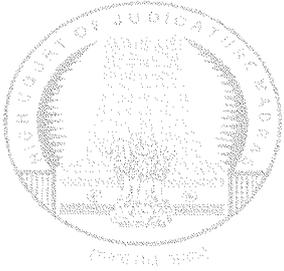
114. In order to test whether a particular proposition of law is



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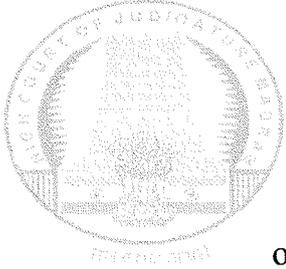
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to be treated as the *ratio decidendi* of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case. This test has been followed to imply that the *ratio decidendi* is what is absolutely necessary for the decision of the case. "In order that an opinion may have the weight of a precedent", according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.] , "it must be an opinion, the formation of which, is necessary for the decision of a particular case". '

(vii) We now resort to Wambaugh inversion test. In the case on hand, the relevant paragraph where Wambaugh test has to be applied in *Pahwa Plastics* is observation relating to one time measure granted in Puducherry WP (paragraph 46) and in *D.Swamy* case, relevant paragraphs are paragraphs 35 and 36. Even if these relevant paragraphs in *Pahwa Plastics* and *D.Swamy* are removed, it does not change the conclusion, i.e., the outcome does not change. Even when the aforesaid Wambaugh inversion test is applied to paragraph 85 of *Electrosteel* case, wherein Hon'ble Supreme Court made an



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observation about the interim order granted by the Madras High Court, we find that it does not change the conclusion in *Electrosteel*.

(viii)It is useful to extract relevant paragraphs in *Pahwa Plastics, D.Swamy and Electrosteel* qua which Wambaugh test has to be applied and the conclusion arrived at. Relevant paragraph in *Pahwa Plastics* qua which Wambaugh inversion test has to be applied is paragraph 46 (as alluded to supra) and the same reads as follows:

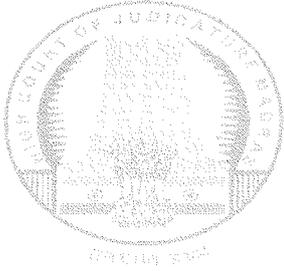
'46. It is true that in the case of *Puducherry Environment Protection Association v. Union of India*, the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible. '

Conclusion in paragraph 67 :

'67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been



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filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with. '

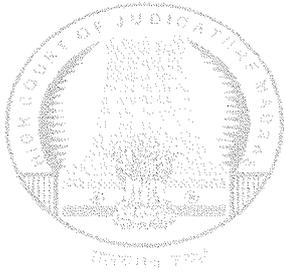
(ix) Relevant paragraphs in *D.Swamy's* case (for applying Wambaugh inversion test) are paragraphs 35 and 36 and the same read as follows:

'35. It is true that in the case of *Puducherry Environment Protection Association v. Union of India*⁴, the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

36. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be



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amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.'

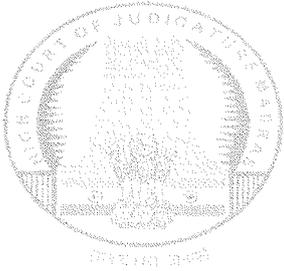
Conclusion in paragraphs 47 and 50 :

'47. *Ex post facto* environmental clearance should ordinarily not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of *ex post facto* approval, and the 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. In a given case, 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.

50. In our considered view, the NGT rightly found that when the Bio-Medical Waste Treatment facility of the Appellant was being operated with the requisite consent to operate, it could not be closed on the ground of want



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of prior Environmental Clearance. The issues raised/involved in this appeal are squarely covered by the judgment of this Court in *Electrosteel Steels Limited* (supra) and *Pahwa Plastics Pvt. Ltd.* (supra). This Court cannot lose sight of the fact that the operation of a Bio-Medical Waste Treatment Facility is in the interest of prevention of environmental pollution. The closure of the facility only on the ground of want of prior Environmental Clearance would be against public interest. There are no grounds to interfere with the judgment and order of the NGT in appeal as rightly argued by KSPCB and the Respondent No. 3. The appeal is barred by delay. In any case, the appeal does not raise any substantial question of law. The appeal is therefore dismissed.'

