BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

AT PUNE

ORIGINAL APPLICATION NO. 1 OF 2022 (WZ)

Mr. Shashikant Vitthal Kamble ... **APPLICANT**

V/s

MOEF & CC and Ors. **... RESPONDENTS**

COMPILATION OF JUDGMENTS ON BEHALF OF RESPONDENT No.15

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

Original Application No.135/2015
(M.A No.1309/2015)

In the matter of:

1. Narinder Kumar Shukla & Ors
S/o Late Sh. H.K Shukla
C-25, 2nd Floor, Paryavam complex Opp. Saket
New Delhi-110030

2. Sh. Satpal Sharma
S/o Late Sh. Bhagi Rath Sharma

3. Sh. Shashi Sharma
Sakoh, the Jaisingpur

.....Applicants

Verses

1. Sh. Jagish Saphiya
S/o Subedar Singh
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

2. Sh. Kapil Shapahya
S/o Sh. Jagdish Shapahya
Village Jagrup Nagar
P.O. Alampur
Teh:- Jai Singhpur, Dist: Kangra, H.P

3. Sh. Sanjay Patharia
S/o Not Known
MS Ashok Teal Stall
Sakoh (Village), Teh:- Jaisinghpar
Disttrict Kangra, H.P

4. The Secretary,
Department of Industries
Geological Wing, Udyog Bhawan,
Bemloe, Shimla-171001

5. The Secretary,
State Government of Himachal Pradesh,
Shimla, H.P

6. The Deputy Commissioner
Kangra at Dharamsala, H.P

7. The Director,
Mining Office
Dharamshal, Kangra, H.P

8. Ravi Sharma
Mining Guard of Beas River,
Lamba Gaon, Teh: Jaisinghpur
Himachal Pradesh

.....Respondents

Counsel for Applicant:
Mr. Amita Babbar, Mr. Rahul Sharma & Mr. Jitin, Advs

Counsel for Respondents :

Mr. S.C Rana, Adv for respondent no. 1 to 3
Mr. Suryanaryana Singh, AAG for respondent no. 4 to 8

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Prof. A.R Yousuf (Expert Member)

Reserved on: 21st March, 2016
Pronounced on: 27th May, 2016

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1. **Whether the judgment is allowed to be published on the net?**
2. **Whether the judgment is allowed to be published in the NGT Reporter?**

Justice M.S Nambiar (Judicial Member)

1. The Application is filed under section 14, 15 and 17 of National Green Tribunal Act, 2010, seeking direction to the

respondents to remove the stone crusher from the bank of river Beas with its junction of Khad Bhariva at Village Sakoh, Tehsil Jaisinghpur, District Kangra (H.P.) and also to remove all the structures, transports and other connected items from the bank of river Beas where those are parked/installed/placed and to pay compensation to the applicants and other villagers who have been affected by the illegal activities.

2. The applicants are residents of village Sakoh and Alampur of Jai Singhpur holding properties therein. Respondent No. 4 is the Secretary, Department of Industries, respondent no. 5- Secretary, State Govt. of Himachal Pradesh, respondent no. 6- the Deputy Commissioner, Kangra, respondent no. 7-the Director, Mining Office, and respondent no. 8- the Mining Guard of Beas River. Respondent no. 1 is alleged to be an active political worker of the ruling party. It is alleged that using his political influence, he managed to install one stone crusher on the Bhariva Khad, at the meeting point of the Khad in the river Beas, in the name of his son- Mr. Kapil Saphia, the respondent no. 2. According to the applicants, to reach the meeting point of Bhariva Khad and the Beas River, Respondents nos. 1 and 2 illegally constructed a road along the properties of the villagers without their permission and they also cut hundreds of trees to lay the road. Operation of the crusher is yet to be started, but the foundation has been laid by respondent no. 1 to 3. They are digging sides of Beas River and Khad Bhariva for taking out hundreds of trucks of sand and small stones/pebbles everyday for selling in the market. In spite of intimating the mining

guard, who was personally brought at the site, no action was taken, though it was promised that they will be prosecuted. As per the latest rules framed by the State of Himachal Pradesh, no stone crusher can be installed within two kilometers from the residential area, whereas the disputed crusher has been installed just at a distance of half a kilometer from the village abadi. This causes air pollution and is a source of respiratory diseases. If the respondents are allowed to continue their illegal acts, it would cause environmental degradation. The Bulldozer and the JCB machines on work are shown in the photographs annexed to the application. Respondent no. 1 to 3 are continuing the work of excavation, sale of sand, Bajri and stones from the Beas River and Khad Bhariva. They work between 4 am to 9 am, taking advantage of the absence of the villagers, who would be sleeping. In spite of the complaints filed before the authorities, no action has been taken on these illegal activities. The applicants are therefore seek the reliefs stated earlier.

3. Respondent no. 4, 7 and 8 together filed a reply contending that as per the records, no person in the name of respondent no. 2 or 3 had applied for grant of mining lease for setting up of stone crusher. One Mr. Sanjay Pathania S/o Sh. Jagroop Singh has applied for grant of mining lease for excavation/ collection of sand, stone and bajri in Khasra No. 410 measuring 04-81-86 Hects of Govt. land Mauza Alampur for a period of 15 years for setting up of stone crusher. The joint inspection committee inspected the area applied for mining lease on 13.11.2013 and recommended the area

for granting the mining lease. On the recommendation, a letter of intent was issued on 17.06.2014, after completing all the formalities in favour of Sh. Sanjay Pathania for extraction/collection of sand, stone & bajri in Khasra no. 410 for setting up of stone crusher. The said Sanjay Pathania had applied for installation of stone crusher in Khasra no. 652/1 measuring 17-96 hects of private land falling in Mauza Alampur, Mohal Sakoh and the site was inspected by the site appraisal committee on 13.11.2013. The committee found that the site comprising Khasra no. 652/1 measuring 15-58 is suitable for installation of stone crusher. The area has been approved as per notification dated 29.04.2003 as amended on 10.09.2004 by Department of Science and Technology. The Govt. of Himachal Pradesh vide notification dated 29.05.2014, has modified the earlier notification dated 29.04.2003 and the sitting parameters for installation of stone crushers have been changed and some are incorporated afresh. In view of the said notification, directions have been issued to the Mining Officer, Kangra on 17.06.2015 to get the site re-inspected as per notification dated 29.05.2014. There exist an approach road to the site approved for the proposed stone crusher, and applied for grant of mining lease by Sh. Sanjay Pathania, and this road was noticed even before the joint inspection of the said area by the joint inspection committee. The Assistant Mining Inspector, Palampur conducted spot inspection of the site on 07.05.2015 and during inspection the Pradhan of the Gram Panchayat certified that the said road is very old and stone crusher owner has neither cut any tree nor undertaken any excavation or mining. Some basic civil

work for installation of stone crusher has been undertaken by the Respondent No. 3 and no illegal activities were noticed by the concerned field staff. Though the photographs annexed show the JCB, it does not show the registration No. of the JCB. No land mark has been shown to fix the identity of the land or the owner of the JCB. Perusal of the photographs of the trucks show the registration nos. It was revealed that these trucks do not belong to Respondent No. 3 but to one Sh. Pradeep and Sh.Mohar Singh. The mining officer has reported that in the absence of land mark, it is not possible to identify the exact part of the land seen in the photographs. The mining officer has issued notices to the owners of the trucks and if they are found indulging in illegal mining, action will be taken against them in accordance with the law. Respondent No. 9, the mining guard inspected the site along with the applicant and assured them that in case of illegal mining the offenders will be prosecuted. Respondent no. 8 did not notice any illegal mining. The area applied for grant of mining lease, with respect to which letter of intent was issued in favour of Sh. Sanjay Pathania, forms part of bed of Beas River and the proposed mining activities involve only collection of minor mineral stone, bajri and sand from the river bed, therefore, apprehension made by the applicant with respect to the environmental degradation is without any basis. The status of the approach road leading towards the river bed was also got verified from the Pradhan of Gram Panchayat Sakoh. It was informed that it is a very old road and stone crusher owner has neither cut any tree nor undertook any excavation. The Gram Panchayat has also furnished a certificate to that effect. As there is no illegality or

environmental degradation, the applicants are not entitled to any relief sought for.

4. Respondent No. 3 in his reply contended that he had applied for grant of mining lease for extraction/collection of sand, stone and Bazri in Khasra No. 410 measuring 4.81.86 Hectare which is a Government land in Mauza Alampur for the period of 15 years for setting up of a stone crusher. The Joint Committee inspected the site on 13.11.2013 and recommended the area for grant of lease and letter of intent was issued in favour of the respondent on 17.06.2014 for the said period, in Khasra No. 410. Respondent applied for installation of stone crusher in Khasra No.652/1 measuring 17-96 hectares in the same Moza Mohal. The Site Appraisal Committee inspected the site on 13.11.2013 and found the site suitable for installation of the stone crusher as per the prescribed parameters. The earlier Notification dated 29.04.2003 was amended by fresh Notification dated 29.05.2014. It is known that directions have been issued to the Mining Officer to re-inspect the site as per the prescribed parameters as per amended Notification dated 29.05.2014 and no activity could take place till the matter is finally decided by the appropriate government. There exists an approach road from Alampur Jaisinghpur Harsipatan which was a very old one. For more than 70 years the villagers used to take cattle to the catchment areas of the banks of the said rivers for grazing, watering and washing their pets. The said road exist in the revenue records also. Respondent has not cut any tree or caused any damage to the environment. He has not used any

JCB or trucks and the photographs annexed to the application is not that of the respondent or used by him. The Applicant is not entitled to any relief sought for.

5. Respondent no.1 & 2 in their reply contended that the application is filed due to political rivalry. The respondent no.1 has not used any influence for granting of mining lease or permission to install the crusher. Respondent no. 1 & 2 have neither any interest in the crusher plant nor in the mining area. The policy relating to installation and working of crusher plant within the territory of Himachal Pradesh falls within the purview of geological wing of Department of Industries to the Govt. of Himachal Pradesh. Respondent No. 1 & 2 have nothing to do with the department or the crusher or the mining and the allegations against the respondents are false and the application is only to be dismissed.

6. The applicants filed rejoinders to the replies contending that the Committee formed for consideration of grant of lease must have been misguided by respondent no.3. The Joint Committee had not physically visited the site and instead inspected the records from the office. In spite of the contention in the reply that no activity could take place till the matter is finally decided, respondent no.1 to 3 are continuing their activities and on everyday hundreds of trucks loaded with sand and bajri are mined and sold. It is thus clear that respondent no.1 & 3 had violated the directions and indulged in illegal mining. Though there existed a road to the catchment area, it was blocked by the installation of the stone crusher in the grazing land. The respondents made a new road through the land which

was fraudulently purchased from the villagers. The Notification dated 29.05.2005 provides the prescribed distance where installation of stone crusher are permitted. No stone crusher can be installed within a distance of less than 500m from village abadi. The village Pratap Nagar of Alampur is only 200m away from the site of the stone crusher and village Sakoh Mauza abadi is about 300m from the site of crusher. The natural spring of village Pratap Nagar and Babli is only 100m away from the site of the stone crusher. Competent authorities have not taken these facts into consideration. As per the inspection report dated 12.05.2015 submitted by Assistant Mining Inspector, he visited Khasra No. 410 applied for lease for mining by Mr. Sanjay Pathania and found that no mining activities are being carried on. It is also stated that road from Harshipattan to Alampur is an old road and no new road has been constructed. If so, the crusher has to be on the road going from Harshipattan to Alampur, which is contrary to the notification dated 29.05.2014. Khasra No. 410 of Mohal Jagroop Nagar, Mauza Alampur is situated in River Beas, where no stone crusher can be installed in water. The report of the Joint Inspection Committee reveals that they have not visited the site, as mining lease granted in Khasra No. 410 is in the river. No mining lease could have been granted or any crusher could legally be installed in the river.

