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

Original Application No. 142/2022

IN THE MATTER OF

Jayant Kumar

...Appellant(s)

Versus

Ministry of Environment Forest and
Climate Change & Ors.

...Respondent(s)

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NEW DELHI

DATED 31/01/2023

Filed By
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New Delhi-110054

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Counsel for Respondent No. 1
Ministry of Environment Forest & CE

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

Original Application No. 142/2022

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Jayant Kumar

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Versus

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Climate Change & Ors.

...Respondent(s)

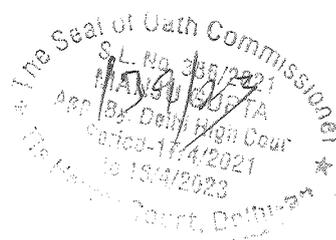
**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT
No. 1)**

MOST RESPECTFULLY SHOWETH

I, Pankaj Verma, S/o Shri Ram Sagar Verma, aged 43 years, currently working as Scientist 'E' at the Ministry of Environment, Forest and Climate Change (MoEF&CC), New Delhi, do hereby solemnly affirm and state as under:

1. That I, in my official capacity in the Ministry Environment, Forest and Climate Change, i.e., Respondent No.1 in the above mentioned matter, I am conversant with the facts and circumstances of the case on the basis of official records, and as such authorized and competent to swear this affidavit.

Pankaj Verma



2. It is submitted that a short affidavit is being filed by the answering respondent at this stage and craves leave and liberty to file a detailed Counter Affidavit to the aforesaid application, as and when required.
3. That the applicant is aggrieved by the grant of mining lease to respondent no.5 (M/s. Sai Ram Enterprises) and respondent no.6 (M/s. C.S. Infra-construction Ltd.) on 05.10.2020 and 06.11.2020 respectively in violation of the judgment of the Hon'ble Supreme Court in 'Deepak Kumar Vs. State of Haryana and Others (2012), 4 SCC 629 and order dated 13.09.2018 of this Tribunal in O.A. no. 186/2016 titled as Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change and another.
4. It is submitted that Hon'ble Tribunal vide order dated 07.12.2022 has directed as under:

"12... No doubt, OM dated 12.12.2018 was issued by MoEF&CC for compliance with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra), but MoEF&CC was also thereby required to revise Notification dated 14.09.2006 as amended by notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 which were challenged in that case. The notification issued in exercise of statutory powers could be revised only by issuance of another notification in exercise of such statutory powers. Office Memorandum issued in exercise of administrative powers cannot be said to be due compliance of the order for revision of the notification. Therefore, mere issuance of OM dated 12.12.2018 cannot be said to be due compliance of order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra).

13.. In view of the above, MoEF&CC is directed to file an affidavit regarding compliance by it with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra). In case the notification has already been revised after 12.12.2018 then copy of the revised

The Seal of Uatn Commission,
S.L. No. 386/2021
MANJUL GUPTA
App. By Dm High Court
Period: 17/4/2021
to 18/4/2021
* The High Court, Patna *

Lawyer

notification be filed before this Tribunal and in case, the notification has not been revised so far then the same be revised in consonance with the orders of Hon'ble Supreme Court and the Tribunal in the matter within one month and compliance report in this regard be filed within two months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

14. Further, this Tribunal has observed that mining leases in which environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 are still continuing even after passing of order dated 13.09.2018 by this Tribunal in *Satendra Pandey (supra)* and issuance of OM dated 12.12.2018 by MoEF&CC without any re-appraisal by SEIAA and appropriate remedial action on the basis of such re-appraisal. All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in *Deepak Kumar (supra)* and order dated 13.09.2018 by this Tribunal in *Satendra Pandey (supra)* by re appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA. MoEF&CC is, therefore, directed to take appropriate steps for compliance in this regard by issuance of requisite directions in exercise of the statutory powers under the Environment (Protection) Act, 1986. For this purpose, MoEF&CC is directed to collect information regarding such mining leases in which environmental clearance was granted by DEIAA and the period of which has not yet expired and are still continuing in all the States and Union Territories and by issuing appropriate directions for compliance with directions given by Hon'ble Supreme Court in *Deepak Kumar (supra)* and order dated 13.09.2018. passed