(x) Paragraph 85 in *Electrosteel* case to which

Wambaugh inversion test has to be applied is as follows :

'85. The interim order [*Fatima v. Union of India*, 2021 SCC OnLine Mad 12936] 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 the Madras High Court. Moreover, final decision may have been taken in

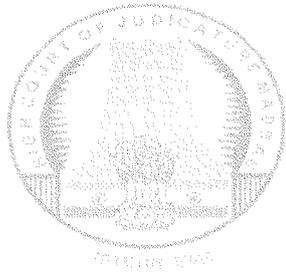


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accordance with the Orders/Rules prevailing prior to 7-7-2021.'

Conclusion in paragraph Nos.86 and 87:

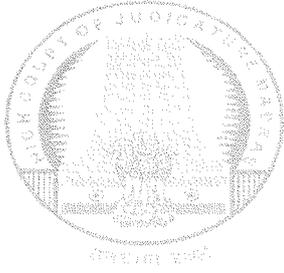
'86. In passing the impugned order [*Electrosteel Steels Ltd. v. Jharkhand State Pollution Control Board*, 2020 SCC OnLine Jhar 796] , the High Court overlooked the consequences of closure of an integrated steel plant with a workforce of 300 regular and 700 contractual workers. The High Court also failed to appreciate that the judgment of this Court in *Alembic Pharmaceuticals [Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157] 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 32-A 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 penalisation of the appellant or recovery of



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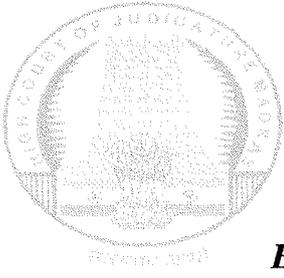
compensation from the appellant. The application of the appellant for revised EC, CTO, etc. shall be considered strictly in accordance with environmental norms.

87. The appeals are allowed. The impugned order [*Electrosteel Steels Ltd. v. Jharkhand State Pollution Control Board*, 2020 SCC OnLine Jhar 796] is set aside. Respondent 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. '

(xi)By applying Wambaugh test, if aforementioned paragraphs in *Pahwa Plastics*, *D.Swamy* and *Electrosteel* (extracted and reproduced supra) are removed, it does not change the conclusion in aforesaid decisions of Hon'ble Supreme Court. As an illustration, in *Electrosteel* vide paragraph 85, Hon'ble Supreme Court has made a mention about interim order and it does not in any way change the conclusion that the operation of the steel plant was not interfered with on the ground of want of EC, FC, CTE or CTO. In this regard, it is of immense significance to note that in



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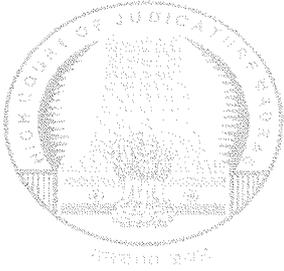
Electrosteel in paragraph 85 itself, Hon'ble Supreme Court has made it unambiguously clear that it is not hearing an appeal against the interim order of Division Bench of Madras High Court.

(xii) We respectfully place strong reliance on *Common Cause* which dealt with rapacious mining in State of Odisha, wherein the principle that that possibility of getting ex post facto EC does not signal (a) EC is not mandatory and (b) the default is retrospectively condonable was laid down by Hon'ble Supreme Court vide paragraph 108 which reads as follows:

'108. It was submitted on behalf of the mining leaseholders that the possibility of getting an ex post facto EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable. We do not agree. We have referred to various provisions of the MMDR Act and the Rules framed thereunder to indicate the statutory importance given to the protection and preservation of the environment. This was also emphasised in *M.C. Mehta* [*M.C. Mehta v. Union of India*, (2004) 12 SCC 118] in which it was also stated that: (SCC p. 161, para



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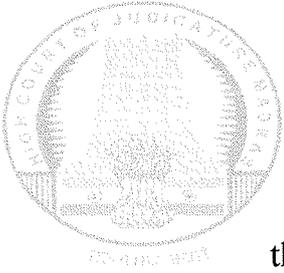
“37. ... It does not appear that MoEF intended to legalise the commencement or continuance of mining activity without compliance of stipulations of the notification.”