7. Subsequently, the applicants got amended the applications contending that the stone crusher is being installed about 50m away from the bank of River Beas and respondent no. 3 is the cousin of respondent no. 1. It was also contended that photographs

annexed to the application are in respect of Khasra no.650, 642, 651, 656 and 664. The reliefs sought for were also modified for a direction to remove the stone crusher being installed at Khasra No. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva.

8. Respondent no. 4 to 6 in their additional reply contended that respondent no. 3 had applied for installation of stone crusher in Khasra No. 652/1 and not in Khasra no. 650,642,651,656 and 664. It is also contended that there was physical inspection and there was no illegal mining activities and the mining lease was granted in compliance of the provision of notification dated 29.05.2014 and the crusher was also installed legally.

9. The learned counsel appearing for the applicant and respondents were heard. The arguments of the learned counsel appearing for the applicants is that, the mining lease granted in favour of respondent no. 3 are in violation of the guidelines issued by the State of Himachal Pradesh and as per the Notification no mining lease could be granted for the purpose of crusher, in respect of the Government land and in violation of the provision, lease was granted for mining in the Government land. The learned counsel also argued that no crusher could be installed or operated, in the area, though it is a private land, in violation of the parameters fixed. The learned counsel appearing for the respondent no. 3 and the Additional Advocate General appearing for the State of Himachal Pradesh argued that the guidelines relied on by the applicant, has no relevance in view of the promulgation of Himachal Pradesh,

Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015. The learned counsel also pointed out that as per the 2015 rules, lease can be granted for mining in Government land and there is no violation. It is also argued that respondent no. 3 has obtained all the requisite licenses and permissions and there is no illegality and in such circumstances, the applicants are not entitled to the reliefs sought for.

10. The following points arise for consideration:

i.) Whether there is any violation in granting of the mining lease in favour of respondent no. 3

ii.) Whether the installation of the stone crusher by respondent no.3 is in violation of any law, rule or regulation.

iii.) Whether the respondents 1 to 3 have caused any environmental degradation and if so, what are the directions to be issued for restoration/restitution of the environment and whether the applicants are entitled to any compensation.

11. <u>Discussion on the points (i) to (iii)</u>

Though the application was originally vague on the reliefs sought for, subsequently it was got amended and the relief sought for is for removal of the stone crusher from Khasra no. 650, 642, 651, 656 and 664 from the bank of River Beas with its junction of Khad Bhariva and to remove all the structures used for transporting sand, stone, bajri and pebbles from the said site.

Though there is no specific prayer with regard to the mining lease, the case of the applicant is that, a stone crusher could be permitted to be operated or installed, only if there is a valid lease for mining and no lease for mining can be granted in respect of Government land for and hence, no crusher could have been installed. The applicants are relying on the guidelines to establish their case. The guidelines relied on by the applicants is "River/stream bed mining policy guideline in the State of Himachal Pradesh". Clause viii therein is the relevant provision of the guideline, relied on by the applicants. It reads as follows:-

"Extraction of minor minerals to be done in selected rivers/streams or the river/stream sections:

8.1 *Based on the action plan as mentioned the lease/contract shall be granted as per Himachal Pradesh Minor Mineral (Concession) Revised Rules, 1971 and by following the procedures as mentioned in the policy.*

8.2 *Extreme care and caution shall be taken to identify mining area in the perennial river/streams so as to avoid mining activities in these areas.*

8.3 ***Permission for the extraction of sand, stone and bajri for open/free sale in the River/Stream Beds falling in the Government land shall be granted through auction/tender whereas mining lease for the same purpose shall be granted only in private land.***

Provided that neither auction shall be done nor mining lease for open sale of mineral shall be granted in border areas like Nalagarh Sub-Division and Kasauli Tehsil of District Solan, where there are chances of over exploitation of River/Stream beds and illegal transportation of mineral outside the State.

Other border areas shall also be included on the basis of study to be conducted.

8.4 Leases for free sale up to area measuring 5 hectare for a period up to 5 years in areas other than as specified in para 9.2 above shall be granted in private land subject to the condition that no boulders/cobbles/hand broken road ballast shall be allowed to be transported outside State.

8.5 Priority shall be given to Government Departments, i.e., PWD, IPH, etc. if mineral is required for departmental bonafide use, by engaging departmental labour.

12. It is the argument of the learned counsel appearing for the applicants that in view of clause 8.3, no mining lease could be granted in respect of Government land, as it could only be granted in respect of private land and admittedly respondent no. 3 was granted mining lease in respect of Government land and, therefore, it is illegal.

13. As rightly pointed out by Additional Advocate General, in the light of the Himachal Pradesh, Minor Mineral Concession and Minerals Prevention of illegal mining transportation and storage Rules, 2015 (in short "Rules 2015"), provides a complete procedure for granting of lease in respect of minor minerals. In case of any contradiction in the guidelines and the Rules, the provisions of the Rules would prevail. Chapter II of Rules 2015 deals with grant of mineral concession and conditions grant of mining lease. Rule 6 provides the restriction on grant of mining lease. Rule 6 reads:-

"6. Restriction on grant of mining lease-

(1) No mining lease shall be granted in respect of land within a distance of two kilometers from the immediate outer limits of Municipal Corporation/Municipal Committee., one kilometer from the immediate outer limits of Nagar Panchayat, except under special circumstances by the Competent Authority.

(2) No mining lease shall be granted up to 100 meters from the edge of National Highway/Express way, 25 meters from the roads except on special exemption by the Joint Inspection Committee.

(3) No mining operation shall be permitted within a distance stipulated by the Joint Inspection Committee from public utilities.

(4) No mineral concession shall be granted to a person who does not hold a Certificate of Approval.

(5) No mining lease shall be granted to a person who is not a citizen of India.

(6) No mining lease and installation of stone crusher shall be granted to a person in a Scheduled area without the prior recommendation of the concerned Gram Sabha.

(7) In areas other than Scheduled area for granting mining lease and permission for installation of stone crusher, the concerned Gram Panchayat shall be consulted and it shall be incumbent upon the Gram Panchayat to convey its approval or refusal within a period of three months failing which it shall be deemed that the Gram Panchayat has no objection. In case of refusal or any objection raised by the concerned Gram Panchayat, sufficient reasons for such refusal/objection shall be recorded in writhing. The objection shall be reviewed/decided by the granting authority after taking input/opinion from the Joint Inspection Committee:

Provided that for grant of mining lease of brick earth and ordinary earth clay in private lands having an area less than 500 hectares, no consultation and approval of the Gram Panchayat concerned shall be required.

(8) No mining lease shall be granted in the forest area without forest clearance from the Central Government in accordance with the provisions of the Forest Conservation Act, 1980 and the rules made thereunder.

(9) No mining lease shall be granted in respect of any such minor mineral as the Government may notify in this behalf from time to time."

14. Rule 9 deals with priority for granting of mining lease. The said rule reads:

"Priority for grant of mining lease:-

(1) Priority in granting mining lease shall be given to the following:-

(a) First priority shall be given to all agencies concerned with the implementation of infrastructure projects in the department of Multi-purpose Projects and Power and National Highway Authority of India and other departments like Himachal Pradesh Public Works Department, Irrigation and Public Health Department etc and projects of State importance and their authorized agents or contractors to whom works have been awarded on the recommendation of concerned Department.

(b) Second priority shall be given to discoverer of new mineral; and

(c) ***Third priority shall be given to a person who intends to set up a mineral based industry in the State:*** *Provided that where two or more persons of the same category have applied for a mining lease in respect of the same land, the applicant whose application is received earlier shall have a preferential right for the grant of the lease over an applicant whose application is received later: Provided further that where such application are received on the same day, the Government after taking into consideration the following factors, may grant mining lease to such one of the applicants as it may deem fit:-*

(a) Experience of the applicant in mining:

(b) Financial soundness, stability and special knowledge in the field of geology and mining of the applicant;

(c) Special knowledge of geology and mining of the technical staff already employed or to be employed for the work:

(d) Clearance of Government dues and royalties where the applicant or his/her family member has been engaged in the mining business previously; and

(e) Satisfactory performance of the applicant where he has been engaged in the mining industry previously.

(2) The Government may for special reasons to be recorded in writing, grant a mining lease to an applicant whose application is received later in preference to an applicant whose application is received earlier.

(3) The State Government may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant of renew a mining lease over the whole or over a part of the area applied for.

(4) A priority register of mining lease application(s) shall be maintained.

(5) The Applicant, for reasons to be recorded in writing can withdraw the priority at any stage."

15. Therefore, as against the provisions of the guidelines, the Rules 2015, enables the State to grant mining lease in respect of Government land, to a person who intends to set up a mineral based industry in the State. The stone crusher as defined under rule 2(ZM) means "stone crusher to be registered under these rules and shall include a machine which use metal surface to break rock/ minerals or compress material to reduce particles size for the manufacturing of grit/ bajri or further reduce to finer size to to be used as a raw material for manufacturing reinforced or pre-stressed cement concrete products or building material or for

construction purpose, except pulverizing or grinding and crushing of rock for reducing size in a cement plant for the production of clinker/cement: and converting rock fragments into sand without using conveyor belts."

16. Therefore, stone crusher would come within ambit of a mineral based industry. As rightly argued by the Additional Advocate General, if a person intends to set up a mineral based industry in the State, the Rules 2015, provides for granting mining lease to such person for that purpose. Therefore, the grant of mining lease in favour of respondent no.3 is not bad in law. In any case it cannot be challenged based on the guideline referred to earlier. Moreover the mining lease as such was not challenged. Therefore, we find no merit in the contention of the Applicants that the grant of mining lease was illegall and due to the said illegality no crusher could be permitted to be installed.

17. Vide order dated 22.09.2015, the State Level Environment Impact Assessment Authority (in short SEIAA), Himachal Pradesh, granted the environmental clearance to the respondent no.3 for mining in Khasra No. 4-81-86 hectares of Government land in Khasra No.410 falling in Mauza Alampur. The said environmental clearance shows that the State Environment Impact Assessment Authority examined the proposal in its 23rd meeting held on 17.08.2015 and considered the recommendations made by SEAC in its 40th meeting held on 07.09.2015 and considering the recommendations of the State Level Expert Appraisal Committee, environmental clearance was granted to the project as per the EIA

Notification of 2006 providing specific and general conditions enumerated therein. Therefore, respondent no.3 has the necessary environmental clearance for mining in 4-81-86 land in Khasra no.410 in Mauza Alampur. Though the environmental clearance is subject to an appeal, appellants have not preferred any appeal and therefore they are not entitled to challenge the environment clearance in the application filed under section 14 of the NGT Act, 2010, without filing an appeal under section 16.