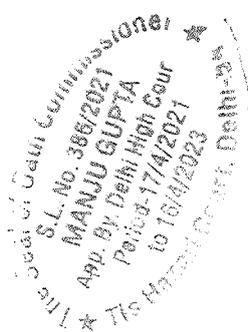
Rauloj W

by this Tribunal in *Satendra Pandey (supra)* by re-appraisal for grant of EC by SEIAA.

15. Action taken report in this regard be filed by MoEF&CC before this Tribunal within two months by email at *judicial-ngt@gov.in* preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF....”

5. It is submitted that the Hon'ble Tribunal vide Judgment dated 13.09.2018 in O.A. No. 186 of 2016 (*Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr*) has inter-alia directed as follows: -

- i. “Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided;
- ii. Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;
- iii. if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;
- iv. EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (*supra*) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;
- v. revise the procedure to also incorporate procedure with respect to annual rate of replenishment and time frame for replenishment after mining closure in an area;
- vi. the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with



Manoj Verma



the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

6. That, the Ministry filed a Review Petition vide R.A. No. 47 of 2017 in O.A. No. 200 of 2016 titled "Union of India Vs Rajiv Suri" against the final judgment in Satendra Pandey case (supra) wherein the Hon'ble Tribunal vide order dated 21.12.2018 dismissed the petition upon failure to find reasons to review the order stating that the matters set out therein had been duly considered and deliberated at length in the impugned judgment.
7. It is submitted that the Hon'ble National Green Tribunal vide its order dated 11.12.2018 in Execution Application No. 55 of 2018 in Original Application No. 520 of 2016 entitled "Vikrant Tongad Versus Union of India" has directed;

"6. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.

7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments."

8. It is most humbly submitted that this Ministry in compliance to the order dated 13.09.2018 passed by Hon'ble National Green Tribunal in the matter of Satendra Pandey vs. MoEF&CC & Anr. issued an OM No. L-11011/175/2018 IA-II(M) vide dated 12.12.2018 addressed to the Chief Secretaries of all the States/UTs. A copy of the OM No. L-11011/175/2018 IA-II(M) vide dated 12.12.2018 is marked and annexed herein as as **Annexure- R1/1**.

9. It is submitted that in pursuance to the above mentioned order of the Hon'ble National Green Tribunal dated 13.09.2018 and 11.12.2018, the Ministry has approached the Hon'ble Supreme Court against the above

(Signature)
 (Name)
 (Designation)

Lawrence Venk

6

mentioned order by way of a Civil Appeal in the matter titled C.A. No. 3799-3800 "Union of India Vs Rajiv Suri". It is further submitted that the said matter is pending before the Hon'ble Supreme Court.

10. It is further submitted that this Ministry issued a notification S.O. 1886 (E) vide dated 20.04.2022 has delegated the power to the SEIAA to grant Environmental Clearances to all minor mineral mining projects, irrespective of mine lease area and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal. A Copy of the Notification S.O. 1886 (E) dated 20.04.2022 is marked and annexed herein as ANNEXURE R1/2.

11. That the notification S.O. 1886 (E) vide dated 20.04.2022 was challenged before the Hon'ble NGT vide OA No. 461 of 2022 titled SAFE vs. Union of India. The matter has been disposed of vide order dated 07/12/2022. Wherein, the Hon'ble NGT has not stayed/ quashed the Notification. A Copy of the order dated 07/12/2022 is marked and annexed herein as ANNEXURE R1/3.