It appears to us that the MoEF was, in a sense, cajoling the mining leaseholders to comply with the law and EIA 1994 rather than use the stick. That the mining leaseholders chose to misconstrue the soft implementation as a licence to not abide by the requirements of the law is unfortunate and was an act of omission or commission by them at their own peril. We cannot attribute insensitivity to the MoEF or even to the mining leaseholders to environment protection and preservation, but at the same time we cannot overlook the obligation of everyone to abide by the law. That the MoEF took a soft approach cannot be an escapist excuse for non-compliance with the law or EIA 1994.'

(xiii) We make it clear that we are not applying case laws of Hon'ble Supreme Court to the captioned matter solely by applying Wambaugh inversion test. In the earlier part of this order, we have set out the principles that have been respectfully deduced from the case laws, i.e., judgments rendered by Hon'ble Supreme Court. We are only respectfully following the principles laid down by Hon'ble Supreme Court, particularly



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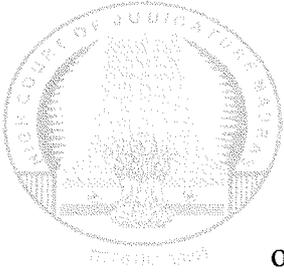
the principle that ex post facto EC should be an exception. To put it differently, Wambaugh inversion test is applied only for three case laws solely as a buttressing factor to support what we have respectfully followed as rationes decidendi of Hon'ble Supreme Court qua case laws. We have also respectfully followed the declaration of law made by the Constitution Bench of Hon'ble Supreme Court in *Padma Sundara Rao*, about which there is allusion elsewhere in this order.

(xiv) In *D.Swamy*, larger public interest of Bio-medical waste treatment facility was considered by Hon'ble Supreme Court and it was held that the Court cannot lose sight of the fact that the operation of a Bio-Medical Waste Treatment Facility is in the interest of prevention of environmental pollution and the closure of the facility only on the ground of want of prior Environmental Clearance would be against (larger) public interest.

(xv) In *Electrosteel*, interest of 300 regular and 700 contractual workmen was taken into account in refusing closure of a running steel plant which in any case was being



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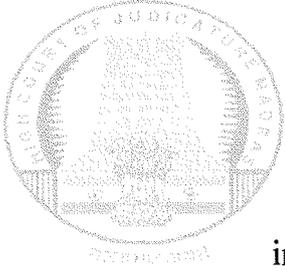
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operated under supervision of jurisdictional State Pollution Control Board (JSPCB). In *Alembic*, three industrial units were mulcted with penalty. All this [In *Alembic* - three industrial units, in *Electrosteel* – steel plant in Jharkhand which was being operated under supervision of JSPCB and *D.Swamy* – Bio-medical waste treatment facility] would go to show that Hon'ble Supreme Court has taken into account the interest of workmen as well as the larger public interest qua industries such as bio-medical waste treatment facility which is in the interest of prevention of environmental pollution, as they have already been put in place and had been made operational and made an exception which emphatically and unambiguously laying down the principle that ex post facto EC should not ordinarily be resorted to and that it should be resorted to only in exceptional circumstances.

(xvi)As intervenors, namely Federation of Indian Mineral Industries, Tamil Nadu Small Mine Owners Federation and ELCOT stand to benefit, we have heard them only as project proponents as it is for learned Solicitor to support the



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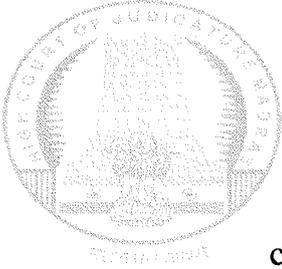