18. Vide order dated 02.11.2015, the Himachal Pradesh State Pollution Control Board has accorded consent to establish the stone crusher in favour of respondent no.3. The said consent establishes that respondent no.3 has approached the Board for issuing consent to establish under the Water Act, 1974 and Air Act, 1981 for establishment of the stone crusher and extraction of stone, bajri and sand and the Assistant Environment Engineer has recommended the case for consent to establish the stone crusher. The consent was finally granted on the conditions stipulated. Vide order dated 22.01.2016 the Pollution Control Board has also granted consent to operate for extraction, collection of sand, stone and bajri at VPO, Sakho in favour of respondent no.3. Therefore, it is clear that respondent no.3 has got the legal Authority and permission for installation of the stone crusher.

19. The argument advanced by the learned counsel appearing for the applicant as against the consent granted for establishment of the stone crusher by respondent no.3 is that it does not satisfy the parameters fixed. The Notification dated 29.05.2014 was issued by

the Government of Himachal Pradesh, in supersession of the earlier Notification no. STE-E(4)-1/2003 dated 29.04.2003 and amendments carried out therein from time to time, regarding setting up of stone crusher units in the State of Himachal Pradesh, in exercise of the powers conferred by section 5 of Environment (Protection) Act, 1986 read with the Notification S.O 152 (E) dated 10.02.1988 of Ministry of Environment and Forest, in pursuance of the provisions of section 7 of the Environment (Protection) Act, 1986, the directions of the High Court of H.P in *CWP No. 7949/2011, Deshraj Vs. State of Himachal Pradesh & Ors and in CWP No. 7951/2011, Yograj Vs. State of Himachal Pradesh & Ors.* Regarding setting up of stone crusher units on the site suitability provides the criteria of minimum distance from village abadi-deh as 500 m, though earlier to the Notification of 2014, it was only 250 m. The argument is that though the Site Appraisal Report in respect of the mining lease, granted to respondent no.3 shows the distance as 700 m, the Performa for the joint inspection of the area applied for grant of mining lease, shows that the area applied for grant of mining lease is bed of river Beas and therefore, granting of consent for the stone crusher is bad and the respondents are to be directed to dismantle and remove the machineries of the stone crusher. Though the said Performa for the joint inspection of area applied for grant of mining lease shows that the area applied is river bed of Beas, the exact distance of the stone crusher from the village abadi has been specifically shown in the Site Appraisal Report based on the inspection by Sub-Divisional level Site Appraisal Committee on 30.09.2015. It shows that the stone crusher site satisfies all the criterions provided under the rules. The Site

Appraisal Report itself shows that the inspection by the Committee on 30.09.2015 was to verify whether the sites identified for proposed crusher unit fulfils the conditions. The relevant part of the report reads:

> *"It is also further observed that there exist a natural barrier in the shape of valley behind and in the front of the crusher site, it will further minimize the adverse effect on the environment by the crusher.*
>
> *During the course of inspection of above said site, it was observed by the committee that the area under reference identified for installation of proposed crusher unit fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014 and the committee recommended the Kh. No. 652/1 measuring to 0-15-58 Hect., which is 700 meters from secondary course of river Beas and fulfill the condition at Sr. No. 14 of Notification No. STE-E(3)-17/2012 dated 29.05.2014.*
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> *The condition at Sr. No. -8, the committee observed that no, spring, Canal, reservoir or functional water supply, percolation well, sewerage treatment plant, water infiltration exists near the area. The other conditions except condition No. -8 and 14 mentioned in the notification has already been recommended by the Site Appraisal Committee inspected on 13/11/2013 and same has also been mentioned in this report.*
>
> *During the course of site appraisal inspection, the Mining Officer appraised the committee that if the stone crusher is to be installed on the basis of mining activities of minor minerals from mining lease, then possession of valid mining lease is pre-requisite for according permission for installation of stone crusher unit, whereas the mining lease of the area applied for, is yet to be granted by the competent authority which will be granted only after the applicant obtains the Environmental clearance from the competent authority of Ministry of Environment and Forest (MoEF).*
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> *Keeping the above in view, it was found by the Site Appraisal Committee that the site over an area comprising of Kh. No. 652/1 measuring to 0-15-58 Hect. in Mohal Sakoh Mauja Alampur The. Jaisingpur, Distt. Kangra identified for installation of proposed stone crusher unit by the applicant fulfills the sitting parameters framed vide notification No. STE-E(3)-17/2012 dated 29.05.2014. The committee found suitable the above said site, subject to following conditions:*

- *That the installation of stone crusher unit can only be allowed whenever the applicant shall hold a valid mining lease/ source.*
- *Issuance of NOC by the Tourism department and other stipulations made above."*

20. During the course of the inspection of the above said site, it was observed by the Committee that the area identified for installation of proposed crusher unit fulfils the conditions at serial no. 14 of the Notification STE-E(3-17/2012) dated 29.05.2014 and the Committee recommended Khasra No. 652/1 measuring 0.15-58 hectares, which is 700 mtrs from the course of the river and hence fulfils condition no. 14 of the Notification dated 29.05.2014. Based on the inspection it was recorded that "it was found by the Site Appraisal Committee that the site was an area comprising of Khasra No. 652/1 measuring 20.15-58 hectares in Mohal, Sakho, Mauza, Alampur, The-Jaisinghpur of Dist: Kangra indentified for installation of the proposed stone crusher unit by the applicant fulfils the site parameters fixed by Notification dated 29.05.2014."

21. We have already found that the respondent no.3 is having a valid mining lease and the mining lease so granted is perfectly in order. Though the learned counsel appearing for the applicant, based on the Site Appraisal Report prepared on the basis of the inspection dated 13.11.2013 and 30.09.2015 respectively argued that as the distance from the village abadi is only 300m and as per the notification dated 29.05.2014 referred to earlier, the minimum distance from village abadi-deh should be 500m, the notes 1.2.2 specifically provide that the distance are relaxable in the case of any

natural barrier between site of the unit. The relevant note to the site suitability provided under the notification reads:

> *"1.2.2 In the guidelines distances are relaxable in the case of any natural barrier between the site of the unit and any of the features indicated in the guidelines natural barrier may be defined as 'any natural physical entity except any kind of river/khad/natural steam/tree canopy which obstructs the physical view and/or prevents the movement of air and noise so as to keep air and noise pollution within prescribed limits".*
>
> *The Government may relax the guidelines for a limited period in specific cases wherein setting up of stone crushing unit is necessary in public interest but it is not practically feasible to adhere to any or all of the guidelines, provided that such relaxation will be considered only on the recommendation of the Joint Inspection Committee as proposed in para 1.3.2."*

22. The Site Appraisal Reports show that though the minimum distance from the village abadi is only 300 mtrs, the site is surrounded by hills, which serve as a natural barrier and therefore, the minimum distance of 500 mtr is not applicable. Therefore on that basis, it cannot be said that consent granted for the establishment and operation of the stone crusher is bad.

23. We therefore, find no substance in the contentions of the applicants on violation of the site parameters.

28. Even otherwise, it is seen from the records produced that the receipt of application for mining lease was submitted by respondent no.3 on 12.10.2014. The State Level Environment Impact Assessment Authority (SEIAA), accorded environment clearance for the project on the specific and general conditions provided therein.

That clearance was granted based on the application submitted seeking prior environmental clearance for extraction/collection of sand/stone and bajri by respondent no.3. As the E.C was granted as early as 22.09.2015, the applicant could not have preferred an appeal under Section 16 of NGT Act, 2010 challenging the EC on 23.04.2015, the day when the application was filed before the Tribunal. When the order granting E.C, is an appealable order, and the applicant failed to challenge the E.C within the statutory period, or the period provided for condonation of delay, the same cannot be challenged in the guise of an application under section 14 of the National Green Tribunal Act, 2010.

24. In such circumstances, the application can only be dismissed as there is no violation of the relevant rules or the parameters. The application is therefore dismissed but without any order as to cost.

M.A No. 1309/2015 & 220/2016

As the main application is dismissed the miscellaneous applications itself are dismissed.

Hon'ble Mr. Justice M.S.Nambiar
Judicial Member

Hon'ble Prof. A.R Yousuf
Expert Member

New Delhi,
May, 2016

2022 SCC OnLine SC 1280

In the Supreme Court of India
(BEFORE AJAY RASTOGI AND B.V. NAGARATHNA, JJ.)

Bharat Sanchar Nigam Ltd. and Others ... Appellant(s);
Versus
Tata Communications Ltd. etc. ... Respondent(s).

Civil Appeal No(s). 1699-1723 of 2015
Decided on September 22, 2022

The Judgment of the Court was delivered by

AJAY RASTOGI, J.:— The instant batch of appeals has been preferred by the appellant, Bharat Sanchar Nigam Ltd. assailing the judgment dated 20th August, 2014 passed by the Telecom Disputes Settlement and Appellate Tribunal, New Delhi, followed with the order dated 14th October, 2014 rejecting the application filed by the appellant seeking clarification of judgment dated 20th August, 2014 to the extent that the rate of infrastructure charges for Active Links of Licensed Telecom Service Providers to be charged in terms of the circular dated 12th June, 2012 has been made effective from 1st April, 2013 instead of 1st April, 2009 taking note of increase of 10% per annum between 1st April, 2009 to 31st March, 2013 as payable on 1st April, 2013. As consequence thereto, the revised rates introduced by the appellant as per circular dated 12th June, 2012, which although were proposed from 1st April, 2009, shall be applicable with effect from 1st April, 2013 but that was declined by the Tribunal under the order impugned.

2. It will be apposite to take a narration of facts for better appreciation of the controversy raised in the instant appeals.

3. The respondents herein who have been granted licenses under Section 4 of the Indian Telegraph Act, 1885, for providing telecom services such as Universal Access Service/Cellular Mobile Telephone Service/National Long Distance Service, etc. and the service providers entered into Interconnection Agreements with the appellant which is a public sector undertaking for interconnection of their telecom networks with that of the appellant.

4. Whenever a new operator wishes to start operations, it is necessary for such an operator to interconnect with various other networks of the incumbent operators that are already in existence. It is for this reason that interconnection as well as the terms on which the same is to be provided, is regulated by the telecom regulations. The various operators designate some of their switches/exchanges as points of interconnect (POI) from which the interconnection facility is provided by a physical connection on the ports available in such points of interconnect. Sometimes, the newcomer called the interconnection seeker in common parlance, may ask for certain other facilities/resources from the incumbent operators, which may not be mandated by the regulations, on mutually agreeable terms.

5. The dispute in the present batch of appeals pertains to charges for infrastructure facilities which are being provided by the appellant to the batch of respondents, which were increased by a circular dated 12th June, 2012, w.e.f. 1st April, 2009. The question that arose was as to whether the appellant was justified in raising charges for infrastructure facilities with retrospective operation from 1st April, 2009, more so, when the yearly charges are paid by the service providers (respondents) upfront in advance every year.