12. That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).

The Seal of Oath Commissioner
S.L. No. 386/2021
MANJU GUPTA
App. By. Delhi High Court
Period: 17/1/2023
18/1/2023
The Hazari Court, Delhi-5

Pankaj Verma
(पंकज वर्मा)
(PANKAJ VERMA)
DEPONENT
श्रेणीक 'E' /Scientist 'E'
पर्यावरण, वन एवं जलवायु परिवर्तन विभाग
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

VERIFICATION

Verified at New Delhi on this 13 day of 13 JAN 2023, 2023 that the contents of this affidavit based on official record(s) maintained and information available in the office are true and correct, no part of it is false and nothing has been concealed there from.

Manju Gupta
I certify that the Deponent
has signed in my presence

Pankaj Verma
DEPONENT
(पंकज वर्मा)
(PANKAJ VERMA)
श्रेणीक 'E' /Scientist 'E'
पर्यावरण, वन एवं जलवायु परिवर्तन विभाग
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

I CERTIFY THAT THE DEPONENT
Shri/Omt./Mm..... *Pankaj Verma*
S/o W/o D/o.....
R/o.....
Identified by.....
has signed and affirmed before me at
Delhi on.....
that the Contents of this Affidavit which have
been read and explained to him are true and
correct to his knowledge.

Manju Gupta

3rd Floor, Vayu Wing,
Indira Paryavaran Bhawan,
Jorbagh Road, Aliganj,
New Delhi-110 003
Email: rb.jal@nic.in
Phone/Fax: 011-24695362

Dated: 12th December 2018

Office Memorandum

Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No. 173 of 2018 & O.A. No. 186 of 2016 in the matters titled "Sudarsan Das Vs State of West Bengal & Ors" & "Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr." respectively- regarding.

This is with reference to the recent orders of the Hon'ble NGT dated 04th September, 2018 in the matter titled *Sudarsan Das Vs State of West Bengal & Ors* & and order dated 13th September, 2018 in the matter *Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr.* Copies of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 in O.A. No. 186 of 2016 (*Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr*) has inter-alia directed as follows:-

(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided;

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

*Truly
Yours*

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

3. In view of the above, the undersigned is directed to forward the copy of the aforementioned order for necessary compliance and inform the Ministry about the action taken.

4. This issues with the approval of the Competent Authority.

Yours faithfully,

Encl: As above

(Dr. R.B. Lal)
Scientist 'E'

To,

1. The Chief Secretary, 1st Block, 1st Floor A.P Secretariat Office, Andhra Pradesh, Velagapudi - 522503
2. The Chief Secretary, Government of Arunachal Pradesh, Civil Secretariat, Itanagar - 791111
3. The Chief Secretary, Government of Assam, Block-C, 3rd Floor, Assam Sachivalaya, Guwahati-781006
4. The Chief Secretary, Government of Bihar, Main Secretariat Building, Patna-800015
5. The Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur-492002
6. The Chief Secretary, Government of Gujarat, Block No.1, 5th Floor, Sardar Bhawan, Sachivalaya, Gandhinagar-382010
7. The Chief Secretary, Government of Goa, Secretariat, Porvrim, Bardez, Goa - 403521
8. The Chief Secretary, 4th Floor, Haryana Civil Secretariat Sector-I, Chandigarh - 160019
9. The Chief Secretary, Government of Himachal Pradesh Secretariat, Shimla - 171002
10. The Chief Secretary, R. No. 2/7, 2nd, Floor Main Building Civil Secretariat, Jammu - 180001 R. No. 307, 3rd Floor Civil Secretariat, Srinagar - 190001
11. The Chief Secretary, Government of Jharkhand 1st Floor, Project BUILDING, Dhurwa, Ranchi-834004
12. The Chief Secretary, Govt of Karnataka, Room No.321, Vidhana Soudha, Bengaluru- 560 001
13. The Chief Secretary, Government of Kerala Secretariat, Thiruvananthapuram - 695001
14. The Chief Secretary, Government of Madhya Pradesh MP Mantralaya, Vallabh Bhavan Bhopal - 462004