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impugned OMs and / or making of the same. Nonetheless we have considered those arguments also but that does not lead to a situation of giving relief to intervenors in captioned W.Ps which have been brought to this court by protagonists of public interest. In any event, legal position is clear that an intervenor (unlike an impleaded party) can neither seek relief nor prefer an appeal and intervenor will only get audience. The decisions relied on by learned Senior Advocate for ELCOT at the time of hearing as intervenor and with regard to Article 141 of the Constitution qua declared law, do not come to the aid of ELCOT, as aforesaid decisions of Hon'ble Supreme Court were rendered in different contexts, considering the plight of the workmen and also taking into account the interest relating to prevention of environmental pollution with regard to operation of a bio-medical waste treatment facility as it was categorically and unambiguously held in no uncertain terms in these very decisions that ex post facto EC should ordinarily not be given and that it should be resorted to only in exceptional circumstances. Hon'ble Supreme Court in *Padma Sundara Rao*



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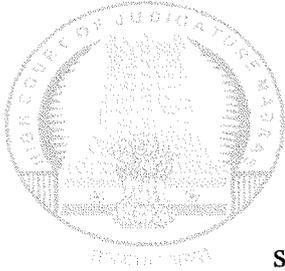
case (supra) has declared the law qua precedents that each case should be relied on considering the fact situation of that particular case. Therefore, the decisions relied on by learned Senior counsel for ELCOT do not come to his aid. *Vedanta* is a case where the industrial unit was directed to be closed for serious violations of environmental norms and *Vedanta* is entirely in a different factual canvass and therefore, reliance on *Vedanta* also does not aid the arguments of learned senior counsel for ELCOT.

(xvii)As regards State of Tamil Nadu, regarding ongoing projects, learned Advocate General made a fervent plea to consider larger public interest. We took into account the factum that IT Towers have been put up using public money. Considering the huge amount of public money that has been sunk, we make it clear that it is open to State of Tamil Nadu to apply for ex post facto EC for the three projects mentioned in the affidavit filed by the Managing Director of ELCOT on 28.11.2023 alone, if not already done.

(xviii)A barrage of successive instructions, i.e., a



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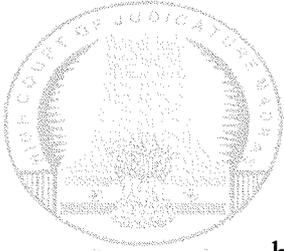
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slew of instruments means that all project proponents would be emboldened to start projects as a matter of routine and apply later. The biggest casualty would be public hearing. The file obtained inter-alia through RTI showing the manner in which impugned OMs were made was placed before us. When 1986 Act is a statute which has been made in Parliamentary wisdom and rules made thereunder is a subordinate legislation vide rule making power do not provide for ex post facto EC and when 2006 and 2011 EIA/CRZ notifications make 'prior' EC mandatory, such OMs cannot be made by taking recourse to there being no bar more so when the EIA notification in the year 2006 and CRZ notification in the year 2011 mandate 'prior' EC. The expression 'prior consent' has been elucidatively explained by the Constitution Bench of Hon'ble Supreme Court in *Life Insurance Corporation of India* which is holding the field.

(xix)As alluded to supra, the file obtained inter-alia through RTI showing the manner in which impugned OMs were made was placed before us and a perusal of the same



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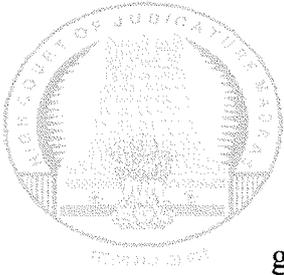
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brings to light that it is clearly contrary to and an anathema to subordinate legislation making in its evolved form. When we say subordinate legislation making in its evolved form, we mean that subordinate legislation making as explained over the years starting from corpus juris secundum, i.e., that it cannot be made merely at the bureaucratic level. In other words, subordinate legislation making in its evolved form as it obtains today is such that subordinate legislation made pursuant to rule making power in a primary or parent statute by a authority vested with such rule making power should have all trappings of parent / primary legislation making. In the case on hand, the slew of instruments, in this view of the matter can be no substitute to subordinate legislation when the parent statute provides for such powers / rule making.

(xx)The other sheet anchor argument of learned Solicitor is, when ex post facto EC is resorted to, the clearance would be given only if all conditions are satisfied. To put it otherwise, it is the specific and emphatic say of learned Solicitor that such of those project proponents who would have



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got clearance if they had sought prior approval alone would be allowed to continue. In our considered view, this argument does not cut ice as one made to support the impugned OMs.