6. Interconnect Agreements are executed between the parties and as per clause

2.1.9, infrastructure facilities will be provided, subject to availability and feasibility. Rental for use of such space and mounting shall be determined by the provider of such facility. As per clause 6.3.3 of the Interconnect Agreement, it is not mandatory for the appellant to provide any infrastructure to the respondents, which they are themselves supposed to arrange. The extract of clauses 2.1.9 and 6.3.3, which are relevant for the purpose is reproduced hereinbelow:

> "Clause 2.1.9
>
> Irrespective of who owns a transmission system of the link interconnecting one party's exchange to the exchange of the other party, each party subject to availability and feasibility may provide accommodation for the terminals of such equipment of the other party located in its premises. Each party may permit mounting of antennae for interconnect link owned by the other party on its transmission towers subject to feasibility. Rental for use of such space and mounting shall be determined by the provider of such facility. Arrangements for installation, operation and maintenance of such equipment will be arrived at by mutual agreement."
>
> "6.3.3 Other charges
>
> It shall not be mandatory for BSNL to provide any infrastructure to BSO which BSO himself is supposed to arrange. In case the BSO is not able to bring his interconnecting transmission link upto the BSNL's designated exchange for the POI, BSNL may subject to availability and payment of the prescribed charges by BSO, provide inter exchange junctions on PCMs from the exchange upto which the BSO has brought its transmission link to the location of POI. These charges shall be same as prescribed by TRAI for leased lines from time to time or on R&G & conditions as the case may be.
>
> For any other infrastructure like space BSNL's building, provision of power supply, air conditioning, mounting of antenna on towers or building tops if feasible, the charges and other terms & conditions for the same shall be as prescribed by BSNL from time to time separately."

7. The appellant, in the first instance, by circular dated 19th February, 2001 fixed the rental charges for providing facilities i.e. accommodation, power supply, tower space, cable ducts, etc. to the private licensed service providers and it was specifically mentioned that the appellant reserve the right to renew the charges as well as the electricity charges as and when being revised by the State Electricity Boards. In furtherance thereof, Interconnect Agreements were executed between the appellant and the respondents/service providers herein earlier on 31st March, 2004 and it was made explicit that the appellant has no obligation to provide infrastructure facilities and it is for the respondents/service providers to arrange the same at their own and in case infrastructure facilities are taken from the appellant, it shall be on the rates prescribed by the appellant from time to time.

8. In furtherance thereof, the appellant revised the infrastructure charges for Active Links leased to the operators by its circular dated 30th May, 2006 w.e.f. 1st April, 2006 and all such charges are to be leviable upfront every year and the circular indicates the justification of revising the infrastructure charges based on classification of cities introduced by the Central Government for the purposes of determining the House Rent Allowance. The extract of the Circular dated 30th May, 2006, although not under challenge, but may be relevant for proper appreciation of the grievance raised by the appellant is reproduced as under:

> "Bharat Sanchar Nigam Ltd.
> (A Government of India Enterprise)
> 613-B, Statesman House, B-148,
> Barakhamba Road, New Delhi - 110001

(Commercial Branch)

No. 103-1/2006-Comml. Dated : 30th May, 2006

Subject : Infrastructure charges for Active Links of Licensed Telecom Service Providers

In view of various reference received in this office on the subject, the competent authority has reviewed the infrastructure sharing charges prescribed vide Circular No. 116-14/96-PHC (pt) dated 19th February, 2001 and decided to revise the charges as given below:—

2. Definition of links connected to BSNL network:

a. Active Links : These are the links of Licensed Telecom Service Providers for which transmission equipment of service provider is installed in BSNL's exchange premises and their network is connected through it. The rental charges of infrastructure in this case have been streamlined and are given below in Para 3.

b. Passive Links : These are the links of Licensed Telecom Service Providers for which their transmission equipment is installed close to BSNL exchange premises and only transmission cable (with/without modem) is brought in the BSNL's telephone exchange premises. Charges for this have already been prescribed vide Circular No. 103-4/2004-Comml dated 29th April, 2005.

3. Rental changes for infrastructure sharing have been divided into following components:

a. Charges for sharing of building space.

b. Electricity and miscellaneous charges.

c. Charges for Tower sharing.

d. Charges for duct sharing.

a. Charges for sharing of building space:

(i) To simplify rent assessment, it has been decided to classify the areas/cities based on the classification followed by Government of India for House Rent Allowance i.e. A1, A, B1, B2 and C class cities. For the sake of simplicity, it has further been decided to have only in four categories i.e. A (for A1 and A), B (for B), C (C) and Unclassified cities.

(ii) Accordingly, the rates for one transmission bay (including space for one box of OF termination and DDF as required) in these categories of cities may be charged as under. The space is normally given in technical area of exchange building, which is having high specifications for installation of telecom equipments. The Licensed Telecom Service Providers are given space for installation of their various equipments by officer-in-charge of building on approval of equipment installation plan by Head of SSA:

Categories of City	Charges
A	Rs. 36000 per bay per annum
B	Rs. 28000 per bay per annum
C	Rs. 20000 per bay per annum
Unclassified	Rs. 13000 per bay per annum

b). Miscellaneous Infrastructure service charges : These charges include the sharing of following services:

1). DCT power at - 48V up to 10A/transmission bay;

2). AC power for lights, fans, testing instruments etc;

3). Air Conditioning charges (sharing of existing air conditioning system);

4). Generator Backup;

5). Earthing charges (Tapping from exchange earth bar is allowed)

6) Fire equipment (Sharing in case of requirement).

As the rates of electricity and capital expenditure of BSNL in developing these facilities is varying as per the size of city, the rates for one transmission bay in these categories of cities will be as under:

Categories of City	Charges
A	Rs. 2,00,000 per bay per annum
B	Rs. 1,80,000 per bay per annum
C	Rs. 1,50,000 per bay per annum
Unclassified	Rs. 1,20,000 per bay per annum

C. Tower Charges: Charges per antenna will be as under:

Sl.	Tower Height	All Cities
1.	Up to 30 meters	Rs. 1,20,000 per annum
2.	31-60 meters	RS. 2,50,000 per annum
3.	More than 60 meters	Rs. 4,00,000 per annum

The above charges will be multiplied by no. of antennas in case multiple antennas are installed by Licensed Telecom Service Providers.

d. Duct Charges: Permission may be granted to Licensed Telecom Service Providers to lay one 50 mm pipe inside the BSNL exchange premises to lay their OF cable. It will be the responsibility of Licensed Telecom Service Providers to restore telecom exchange building and its premises in original shape after their construction work is over which should be done within one month. A refundable security of Rs. 50,000 may be obtained from Licensed Telecom Service Providers before the permission is given.

BSNL will not lease its own DUCTs as far as possible. Duct rental for already leased ducts of BSNL may be continued to be charged as at present, i.e.:

=[Cost of Duct × No. of Cable × 36%]/[Total no. of pipes in duct]

4. Applicability of above charges-

a) These revised rates will be applicable w.e.f. 1st April, 2006 with a provision of 10% annual increase every year i.e., 01.04.2007 onwards. Billing cycle shall be from 01.04 to 31.03 of every year. Hence, billing cycle for all existing links may be shifted to the new arrangement;

b) All these charges will be leviable in advance every year;

c) In case of change of classification of cities, high classification will be applicable at the time of yearly renewal only. The charges will be applicable financial year wise;

d) No cash refunds shall be made and any excess payments received by BSNL, due to difference in charges based on old and new formula, shall be adjusted in future bills of party concerned.

(R P Bhalla)

Assistant Director General (Commercial)"

9. It may further be noticed that the revised rates applicable w.e.f. 1st April, 2006 with a provision of 10% annual increase every year i.e. 1st April, 2007 onwards and the billing cycle shall be from 1st April to 31st March and the charges will be leviable upfront in advance every year with a further stipulation that in case of change of classification/categorization of cities, higher classification will be applicable at the time of yearly renewal only and charges will be applicable on each financial year.

10. The Government of India, Ministry of Finance, by its circular dated 29th August, 2008, revised the classification of cities effective from 1st September, 2008 and the cities have been revised as follows:

"2. Based on the recommendations of the Sixth Central Pay Commission, the earlier classification of cities has been revised viz., A-1 to "X"; A, B-1 & B-2 to "Y" and C & Unclassified to "Z". In determining the revised classification, the population of Urban Agglomerate area of the city has been taken into consideration. Accordingly, the rates of House Rent Allowance shall be as under:

Classification of Cities/Towns +	Allowance Rates of House Rent as a percentage of (Basic Pay NPA where applicable)
X	30%
Y	20%
Z	10%

11. The Government of India re-classified the cities w.e.f. 1st September, 2008 but so far as the appellant is concerned, the circular revising the infrastructure charges for telecom service providers in terms of circular of the Government of India dated 29th August, 2008 came to be introduced by a circular dated 12th June, 2012, but charges stood revised retrospectively w.e.f. 1st April, 2009 with a provision of 10% annual increase every year w.e.f. 1st April, 2010 onwards and rest of the conditions remained the same. The impugned extract of part of the circular dated 12th June, 2012 is reproduced hereinbelow:—

"Rates & Costing Cell, Bharat Sanchar Nigam Limited
Bharat Sanchar Nigam Limited, A Govt. of India Enterprises
Corporate Office,
Janpath,
New Delhi - 110001

No. 2-2/2009-R&C[CFA] Dated : 12.06.2012

Circular R&C - CFA No. 11/11-12

Subject : Infrastructure Charges for Active Links of Licensed Telecom Service Providers

In view of re-classification of cities and revision of rates of house rent vide Govt. of India Department of Expenditure letter No. 2(8)/2008-E-II(B) dated 29.08.2008, the existing rental charges for Infrastructure Sharing by the other licensed service providers fixed vide BSNL HQ No. 103-1/2006-Comml. Dated 30.05.2006 has been reviewed by Competent Authority and it has been decided to revise the charges w.e.f. 01.04.2009, as details given below:

1. Charges for building space.

(Rates for one transmission bay including space for one box OF transmission and DDF as required)

S. No.	Classification of Cities/Towns	Charges w.e.f. 01.04.2009
1.	X	Rs. 61,606 per annum per bay
2.	Y	Rs. 47,916 per annum per bay
3.	Z	Rs. 26,620 per annum per bay

2. Misc. Infrastructure Service Charges: These charges include the sharing of following services.

1. DC power at - 48V up to 10A/transmission bay;
2. AC power for lights, fans, testing instruments etc.;
3. Air conditioning charges (sharing of existing air conditioning system);
4. Generator Backup;
5. Earthling charges (Tapping from exchange earth bar is allowed);
6. Fire equipment (sharing in case of requirement).

S.No.	Classification of Cities/Towns	Charges w.e.f. 01.04.2009

1.	X	Rs. 2,95,778 per annum per bay
2.	Y	Rs. 2,66,200 per annum per bay
3.	Z	Rs. 1,99,650 per annum per bay

3. The other two infrastructure Sharing rentals viz Tower Sharing Charges and Duct Charges, which are not dependent on re-classification of classification of city and house rent rates, shall remain unchanged and be charged as per this office letter No. 103-1/2006-Comml. Dated 30.05.2006.