15. The Chief Secretary, Government of Maharashtra CS Office Main Building, Mantralaya 6th Floor, Madhane Cama Road, Mumbai - 400032
16. The Chief Secretary, Government of Manipur South Block, Old Secretariat Imphal-795001
17. The Chief Secretary, Government of Meghalaya Main Secretariat Building Rilang Building Room No. 321 Meghalaya Secretariat, Shillong - 793001
18. The Chief Secretary, Government of Mizoram New Secretariat Complex, Aizwal - 796001
19. The Chief Secretary, Government of Nagaland Civil Secretariat, Kohima-797004
20. The Chief Secretary, Government of Odisha General Administration Department, Odisha Secretariat, Bhubaneswar - 751001
21. The Chief Secretary, Government of Punjab, Chandigarh - 160001
22. The Chief Secretary, Government of Rajasthan Secretariat, Jaipur - 302005
23. The Chief Secretary, Government of Sikkim New Secretariat, Gangtok - 737101
24. The Chief Secretary, Government of Tamil Nadu Secretariat, Chennai - 600009
25. The Chief Secretary, Government of Telangana Block C, 3rd Floor, Telangana Secretariat Khairatabad, Hyderabad, Telangana
26. The Chief Secretary, Government of Uttar Pradesh 1st Floor, Room No. 110 LalbahadurSastri Bhawan Uttar Pradesh Secretariat, Lucknow - 226 001
27. The Chief Secretary, Government of Tripura New Secretariat Complex, Secretariat-799010, Agartala West Tripura
28. The Chief Secretary, Government of Uttarakhand 4 Subhash Road, Uttarakhand Secretariat, Dehradun - 248001
29. The Chief Secretary, Government of West Bengal Nabanna, 13th Floor, 325, Sarat Chatterjee Road, MandirtalaShibpur, Howrah - 711102
30. The Chief Secretary, Andaman and Nicobar Administration Secretariat, Port Blair - 744101
31. The Chief Secretary, Secretariat, Moti, Silvassa, Daman - 396220
32. The Chief Secretary, Secretariat, Moti, Daman - 396 220
33. The Chief Secretary, Raj Bhawan, Chandigarh-160019
34. The Chief Secretary, Lakshadweep, Kavaratti - 682555
35. The Chief Secretary, Chief Secretariat, Goubert Avenue, Puducherry - 605001
36. The Chief Secretary, Delhi Secretariat, Ip Estate, Delhi - 110002, Near Indra Gandhi Indoor Stadium

Copy to:

1. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (SZ), Kendriya Sadan, 4th Floor, E&F Wings, 17th Main Road, Koramangala II Block, Bangalore-560034
2. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (WZ), E-5, Kendriya Paryavaran Bhawan, E-5 Area Colony, Link Road-3, Ravishankar Nagar, Bhopal-462016
3. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (EZ), A/3, Chandrasekharpur, Bhubaneswar-751023

4. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (SEZ), 1st and 2nd Floor, Handloom Export Promotion Council, 34, Cathedral Garden Road, Nungambakkam, Chennai-34
5. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NZ), Bays No. 24-25, Sector 31 A, Dakshin Marg, Chandigarh-160030
6. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NCZ), Pearson Road, P.P. New Forest, Forest Research Institute (FRI) Campus Dehradun-248006
7. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (CZ), Kendriya Bhawan, 5th Floor Sector "H", Aliganj, Lucknow-226020
8. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (WCZ), Ground Floor, East Wing, New Secretariat Building, Civil Lines, Nagpur-440001
9. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (ECZ), Bungalow No. A-2, Shyamali Colony Ranchi-834002
10. Addl. Principal Chief Conservator of Forests (C), Ministry of Environment, Forest & Climate Change, Regional Office (NEZ) Law-U-Sib, Lumbatngan, Near MTC Workshop, Shillong, Meghalaya-793021