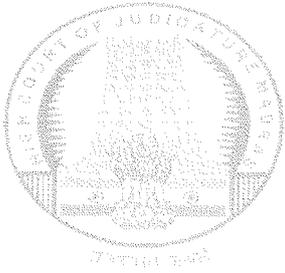
The reason is, the challenge to impugned OMs are predicated on the question as to whether ex post facto EC should be resorted to at all and response to this by saying that those of the project proponents who would have otherwise got clearances if they had sought prior EC alone will be able to get benefit of EC is a clear case of putting the cart before the horse and / or begging the question.

(xxi)Reverting to the five points raised by learned senior counsel for ELCOT which have been captured and set out elsewhere supra in this order, we write the following points to enhance clarity and add specificity:

(a)As regards *Vedanta*, the fact situation is distinguishable from the captioned matters as it does not pertain to notifications issued by MoEF and therefore, it really does not come to the aid of ELCOT as a case law precedent in the legal drill on hand. As



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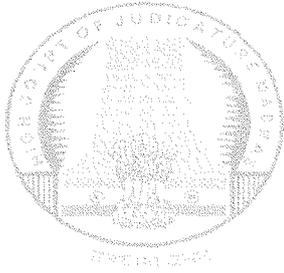
regards ***Barak Upatyaka*** and ***M.R.Apparao***, we have respectfully adverted to ***Lafarge, Common Cause, Alembic, Electrosteel, Pahwa Plastics*** and ***D.Swamy***

(inter-alia by applying Wambaugh Inversion test) and in this view of the matter, ***Barak Upatyaka*** and ***M.R.Apparao*** arguments of learned Senior counsel stand addressed and the sequitur is, they become non starters as regards aiding ELCOT in the case on hand;

(b)As regards, G.O.Ms.No.18, we have made it clear that with regard to IT Towers put up by the Government of Tamil Nadu, as the same have been done sinking huge public money, considering the larger public interest, it is open to Government of Tamil Nadu to apply for ex post facto EC (if not already been done). Such application for ex post facto EC shall be considered by MoEF on its own merits and in accordance with legal obtaining position by construing as if impugned OMs are operating. In any event, we are interfering with impugned instruments



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only prospectively and therefore, this would only tantamount to stating the obvious and as a specific point has been raised qua G.O.Ms.No.18, we are setting out this.

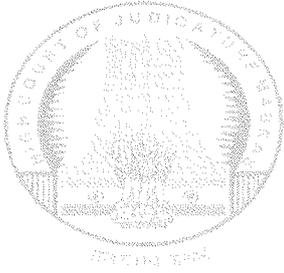
(c)As regards multiple projects, we are interfering with instruments prospectively and therefore, if applications for ex post facto EC have already been made, the same shall be carried to its logical end untrammelled by this order.

(d)As regards the argument that 07.07.2021 OM is more in the nature of a SOP, we have dealt with all instruments and that drops the curtains on this argument.

(e)The last point pertaining to employment potential for about 6000 workmen in Sholinganallur and Vilankurichi IT Towers, they are not running industries like Electrosteel and it is not as if the livelihood of workmen who are now in employment is going to be affected. It is only a case of future potential



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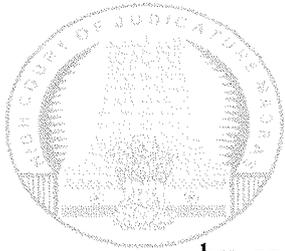
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but in any event, even with regard to this, as already alluded to supra, based on the submissions of learned Advocate General of State of Tamil Nadu, we have provided a window for Government of Tamil Nadu to make ex post facto EC application (if not already made) and also made it clear that, if so made / if already made, the same shall be considered on its own merits untrammelled by this order and we have also made it clear that this window is provided factoring in the point that substantial public money has been sunk in putting up these IT Towers and it is only appropriate that citizenry get the benefit. In other words, we have provided this window by taking into account larger public interest.