4. Other terms and conditions applicable to above charges are:

i) These revised rates will be applicable w.e.f. 01.04.2009 with provision of 10% annual increase every year i.e. 01.04.2010 onwards. Billing cycle shall be from 01.04.2004 to 31.03.2013 of every year. Hence, billing cycle for all existing links may be shifted to the new arrangement;

ii) All these charges will be leviable in advance every year;

iii) In case of change of classification of cities, higher classification will be applicable at the time of yearly renewal only. The charges will be applicable financial year wise;

iv) TAXs, duties as per Govt. orders from time to time will be levied extra.

v) This Circular is issued based on the approval of Competent Authority in NOW-CFA file No. 6-9/2010-POI (Infra)(Pt.). For any Clarification/correspondence, in this regard, matter may be taken up with NOW-CFA Section, BSNL Corporate Office, Janpath, New Delhi - 110001 [Tel No. 011-23711795 Fax No. 011-23734135].

Sd/-
(AGM(T&C-CFA)"

12. It may be relevant to note at this stage that the circular dated 12th June, 2012 revised the infrastructure facilities retrospectively w.e.f. 1st April, 2009, however, the fact is that all the telecom service providers have made their payments for the previous years in terms of the circular dated 30th May, 2006 according to the terms of Interconnect Agreements where the charges are leviable upfront every year and after introducing the circular dated 12th June, 2012 w.e.f. 1st April, 2009, additional bills were raised by the appellant for the previous years for which the upfront payment was made by each of the telecom service provider and that became the subject matter of challenge at the instance of the telecom service providers (respondents herein) by approaching the Tribunal.

13. The learned Tribunal, after taking note of the submissions and the pleadings on record, arrived to a conclusion that the appellant is well within its rights to revise the rates according to classification of cities and it was for the respondents to continue to use the resources of the appellant at the revised rates or take the same from other resources if available and it was open to the service provider to avail the infrastructure facilities such as building space, etc. either from the appellant or from any other service provider, if any.

14. The limited question which the Tribunal considered was regarding the rates prescribed by the appellant under the circular dated 12th June, 2012 could have been made applicable retrospectively w.e.f. 1st April, 2009 and taking into consideration the backdrop of the matter, while upholding the right of the appellant (BSNL) to revise the rates of the infrastructure facilities in question held that the circular dated 12th June, 2012 of the appellant shall be applicable prospectively w.e.f. 1st April, 2013, which is the next financial year instead of 1st April, 2009 and upto 31st March, 2013, the

infrastructure facilities provided by the appellant to the telecom service providers shall be charged at the rates and as per classification of cities prescribed in the circular dated 30th May, 2006 and the consequential effect is either for refund or for realization of charges, if any, the same may be accounted for by the appellant in terms of the judgment impugned dated 20th August, 2014. Relevant extract of the judgment dated 20th August, 2014 is reproduced hereinbelow:

> "In view of the aforesaid circumstances, while upholding the right of the respondent-BSNL to revise the rates of the infrastructure facilities in question, we direct that the revised rates as per the circular dated 12.06.2012 of the Respondent shall be applicable with effect from 01.04.2013 which is the next financial year. Up to 31.03.2013, the infrastructure facilities provided by the respondent to the petitioners shall be charged at the rates and as per classification of cities as prescribed in the circular dated 30.05.2006. The excess rates, wherever realised from the petitioners, shall be refunded back to the petitioners along with interest at the rate as is prescribed in the interconnect agreements for delayed payments from the date of realization of these amounts and till the time of filing of the petitions along with pendente lite and future interest @9% till the payment is made. The refunds shall be made within a period of four weeks. If any amount is found payable by the petitioners in terms of this order, the same shall also be paid along with interest, as payable in case of refunds, and shall be paid within four weeks."

15. The appellant, at this stage, filed an application before the Tribunal seeking clarification of the judgment and order dated 20th August, 2014 on the premise that the rate of infrastructure charge for active links of licensed telecom service providers indicated in the circular dated 12th June, 2012 has become effective from 1st April, 2013 instead of 1st April, 2009. In the given circumstances, the 10% notional increase per annum between 1st April, 2009 to 31st March, 2013 is leviable and can be charged from 1st April, 2013 but that application was dismissed by the Tribunal by its later order dated 14th October, 2014 with a clarification that the revised rates as per the circular dated 12th June, 2012 shall be applicable w.e.f. 1st April, 2013 and the rates which were applied w.e.f. 1st April, 2009 are to be applied w.e.f. 1st April, 2013 without any notional increase and consequently disposed of the application filed by the appellant. Relevant extract of the order dated 14th October, 2014 is reproduced hereinbelow:

> "We, however, do not find any such direction in the judgment. On the contrary, if the rates mentioned in this circular are to be taken w.e.f. 01.04.2009 and then notionally increased by certain percentage every year to arrive at a rate to be applicable from 01.04.2013, it will be contrary to the letter and spirit of the judgment. The direction in the judgment is clear that revised rates as per the circular dated 12.06.2012 shall be applicable w.e.f. 01.04.2013 and, therefore, the rate which was applied as per the circular w.e.f. 01-04-2009 is to be applied w.e.f. 01.04.2013 without any notional increase. We, however, make it clear that this will be without prejudice to the right of the respondent-BSNL to revise the rates prospectively, and in accordance with the agreement between the parties."

16. That both the orders passed by the Tribunal dated 20th August, 2014 and 14th October, 2014 became the subject matter of challenge in the instant batch of appeals before us.

17. It may be further noticed that in furtherance of the circular dated 12th June, 2012, circular dated 13th May, 2015 has been notified revising the infrastructure charges for active links of licensed telecom service providers w.e.f. 1st April, 2015 leviable in advance for the year 2015-2016 onwards and the justification tendered by the appellant was that it is based on commercial viability and enhanced maintenance cost and the appeals filed by the service providers assailing the circular dated 13th

May, 2015 came to be dismissed by the Tribunal by judgment dated 18th October, 2019 and the appeal preferred against the judgment of the Tribunal came to be dismissed by this Court by an order date 17th February, 2020 in Civil Appeal No. 1438 of 2020.

18. Counsel for the appellant in the first instance has tried to persuade this Court that the rate of infrastructure charges stood revised on the basis of the circular issued by the Government of India, Ministry of Finance, revising the classification of cities vide its circular dated 29th August, 2008 and that became effective from 1st September, 2008 and it was the reason for which the circular dated 12th June, 2012 became effective in revising the infrastructure charges for telecom service providers w.e.f. 1st April, 2009. The appellant revised the rates based on the classification of cities and such revision was permissible in relation to commercial agreements duly supported with the evidence on record.

19. Counsel for the appellant further contended that once the competence of the appellant in laying down the charges has been upheld by the Tribunal, retrospective application to the circular dated 12th June, 2012 should not have been interfered with by the Tribunal, but in the next breath, has submitted that if the retrospective applicability of the circular dated 12th June, 2012 effective from 1st April, 2009 is not sustainable, at least the appellant is within its rights to make the charges leviable after notional fixation by increase of 10% every year w.e.f. 1st April, 2009 and, to this extent, the finding of the Tribunal is not legally sustainable and deserves to be interfered with by this Court.

20. Counsel further submits that so far as the notional fixation of charges to be effective from 1st April, 2013 is concerned, in terms of circular dated 12th June, 2012, there is a provision of 10% annual increase every year w.e.f. 1st April, 2010 onwards and, in the given circumstances, even if the infrastructure charges as levied by the appellant to be charged from service providers at the revised rates applicable w.e.f. 1st April, 2009 are not chargeable because of the impugned judgment of the Tribunal still the service providers are under an obligation to pay w.e.f. 1st April, 2013 the notional increase of charges based on 10% annual increase and this was a manifest error which the Tribunal has committed in passing the judgment impugned and the same needs to be interfered with by this Court.

21. Counsel for the respondents, on the other hand, submits that the right of the appellant to revise the rate of infrastructure facilities indeed after the finding has been recorded by the Tribunal has not been questioned by the respondents in the later proceedings, but if the circular dated 12th June, 2012 could not be given retrospective effect w.e.f. 1st April, 2009, at least no notional increase of 10% every year could have been permissible to be charged from the service providers w.e.f. 1st April, 2013 and if that is being made permissible, what could not have been directly chargeable from the service providers can be indirectly charged at the rates which the appellant is entitled to claim as the infrastructure charges w.e.f. 1st April, 2013 and that was the reason the Tribunal intervened in the matter and clarified in its latter order that there shall be no notional increase of 10% every year as being indicated in the circular dated 12th June, 2012 and the appellant is under an obligation to charge the rates as applicable on 1st April, 2009 to be applied w.e.f. 1st April, 2013 without any notional increase. The circular dated 12th June, 2012 applicable prospectively w.e.f. 1st April, 2013 was to be purposively interpreted and the plea of notional increase by 10% every year in revising the rates, to be charged from 1st April, 2013 is not legally sustainable.

22. Counsel for the respondents, while supporting the finding recorded by the Tribunal under the impugned judgment, further submits that if what is being prayed for by the appellant is accepted by this Court, each service provider will have to bear the additional financial burden for the period for which they have not charged any

additional charge from their customers and since the respondents have not charged from their customers for the previous years from 1st April, 2009 onwards, it will carry a financial burden on the service providers for which they are not at fault.

23. As a matter of fact, the present dispute survives regarding payment of infrastructure charges for the limited period of two years i.e. from 1st April, 2013 to 31st March, 2015.

24. We have heard learned counsel for the parties and with their assistance perused the material available on record.

25. That the authority of the appellant in revising the infrastructure charges for active links leased to telecom operators is not a subject matter of challenge and none of the respondents have questioned the authority of the appellant in revising the infrastructure charges for active links leased to telecom operators.

26. The limited question which has been raised for our consideration is as to whether the rates prescribed by the appellant under the circular dated 12th June, 2012 could be applied retrospectively w.e.f. 1st April, 2009 or be effective from 1st April, 2013, as observed by the Tribunal and whether the appellant is entitled to claim 10% notional increase every year from 1st April, 2009 to be applicable from 1st April, 2013.

27. So far as the impugned circular dated 12th June, 2012 is concerned, it stipulates that it shall be made effective from 1st April, 2009 and the rates would revise from 1st April, 2009 with 10% annual increase w.e.f. 1st April, 2010, particularly, in the circumstances when all the infrastructure and other charges are being paid upfront every year.

28. It is not disputed that each of the service provider has paid upfront for the previous years from 1st April, 2009 in terms of the earlier circular dated 30th May, 2006 until the circular dated 12th June, 2012 was introduced.

29. It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.

31. So far as the submission made by the appellant with regard to the notional increase of charges by a certain percentage every year as being referred to in the circular dated 12th June, 2012 is concerned, we have not been able to persuade ourselves with the finding recorded by the Tribunal. The reason is that the appellant might not be justified in making the circular dated 12th June, 2012 effective from 1st April, 2009, but once the competence of the appellant in fixing the rates of infrastructure charges in question stands affirmed and is not a subject matter of challenge, the appellant is well within its rights to make their charges leviable on notional fixation by increase of charges by a certain percentage every year in terms of

circular dated 12th June, 2012 from each of the service provider as being notionally applicable from 1st April, 2013. In other words, the service provider is not under an obligation to pay any additional infrastructure charges which was prescribed by the appellant under its circular dated 12th June, 2012 for the previous years, effective from 1st April, 2009, but at the same point of time, it was open for the appellant to notionally fix the charges to be computed and became payable from 1st April, 2013, based on 10% annual increase every year or by any other mechanism which may have a reasonable justification. That such notionally increased charges can indeed be leviable on the service providers and to this extent, the order passed by the Tribunal, in our considered view, is not sustainable in law and deserves to be set aside.