(Dr. R.B. Lal)
Scientist 'E'

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True copy
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भारत का राजपत्र

The Gazette of India

सी.जी.-डी.एल.-अ.-20042022-235241
CG-DL-E-20042022-235241

असाधारण
EXTRAORDINARY

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

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 1795]
No. 1795]

नई दिल्ली, बुधवार, अप्रैल 20, 2022/चैत्र 30, 1944
NEW DELHI, WEDNESDAY, APRIL 20, 2022/CHAITRA 30, 1944

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय
अधिसूचना

नई दिल्ली, 20 अप्रैल, 2022

का.आ. 1886(अ).—केंद्रीय सरकार पर्यावरण और वन विभाग के पूर्ववर्ती मंत्रालय में पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उप-धारा (1) और उप-धारा (2) के खंड (v) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण समाघात निर्धारण अधिसूचना, 2006 (जिसे इसमें इसके पश्चात ईआईए अधिसूचना, 2006 कहा गया है), परियोजनाओं की कतिपय प्रवर्ग के लिए पूर्व पर्यावरणीय मंजूरी आजापक बनाने के लिए, संख्या का.आ.1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की है।

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण (एसईआईए) का गठन प्रवर्ग ख के अधीन सभी प्रस्तावों के लिए पर्यावरण मंजूरी (ईसी) पर विचार और अनुदान के लिए प्रत्यायोजित शक्तियों का प्रयोग करने हेतु राज्य स्तर पर ईआईए अधिसूचना, 2006 के कार्यान्वयन के लिए पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उप-धारा (3) के अधीन किया गया है;

और राज्य पर्यावरण समाघात निर्धारण प्राधिकरण ने पर्यावरण मंजूरी मूल्यांकन प्रक्रिया में पिछले पंद्रह वर्षों में पर्याप्त अनुभव प्राप्त किया है और राज्य स्तर पर पर्यावरण मंजूरी प्रस्तावों के कुशल और पारदर्शी निपटान के लिए परिवेश पोर्टल के माध्यम से पूरी तरह से ऑनलाइन कर दिया गया है;

और केंद्रीय सरकार राज्य स्तर पर मंजूरी की प्रसुविधा के लिए पर्यावरण मंजूरी प्रक्रिया को और विकेंद्रीकृत करना आवश्यक समझती है;

और आज की तारीख में, सुरक्षा भागीदारी के महत्वपूर्ण तत्वों के साथ राष्ट्रीय रक्षा और सामरिक महत्व से संबंधित प्रवर्ग ख की परियोजनाओं का राज्य स्तर पर भी मूल्यांकन किया जा रहा है, जिसे केंद्रीय सरकार राष्ट्रीय सुरक्षा चिंताओं को ध्यान में रखते हुए केंद्रीय रूप से मूल्यांकन करना आवश्यक समझती है;

Tommy
CS

अतः अब, केंद्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त नियमों के नियम 5 के उप-नियम (3) के खंड (क) के अधीन नोटिस की अपेक्षा को समाप्त करने के पश्चात्, लोकहित में भारत सरकार की तत्कालीन पर्यावरण एवं वन मंत्रालय की अधिसूचना संख्यांक का.आ. 1533(अ), तारीख 14 सितम्बर, 2006, की अधिसूचना में निम्नलिखित और संशोधन करती है अर्थात्:-

उक्त अधिसूचना में-

(1) पैरा 4 में, उप-पैरा (iii) क) के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