27.As regards contempt petition, we have already noticed that Hon'ble Supreme Court has referred to the undertaking given by learned Solicitor in Puducherry WP case. We have also noticed that Hon'ble Supreme Court in *Pahwa Plastics* and *D.Swamy* has explained the same



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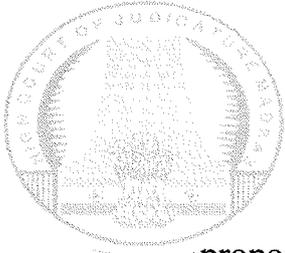
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by saying that it does not mean that it is only once and as we have decided the writ petitions on the basis of the ratio of Hon'ble Supreme Court that ex post facto EC should be resorted to only as exception and not as a norm, we deem it appropriate to close the contempt purging the respondent of the contempt as the Rule of contempt has been issued.

28. We are resorting to the doctrine of prospective overruling in the captioned matter. While initially the doctrine was confined to matters arising under the Constitution, later on it has been applied to other areas of law .as well. The reason of applying the doctrine of prospective overruling in the case on hand is, projects / industries which are already functioning are in the anvil of commencing operations or for that matter, projects / industries which are awaiting ex post facto EC will be in putting the clock back situation. Besides putting the clock in the clock back situation, as regards projects / industries which are in the anvil of being operationalized, the same may result in deleterious situation after being lulled into the belief that ex post facto EC is available. There is another reason as to why we are resorting to prospective overruling and that is, it is quite possible that ex post facto EC applications of project



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proponents who are not before this Court are under active consideration.

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We make it clear that prospective overruling is resorted to with regard to statutory provisions and when a future date is fixed. We are not fixing a future date and we are dealing with executive fiats in the case on hand and therefore, we are mentioning about prospective overruling legal mechanism only as a buttressing factor.

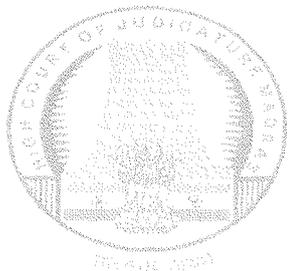
29.Ergo, the sequitur is,

(i)captioned three W.P.s, namely W.P.(MD)Nos.8866 of 2021, 11757 of 2021 and W.P.No.18829 of 2021 are allowed in the aforesaid manner, impugned OMs dated 19.02.2021 and 07.07.2021 issued by MoEF are quashed / set aside but prospectively albeit with a window to three ongoing / completed projects as set out elsewhere supra in this order. Consequently, connected Writ Miscellaneous Petitions thereat are closed. There shall be no order as to costs;

(ii)Contempt Petition No.56 of 2022 is closed and the respondent is purged of contempt vide Rule of contempt issued on 08.03.2022. Consequently, connected Sub application is closed.



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(M.S., J.) (K.G.T., J.)
30.08.2024

Speaking order: Yes
Index: Yes
Neutral Citation : Yes
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To

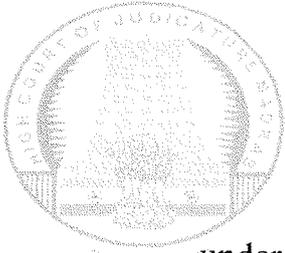
- 1.The Secretary to the Government,
Ministry of Environment, Forest and Climate Change,
Paryavaran Bhawan,
Jor Bagh, New Delhi-110 003.
- 2.Joint Secretary to the Government of India,
Ministry of Forest, Environment and Climate Change,
Paryavaran Bhawan, Jor Bagh,
New Delhi-110 003.
- 3.The Principal Secretary,
State of Tamil Nadu,
Department of Environment, Climate Change and Forests,
No.1, Jeenis Road,
Panagal Building,
Ground Floor, Saidapet,
Chennai-600 015.

M.SUNDAR.J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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under Article 134-A(b) can be acceded to in cases falling under clause

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(1) of Article 132, Clause (1) of Article 133 or sub-clause (a) of Clause
(1) of Article 134.

4.In the case on hand, learned Solicitor sought leave on the ground that the matter involves a substantial question of law of general importance. This means that the oral application falls under Clause (1) of Article 133 and to state with greater specificity under sub-clause (a) of Clause (1) of Article 133.