32. Consequently, the appeals stand partly allowed. The order of the Tribunal dated 20th August, 2014 followed by the order dated 14th October, 2014 are hereby modified and the appellant is at liberty to revise the notional rates based on 10% increase every year in terms of circular dated 12th June, 2012 as applicable on 1st April, 2013 and to raise its additional demand/bills based on notional increase of infrastructure charges effective as on 1st April, 2013 to the service providers/respondents herein and if the service providers/respondents fail to pay, consequences in terms of the agreements executed between the parties shall follow.

33. Pending application(s), if any, shall stand disposed of.

(*b*) That the petitioners will not induct anybody else into occupation of any part of the premises or otherwise assign or part with possession ;

(*c*) That the petitioners will continue to pay regularly a sum equal the rent that has been fixed between parties, month by month, before the 10th of every month, by way of damages for use and occupation.

(1980) 4 Supreme Court Cases 597

(BEFORE V. R. KRISHNA IYER AND A. D. KOSHAL, JJ.)

REGIONAL TRANSPORT OFFICER, CHITTOOR AND OTHERS .. Appellants ;

Versus

ASSOCIATED TRANSPORT MADRAS (P) LTD. AND OTHERS .. Respondents.

Civil Appeals Nos. 301-303 of 1970†, decided on September 5, 1980

Administrative Law — Subordinate legislation — Rules cannot be made with retrospective effect unless such power is delegated by the legislature expressly or by necessary implication — Fact that the rule in question was framed in pursuance of a resolution passed by the legislature and that it had to be placed before the legislature for approval, held, does not imply any such delegation — Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 (A. P. Act 16 of 1952) — Section 16(1) — Conferred no power on State Government to make rules with retrospective effect — Rule 1(5) of the Rules framed under Section 16(1) which deleted Rule 1(1) resulting in retrospective operation of liability to pay tax, held, ultra vires Section 16(1) — Interpretation of Statutes — Retrospective operation — Taxation — Retrospectivity

Held :

The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But, a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. (Para 4)

In the present case the power under Section 16(1) of the Act does not indicate either alternative. The fact that Rule 1(5) was framed in pursuance of a resolution passed by the legislature does not have any bearing on the question under consideration except to make the observation that the State Government should have been more careful in giving effect to the resolution and should not have relied upon its delegated power which did not carry with it the power to make retrospective rules. (Para 4)

The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole

†From the Judgment and Order dated November 17, 1967 of the Andhra Pradesh High Court in Writ Petitions Nos. 138, 1256 and 1460 of 1963

purpose of laying on the table of the legislature the rules framed by the State Government is different. It is, therefore, plain that the authority of the State Government under the delegation does not empower it to make retrospective rules. (Paras 4 and 5)

Hukam Chand v. *Union of India*, (1972) 2 SCC 601, 606 : (1973) 1 SCR 896, 902, *relied on*

Appeals dismissed R/4999/CT

Editor's Note: It would seem that wherever Section 4(1) is mentioned the section intended is Section 16(1).

Advocates who appeared in this case:

A. V. V. Nair, Advocate, for the Appellants;
K. Rajendra Chowdhary, Advocate, for the Respondents.

The Judgment of the Court was delivered by

Krishna Iyer, J.—We are in complete agreement with the reasoning and conclusions of the High Court and a brief statement of the short point that arises for decision and of the grounds for dismissing the appeal is all that is needed. The Motor Vehicles (Taxation of Passengers and Goods) Act passed by the Madras legislature in the composite Madras State was made applicable to Andhra Pradesh when that State was carved out. There were certain difficulties in the matter of levy of taxation on vehicles plying on inter-State routes and the State of Andhra Pradesh thought it fit to enact its own legislation, which it did in the form of the Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 (16 of 1952), Section 4(2), A. P. Motor Vehicles Taxation Act, 1963 (A. P. Act 5 of 1963), whereof empowered the State Government to make necessary rules to effectuate the enactment. Pursuant to this power, certain rules were framed, of which Rule 1 consisted of three sub-rules. On June 19, 1957 sub-rules (4) and (5) were added to that rule and sub-rule (5) ran thus:

> The proviso to sub-rule (1) of Rule 1 shall cease to be operative on and from October 1, 1955 and the composition fee calculated with reference to clause (*a*) or clause (*b*) of sub-rule (1) in respect of vehicle plying on inter-State routes lying partly in the Madras State and partly in the Andhra State shall, with effect from that date be paid in the State where the vehicles are registered and normally kept.

2. This sub-rule enabled operators of motor vehicles on inter-State routes lying partly in the Madras State and partly in the State of Andhra Pradesh to pay the tax duly to either of these two States. It was, however, deleted along with sub-rules (3) and (4) on March 29, 1963 with effect from April 1, 1962 and it is the retrospectivity of the deletion that is challenged before us because the Andhra Pradesh State sought to collect tax for the period commencing April 1, 1962 from the respondent under the Act above referred to, although he had already paid the same to the State of Madras. The ground of invalidity was stated to be that Section 4(2) did not confer on the State Government power to make rules with retrospective effect.

3. Thus, the only question which engages our attention is as to whether Section 4(2) does confer on the delegate, namely, the State Government, the power to make retrospective rules. The High Court, after an elaborate discussion on the jurisprudence of subordinate legislation, came to the conclusion that no such power was conferred on the State Government and that consequently the deletion which resulted in retrospective operation of the liability to payment of tax was bad in law.

4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the present case the power under Section 4(2) does not indicate either alternative. The position has been considered by the High Court at length and there is no need for us to go through the exercise over again. Indeed, considerable reliance was placed by learned counsel for the appellant on two circumstances. He argued that the impugned rule was framed in pursuance of a resolution passed by the legislature. The fact does not have any bearing on the question under consideration except for us to make the observation that the State Government should have been more careful in giving effect to the resolution and should not have relied upon its delegated power which did not carry with it the power to make retrospective rules. The second ground pressed before us by learned counsel for the appellant is that the rules had to be placed on the table of and approved by the legislature. This was sufficient indication, in his submission, for us to infer that retrospectivity in the rule-making power was implicit. We cannot agree. The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in *Hukam Chand* v. *Union of India*[1]. Mr. Justice Khanna speaking for the Bench observed: (SCC p. 606, para 13)

> The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of CRAIES ON STATUTE LAW that there are three kinds of laying:
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> (*i*) Laying without further procedure;
>
> (*ii*) Laying subject to negative resolution;
>
> (*iii*) Laying subject to affirmative resolution.

The laying referred to in sub-section (3) of Section 40 is of the second category because the above sub-section contemplates that the rules would have effect unless modified or annulled by the Houses of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government.

5. It is, therefore, plain that the authority of the State Government under the delegation does not empower it to make retrospective rules. With this position clarified there is no surviving submission for appellant's counsel. The appeals must be dismissed and we do so with costs (one set).

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1. (1973) 1 SCR 896, 902: (1972) 2 SCC 601, 606

2021 SCC OnLine SC 1133

In the Supreme Court of India
(BEFORE R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.)

Civil Appeal No. 595 of 2021

Sai Baba Sales Pvt. Ltd. ... Appellant(s);

Versus

Union of India and Others ... Respondent(s).

With

Civil Appeal No. 5768 of 2021

Civil Appeal No. 595 of 2021 and Civil Appeal No. 5768 of 2021

Decided on November 26, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:— Heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant in Civil Appeal No. 595/2021. Mr. Lonkar Nitin representing the Original Applicant before the National Green Tribunal. Ms. Aishwarya Bhati, learned Additional Solicitor General of India appears for the Ministry of Environment & Forest. The Government of Maharashtra and the State Pollution Control Board are represented by Mr. Rahul Chitnis and Mr. Mukesh Verma, learned counsel respectively.

2. These two appeals are filed under Section 22 of the National Green Tribunal Act, 2010 (for short "the NGT Act") assailing the judgment and final order dated 18.1.2021 in the OA No. 83/2019. Under the impugned judgment, the NGT held that further construction cannot be made without environment impact assessment, but protected the constructions already made by the appellant, M/s Sai Baba Sales Pvt. Ltd. ("Project Proponent") on the basis of the Environmental Clearance ("EC" for short) issued by the Pimpri Chinchwad Municipal Corporation ("PCMC" for short) as per the notification dated 9.12.2016. The Original Applicant, on the other hand, is aggrieved by the decision of the NGT to protect the standing construction and limiting the impact of the impugned judgment on further construction to be made by the project proponent.

3. The main issue that arises for consideration in these matters is whether the Project Proponent herein possesses a validly granted Environmental Clearance (EC) under the Environmental Impact Assessment (EIA) notification dated 14.9.2006. The 2006 EIA notification provided that the projects above 20,000 sq. meter and below 1,50,000 sq. meter should obtain an EC from the State Environment Impact Assessment Authority (SEIAA) of the Ministry of Environment, Forest and Climate Change (MoEFCC).

4. For deciding the issue, the necessary facts in brief are that the Project Proponent initially conceived a project of 15,040 sq. mtrs. (below the EC threshold limit of 20,000 sq. mtrs.) and it approached the PCMC for a lay out order which was a prerequisite, to obtain an EC from the SEIAA of the MoEFCC. The application was processed and the Building Permission Department of the PCMC granted the commencement certificate to the Project Proponent for an area of 15,040 sq. mtrs. and approved the plan under the sanction letter dated 14.5.2013. With such permission, the Project Proponent could construct the permitted structures, and since the built up area was less than the threshold limit of 20000 sq. mtrs., the EC permission was not needed for the intended construction.

5. The Project Proponent builder then applied and was granted additional FSI as it intended to expand the project to one with built up area of 49,012 sq. mtrs. and for

this they approached the PCMC for a lay out order, which as noted earlier was essential to obtain an EC from the SEIAA of the Ministry of Environment, Forest and Climate Change (MoEFCC). The required approval was issued by the Corporation on 28.11.2016.

6. Under the Ministry's notification dated 9.12.2016, the EIA regime was altered to indicate that the EC could be obtained from the Environmental Cell of a local authority, such as the PCMC. The State of Maharashtra opted for the new regime and adopted the environmental condition stipulated in the MoEFCC notification dated 9.12.2016. This was followed by the communication of the MoEFCC on 7.7.2017 which clarified that separate environmental clearance is not required for projects upto 1,50,000 sq. mtrs. built up area in respect of municipal corporations in Pune and Konkan division.

7. The Project Proponent then filed an application for EC under the 2016 notification which was considered by the Environmental Cell of the PCMC which appraised the project, as contemplated in the notification dated 9.12.2016. The necessary permission for construction to the builder was issued on 28.11.2017, stipulating the environmental conditions for buildings and constructions and this permission was accorded as per the amended regime under the notification dated 9.12.2016 of the MoEFCC and consequential one dated 13.4.2017 of the Maharashtra Government.

8. While the matter stood thus, the NGT while considering the challenge by certain applicants to the exemption from EC, in a batch matter, quashed certain portions of the MoEFCC notification dated 9.12.2016. The NGT in the analogous judgment dated 8.12.2017 in the OA No. 677/2016 (*Society for Protection of Environment and Biodiversity* v. *Union of India*) and other cases, directed the MoEFCC to revisit its notification dated 9.12.2016 and to take appropriate steps to amend/rectify certain clauses in the Ministry's notification, in terms of the NGT's judgment.

9. Nearly two years after the Project Proponent secured construction permission on 8.12.2017 from the PCMC, the OA No. 83/2019 was filed by the Pune resident (respondent No. 10) with the allegation that the Project Proponent had made construction without obtaining any EC. In this proceeding the NGT constituted a three Member Committee comprising the SEIAA - Maharashtra, the State PCB and the Municipal Commissioner, Pune. The Committee, after spot verification, in its Report dated 18.8.2020 noted that construction of total built up area of 22930.17 sq. mtrs. is already completed for Building Nos. A, E, B, D and the Club House. Thereafter, the NGT considered the submission of the original applicant, who contended that while the authority to grant EC is SEIAA as per the EIA notification dated 14.9.2006, the EC for the project in question was granted by the PCMC. The NGT in its order on 17.11.2020, in the first round, opined that the constructions were irregular and remedial measures were directed for the project in question.

10. The above order of the NGT was challenged before this Court and the Project Proponent's CA No. 3893/2020 was allowed on 11.12.2020 whereby, the NGT's order was set aside and the matter was remitted back to the NGT to afford hearing to the appellants and to pass a fresh order.

11. The case of the Project Proponent as can be seen from the pleadings was that he had initially commenced construction on 14.5.2013 with a sanction plan of 15040.05 sq. mtrs., which, being lesser than the threshold limit of 20,000 sq. mtrs, did not require a prior EC. Thereafter, for the proposed expansion of the project, for total constructed area of 49,012 sq. mtrs., the Project Proponent approached the concerned authority on 7.11.2016 for issuance of "*Proposed Development Certificate*", which is a prerequisite to apply for EC, and the said certificate was granted on 28.11.2016 for the purpose of obtaining the EC from the SEIAA. But at that stage, by virtue of the MoEFCC notification dated 9.12.2016, the concerned local authority was designated as the sanctioning authority for projects between 20,000 sq. mtrs. and

50,000 sq. mtrs. and accordingly under the changed regime the Project Proponent applied to PCMC on 10.7.2017 and was sanctioned EC by the competent local authority, on 28.11.2017.

12. It is the further contention of the Project Proponent that when the NGT on 8.12.2017 had invalidated certain portions of the 2016 notification, it did not issue any order nullifying those ECs which were granted by the local authority under the altered regime.

13. The original applicant on the other hand, contended that when the NGT struck down certain provisions of the MoEFCC's 2016 notification, the 28.11.2017 EC granted by the Municipal Corporation, would not legitimize the construction and therefore the Project Proponent should be prevented from proceeding with the construction and also be penalized for the unauthorized construction.

14. The NGT then observed that because of the invalidation of certain clauses in the 2016 notification, the EC obtained from the PCMC is unacceptable and accordingly rendered a finding that the Project Proponent had failed to obtain the valid EC. The maintainability challenge of the OA on the ground of limitation was however rejected by observing that the cause of action arose only in 2017 when the builder allegedly exceeded the threshold limit of 20,000 sq. mtrs. Accordingly, the authorities were directed to take coercive action against the Project Proponent for construction done after 8.12.2017, when the NGT's judgment was rendered in the OA No. 677/2016. However, even with such finding having regard to the regime that existed at the relevant time and adverting to the ratio in *Goan Real Estate and Construction Ltd.* v. *Union of India*,[1] the NGT held that the construction already raised should be protected. However, further construction should be permitted only after securing the EC from the competent authority, under the current regime.

15. The picture which emerges from the above discussion is that when the Project Proponent initially wanted to apply for the EC it had obtained the requisite layout sanction for applying to the SEIAA. As such, it was operating well within the applicable procedure, prior to the amendment. After grant of such sanction, while the construction was underway, the amendment came about on 9.12.2016 whereby, the local authority such as the Municipal Corporation was made the competent authority to grant EC. In the changed circumstances, the Project Proponent necessarily had to apply to the PCMC as during the interregnum before the NGT's judgment on 8.12.2017, SEIAA was not the competent authority to consider application for EC. The Project Proponent was therefore, complying with the regime set out by the amended notification. It is apposite to note that the Committee appointed by the NGT, in its report dated 11.8.2020 had clearly indicated that when the Project Proponent had received the EC on 28.11.2017, the competent authority to issue the EC was the Environmental Cell of the PCMC. Thus, it is the discernible understanding as part of the NGT's own expert Committee that the Project Proponent had obtained the EC from the competent authority of the relevant time i.e. the PCMC. Interestingly, the constituted Committee also included a member of the SEIAA.

16. Moreover, only after the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016, the State of Maharashtra issued a clarification on 29.1.2018 directing that the Municipal authorities should not process pending applications. But neither the decision of the NGT nor of the Maharashtra Government categorically gave any guidance as to the implication on the EC obtained by the Project Proponent, on the strength of which, a substantial measure of construction was already made. It is also necessary to note that in the subsequent notification issued on 14.11.2018 and 15.11.2018 by the MoEFCC, the power to grant EC continued to vest in the local authority such as the PCMC, with the only change being that it is the municipality itself and not its Environmental Cell which is empowered to grant the EC. For the sake

of completion, it may be recorded that the said notifications of the MoEFCC is stayed by the Delhi High Court on 26.11.2018 in the WP(C) No. 12517/2018.

17. It is important to bear in mind that the Committee constituted by the NGT to report on the building project did not underscore any major deviation but instead found that the Project Proponent had made substantial compliance by obtaining the EC from the competent local authority. Moreover the OA, neither before the NGT or this Court, ever contended that appraisal done by the PCMC's Environmental Cell was defective or any different from one done by SEIAA. Both processes are also similarly structured. This may be the reason why the NGT in the impugned judgment itself protected the already made construction. However, the Project Proponent was restrained from making any further construction without obtaining clearance from the statutory EC and adhering to the environmental norms.

18. The project of the appellant comprises six buildings of which three were constructed in full, and the super structure of the fourth building is completed and only the internal works remains to be done. In the fourth building, 40 out of the 64 apartments have already been sold. In this context, it would be appropriate to advert to the submission of Ms. Aishwarya Bhati, the learned ASG who had clearly stated that at the relevant time, the competent authority to grant EC is the PCMC and not the SEIAA and therefore the internal works for the fourth constructed building, can be allowed to be completed.

19. Considering the above circumstances, the NGT rightly protected the already erected buildings and this protection in our view, should not be impacted by the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016 whereby certain portions of the MoEFCC's 9.12.2016 notification were invalidated and direction was issued to the Ministry to revisit the said notification. Importantly, neither the NGT's invalidation order nor the subsequent clarifications by the State of Maharashtra, have suggested any adverse action against the pre-existing structures. As the expert body exclusively occupying the environmental field, the NGT has assessed the factual circumstances to consciously lean towards protecting the already constructed structures. Nothing more need be added on this aspect. It is also not necessary in this appeal to venture into the question of the retrospective implication of the invalidation of certain parts of the 2016 Notification for other project proponents, which may have gained their ECs in the interregnum.

20. In situations of this nature, the Doctrine of *Legitimate Expectation* is attracted. The principle of the rule of law as explained in *De Smith's Judicial Review*, such as, Regularity, Predictability and Certainty in Government's dealings with the Public, must operate in the present matter. The Project Proponent can legitimately expect a certain degree of stability in the manner in which environmental regime is set and how the applications are processed. The actions of the authorities are expected to adhere to the prevalent norms only, without the element of uncertainty for the executed project.

21. In the above context we may benefit by referring to the seminal case of *Attorney General of Hong Kong* v. *Ng Yuen Shiu*[2], where Lord Fraser speaking for the Privy Council, appositely observed thus,

> "... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."

22. This Court in *Sethi Auto Service Station* v. *Delhi Development Authority*[3], speaking through Justice D.K. Jain, has cited other opinions and elucidated on the concept of *legitimate expectation*, in the following manner,

> "24. The House of Lords in *Council of Civil Service Unions* v. *Minister for the Civil Service*, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation.

Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either

(a) **** **** **** **** ****

(b) by depriving him of some benefit or advantage which either : (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decisionmaker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn."

(emphasis supplied)

23. The Doctrine of *Legitimate Expectation* is further explained in *Food Corporation of India* v. *Kamdhenu Cattle Feed Industries*[4] where for a Three-Judge Bench of this Court Justice J.S. Verma observed thus:—

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

24. The more compelling public interest might possibly diminish the degree of *legitimate expectation* for a party but a balance has to be found. In the present matter the appellant has acted on the EC and made substantial investments. They cannot be pushed to a precipice and be made to fall. Doing so would be inequitable particularly when, the appellant has scrupulously adhered to the applicable legal framework during the concerned period. Moreover, third-party interests have also cropped up in the interregnum.

25. A Project Proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearances by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such a scenario would render the process akin to a *Sisyphean task*, eternally inconclusive and never ending.

26. As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by accepting the submission of the appellant's Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh

clearance from the competent authority, as per the currently applicable framework. It is ordered accordingly.

27. With the above order, the appeals are disposed of without any order on cost.

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[1] (2010) 5 SCC 388

[2] (1983) 2 AC 629 : (1983) 2 WLR 735

[3] (2009) 1 SCC 180

[4] (1993) 1 SCC 71

F. No. 3-3/2019-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division
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Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi – 110003
sharath.kr@gov.in

Date: 5th February, 2020

OFFICE MEMORANDUM

Subject: Modalities for making CTE and EC a one step process - regarding.