5.We carefully considered the request made by learned Solicitor in the light of the language in which Article 134-A(b) is couched and the parameters, ingredients and determinants which govern such request.

6.In the order pronounced in the captioned matters, we have respectfully followed *rationes decidendi* of Hon'ble Supreme Court in a long line of authorities and therefore, though the matter is of general importance, substantial question of law issue may not arise as we have respectfully followed *rationes decidendi* of Hon'ble Supreme Court and therefore, we are of the view that the oral request does not pass muster vide Article 134-A(b).



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7.As the order was being dictated, learned Solicitor added that the leave is being sought on the ground that the case involves a substantial question of law as to the interpretation of the Constitution, that the question needs to be decided under Article 132(1) also. This means that the Certificate for appeal is being sought on Article 132(1) ground also. As regards, this second ground on which the oral request was buttressed (as this order was being pronounced), we are of the considered view that this also does not pass muster for three reasons and they are as follows:

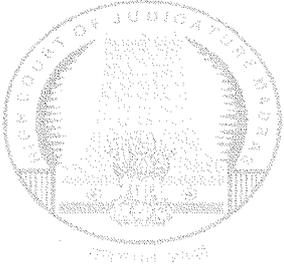
(a)We have heard the captioned matters pursuant to clarificatory orders dated 13.10.2023 and 02.02.2024 made by Hon'ble Supreme Court in I.A.No.195200 of 2023 in SLP(C)No.20061 of 2023 and in the I.A. filed in W.P.(Civil)No.1394 of 2023;

(b)The matter turns largely on statutory provisions and executive fiats; and

(c)On substantial question of law as to the interpretation of the Constitution limb, we have only respectfully followed *rationes decidendi* of Hon'ble



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Supreme Court in a long line of authorities on this aspect of the matter as already alluded to supra in dealing with first ground.

8.In the light of the narrative thus far, the oral application made by learned Solicitor seeking Certificate for appeal to Hon'ble Supreme Court is not acceded to.

9.This order made in open Court will now be uploaded along with the common order in captioned matters as addenda to the common order pronounced in the Court today.

(M.S., J.) (K.G.T., J.)
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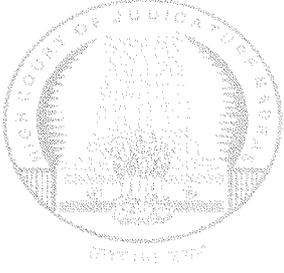
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M.SUNDAR.J.
and
K.GOVINDARAJAN THILAKAVADI, J.



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and W.P.No.18829 of 2021
and
W.M.P.(MD)Nos.6666 and 12052 of 2021
in W.P.(MD)No.8866 of 2021
W.M.P.(MD)No.9241 of 2021 and W.M.P.No.6193 of 2022
in W.P.(MD)No.11757 of 2021
W.M.P.Nos.20128 and 20130 of 2021
in W.P.No.18829 of 2021
AND
Contempt Petition No.56 of 2022
and
Sub Application No.629 of 2023 in Cont.P.No.56 of 2022

30.08.2024

(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक (सी)/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min.of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

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 Limited

.....Petitioner (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.

Signature Not Verified
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Rajni Mukhi
Date: 2022.12.14
17:13:46 IST
Reason:

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

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 Handing 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**



(डॉ. एस. प्रभु)
(Dr. S. Prasad)
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भारत सरकार, नई दिल्ली
Change
Govt. of India, New Delhi

F. No. 22-21/2020-IA.III [E 138949]

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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


(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min.of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

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Annexure-R/13

ITEM NO.23

COURT NO.3

SECTION P.L.W
255

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

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

VANASHAKTI

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION
ORDERS/DIRECTIONS)

and

IA

No.257416/2023-APPROPRIATE

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

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE SANDEEP MEHTA

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

For Respondent(s)

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

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

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(BEENA JOLLY)
COURT MASTER (NSH)

Signature Not Verified

Digitally signed by
ASHA SUNDRIYAL
Date: 2024.01.05
16:37:29 IST
Reason: []

(डॉ. एस. प्रभु)
(Dr. S. PRABHU)
वैज्ञानिक 'डी'/Scientist 'D'
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