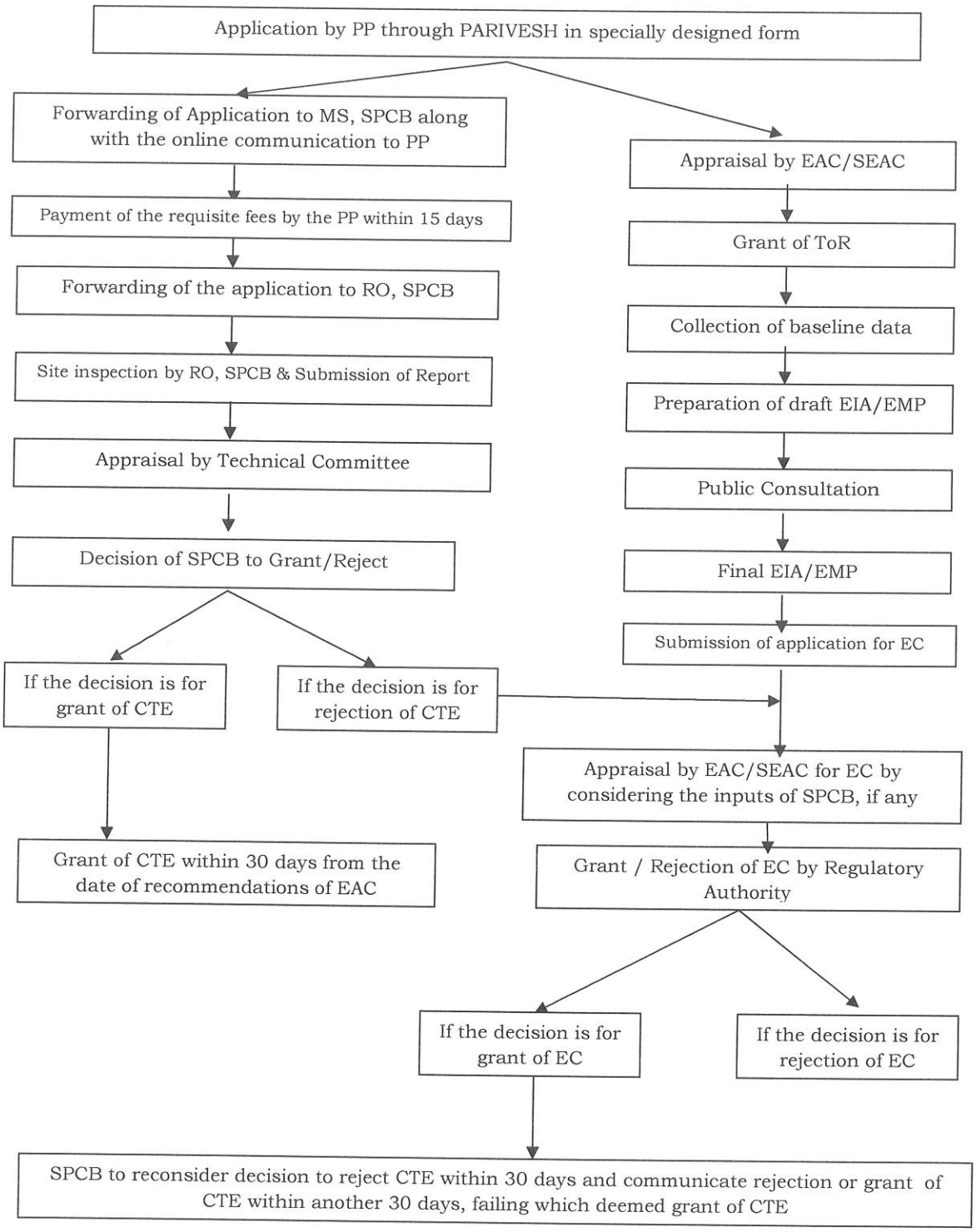
In order to expedite the process of CTE, CPCB vide letter dated 02.02.2017 issued an advisory to all the SPCBs/PCCs to follow the modified mechanism for granting consent to various categories of industries as:-

> *"All the projects requiring Environmental Clearance may be exempted from obtaining the Consent to Establish (CTE). Such projects may be directly granted Consent to Operate subject to EC and installation of pollution control devices".*

2. Further, CPCB issued the directions under Section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 regarding streamlining of consent mechanism vide Letter No. B-29012/MSMEs/IPC-VI/2017-18/12189-12230 dated 2nd November, 2018.

3. The Hon'ble High Court of Delhi has stayed the directions of the CPCB vide order dated 2nd November 2018 in W.P. (CIVIL) 13521 of 2018 in the matter of Social Action for Forest and Environment vs. Union of India and Ors. The CPCB has further informed that a similar case has also been filed before Hon'ble High Court of Madras (WP No. 3046 of 2019 and WMP No. 3316 & 3320 of 2019).

4. A meeting was convened under chairmanship of Secretary, Environment, Forest and Climate Change with CPCB and after detailed deliberations, the following mechanism of one step process of CTE and EC has been decided.


Application by PP through PARIVESH in specially designed form
Forwarding of Application to MS, SPCB along with the online communication to PP
Payment of the requisite fees by the PP within 15 days
Forwarding of the application to RO, SPCB
Site inspection by RO, SPCB & Submission of Report
Appraisal by Technical Committee
Decision of SPCB to Grant/Reject
If the decision is for grant of CTE
If the decision is for rejection of CTE
Grant of CTE within 30 days from the date of recommendations of EAC
Appraisal by EAC/SEAC
Grant of ToR
Collection of baseline data
Preparation of draft EIA/EMP
Public Consultation
Final EIA/EMP
Submission of application for EC
Appraisal by EAC/SEAC for EC by considering the inputs of SPCB, if any
Grant / Rejection of EC by Regulatory Authority
If the decision is for grant of EC
If the decision is for rejection of EC
SPCB to reconsider decision to reject CTE within 30 days and communicate rejection or grant of CTE within another 30 days, failing which deemed grant of CTE

Provided:-

i. If the PP fails to pay the requisite fee, grant of CTE will be at the discretion of the SPCB/UTPCC concerned;

ii. If the decision for rejection of CTE is not communicated by SPCB/UTPCC to the Ministry or SEIAA, as the case may be, before the meeting of EAC, it will be deemed that there are no specific comments / objections to the SPCB/UTPCC

iii. In case of deemed grant of CTE, the conditions of the EC will also be applicable for the deemed CTE.

iv. The deemed clause may not be applicable for cases, where public consultation is exempted for grant of EC.

5. The above, mechanism may be followed while granting EC and CTE.

6. This issues with the approval of the competent authority.

05/02/2020

(Sharath Kumar Pallerla)
Scientist 'F', IA (Policy) Division

To

1. All the officers of IA Division
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman of all the Expert Appraisal Committees
4. Chairman, CPCB
5. Chairpersons/Member Secretaries of all SPCBs/UTPCCs

Copy for information:

1. PS to Minister for Environment, Forest and Climate Change
2. PS to MoS (EF&CC)
3. PPS to Secretary(EF&CC)
4. PPS to AS(RSP) / AS (RA)/JS (GM)/ JS (AKN)/ JS (SKB)
5. Website, MoEF&CC and Guard file

SPEED POST

F.No. B-29012/MSMEs/IPC-VI/2017-18/ 12189-12230 November 01, 2018

To

The Chairman
All SPCBs/PCCs

SUB: DIRECTIONS UNDER SECTION 18(1)(b) OF THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981 REGARDING STREAMLINING OF CONSENT MECHANISM.

WHEREAS, under Section 17 of the Water (Prevention & Control of Pollution) Act, 1974, and under Section 17 of the Air (Prevention & Control of Pollution) Act, 1981, one of the functions of State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) is to plan a comprehensive programme for the prevention, control or abatement of pollution of streams, wells and air pollution in the States/ Union Territory and to secure the execution thereof;

WHEREAS, under Section 16 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 16 of the Air (Prevention & Control of Pollution) Act, 1981, one of the functions of the Central Pollution Control Board (CPCB), constituted under Water (Prevention and Control of Pollution) Act, 1974 is to coordinate activities of the State Pollution Control Boards and Pollution Control Committees and to provide technical assistance and guidance to SPCBs / PCCs;

WHEREAS, as per the Section 25 of Water Act, 1974, no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage). Further as per Section 26, where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette;

WHEREAS, as per the Section 21 of Air Act, 1981, no person shall, without previous consent of the State Board, establish or operate any industrial plant in an air pollution control area;

WHEREAS, SPCBs/PCCs are responsible for prescribing consent application form and consent fees. It is observed that most of the SPCBs/PCCs are issuing Consent to Establish (CTE) followed by Consent to Operate (CTO);

WHEREAS, industries falling under 'Category A' and 'Category B' of the Schedule of EIA Notification, 2006, are required to take Environmental Clearance from MoEF&CC or State Level Environment Impact Assessment Authority;

WHEREAS, obtaining Consent to Establish (CTE) is not a pre-requisite for obtaining EC from State Level or Central Level EIA Authority, under EIA Notification, 2006;

WHEREAS, there may not be value addition in CTE after obtaining EC as most of the conditions laid down in EC and CTE are similar in nature;

WHEREAS, CPCB vide letter dated 02.02.2017 issued an advisory to all the SPCBs/PCCs to follow the modified mechanism for granting consent to various categories of industries which is given below:

> *"All the projects requiring Environmental Clearance may be exempted from obtaining the Consent to Establish (CTE). Such projects may be directly granted Consent to Operate subject to EC and installation of pollution control devices";*

WHEREAS, CPCB re-categorised the industrial sectors into Red, Orange, Green and White Category, based on the pollution index and issued directions u/s 18(1)(b) of the Water and Air Acts to all the SPCBs/PCCs on 07.03.2016 for its adoption. Based on the pollution index, 63 industrial sectors are covered under green category and 36 industrial sectors are covered under newly introduced white category. Further, CPCB in its direction mentioned that addition of any new or left-over industrial sectors and their categorisation, which is not listed in the revised list of red, orange, green and white industrial sectors, shall be done at the level of concerned SPCB/PCC following the criteria and guidelines laid down by CPCB;

WHEREAS, Ministry of Environment, Forest and Climate Change, Government of India notifies standards for emission or effluent from various categories of Industries under the Environment Protection Act, 1986;

WHEREAS, State Pollution Control Boards and Pollution Control Committees in States and Union Territories respectively are required to ensure the compliance of these standards;

WHEREAS, it has been observed that SPCBs/PCCs have different mechanism for selection of industries for compliance verification of environmental norms;

WHEREAS, the issue of exemption of CTE for those projects, which require EC, again came up for discussion during 8th SPCBs/PCCs Review Meeting, held on 25.10.2018 through video conferencing, and while there was a general consensus that such an approach could be adopted, SPCBs/PCCs also raised the issue that they should be involved in the environmental clearance granting process;

WHEREAS, it was agreed that SPCBs/PCCs shall categorize the new/left over industrial sectors under green and white category and issue the expanded

list of green and white categories of industries, which are being operated in their State/UT. It was also discussed that environmental surveillance of industries should be on random basis, and SPCBs/PCCs shall evolve mechanism for that;

NOW THEREFORE, in view of the above and exercising the powers conferred to Central Pollution Control Board under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974, and 18(1)(b) of the Air (Prevention & Control of Pollution) Act, 1981, following directions are issued for regulation of industries including MSMEs;

a) For industries requiring EC, issuing of consent by SPCBs/PCCs shall be one-step process and EC will be deemed as CTE in such cases. SPCBs/PCCs shall be involved in the process of granting of EC.

b) SPCBs/PCCs shall issue the expanded list of green and white categories of industries incorporating new/left over industrial sectors, which are being operated in their State/UT within a month.

c) Inspections for compliance verification of environmental standards by SPCBs/PCCs shall be random and based on risk assessment. SPCBs/PCCs shall develop mechanism for random selection of industries for inspection purpose including self-certification.

The SPCBs/PCCs shall acknowledge the receipt of the directions and submit the action taken report (ATR) in compliance of these directions to CPCB within one month from receipt of directions.

(S. P. Singh Parihar)
Chairman

Copy to:

1. The Joint Secretary (CP Division)
   Ministry of Environment, Forests & Climate Change
   Indira Paryavaran Bhawan
   3rd Floor, Prithivi, Aliganj, Jor Bagh Road
   New Delhi -110 003

2. All Regional Directorates, CPCB
3. DH, IT Division, CPCB *(with a request to upload the copy of Directions on CPCB website)*

(Prashant Gargawa)