(iii) क) राष्ट्रीय रक्षा या सामरिक या सुरक्षा महत्व से संबंधित हैं या जिन्हें केंद्रीय सरकार द्वारा संकटकाल जैसे महामारी, प्राकृतिक आपदाओं जैसी अत्यावश्यकताओं के कारण ऐसी प्रवर्ग 'ख' परियोजनाओं को अधिसूचित किया गया है या राष्ट्रीय कार्यक्रमों या स्कीमों या मिशन या ऐसी परियोजनाओं के अधीन पर्यावरण के अनुकूल क्रियाकलापों का संवर्धन करने के लिए जो इस अधिसूचना में यथा अधिकथित समय-सीमा से अधिक विलंबित हैं और समय-समय पर इस संबंध में यथा-अधिकथित मानदंडों को पूरा करती हैं, उन्हें केंद्रीय स्तर पर प्रवर्ग 'ख' परियोजनाओं के रूप में विचार किया जाएगा;

(2) अनुसूची में, -

(i) मद 1(क) के सामने, -

(क) स्तंभ (3) में, -

(क) गैर-कोयला खनन पट्टे के संबंध में "> 100 हेक्टेयर खनन पट्टा क्षेत्र" के स्थान पर, निम्नलिखित रखा जाएगा, अर्थात्: -

"कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में >250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) ">150 हेक्टेयर" प्रतीक, अंक और अक्षर के स्थान पर, "> 500 हेक्टेयर" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) स्तंभ (4) में, -

(क) गैर-कोयला खनन के संबंध में <100 हेक्टेयर खनन पट्टा क्षेत्र के स्थान पर,

पट्टा", निम्नलिखित रखा जाएगा, अर्थात्: -

"लघु खनिज खनन पट्टों के संबंध में सभी खनन पट्टा क्षेत्र और कोयले के अलावा अन्य प्रमुख खनिज खनन पट्टे के संबंध में <250 हेक्टेयर खनन पट्टा क्षेत्र";

(ख) "<150 हेक्टेयर" के प्रतीकों, अंकों और अक्षरों के स्थान पर "<500 हेक्टेयर" के प्रतीक, अंक और अक्षर रखे जाएंगे;

(ii) मद 1(ग) के सामने, -

(क) स्तंभ (3) में, -

(क) क्रम संख्या (i) में, "> 50 मेगावाट, प्रतीकों, अंकों और अक्षरों के स्थान पर "> 100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) और उससे संबंधित प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, -

(क) क्रम संख्या (i) में, "<50 मेगावाट" प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(ख) क्रम संख्या (ii) में, -

(I) "और <50,000 हेक्टेयर" शब्द, प्रतीक और अंक का लोप किया जाएगा;

(II) बिंदु (ग) में सारणी में, "से <50,000" शब्द, प्रतीक और अंक का लोप किया जाएगा; ।

(ग) स्तंभ (5) में, क्रम संख्या (ii) के पश्चात्, निम्नलिखित क्रम संख्या अंतःस्थापित किया जाएगा, अर्थात् :-

"(iii) अंतर-राज्यीय मुद्दों से संबंधित सिंचाई परियोजनाओं का मूल्यांकन केंद्रीय स्तर पर श्रेणी में परिवर्तन के बिना किया जाएगा।";

(iii) मद 1(घ) के सामने,-

(क) स्तंभ (3) में, "> 50 मेगावाट" प्रतीकों, अंकों और अक्षरों के स्थान पर, "> 100 मेगावाट" प्रतीकों, अंकों और अक्षरों को रखा जाएगा;

(ख) स्तंभ (4) में, "<50 मेगावाट" प्रतीक, अंक और अक्षर के स्थान पर, "<100 मेगावाट" प्रतीक, आंकड़े और अक्षर रखे जाएंगे;

(iv) मद 2(क) के सामने, -

(क) स्तंभ (3) में, ">1" प्रतीकों और अंक के स्थान पर, ">2.5" प्रतीकों और अंक को रखा जाएगा;

(ख) स्तंभ (4) में, "<1" प्रतीकों और अंक के स्थान पर, "< 2.5" प्रतीक और अंक रखे जाएंगे;

(ग) स्तंभ (5) में, विद्यमान पैरा के पश्चात्, निम्नलिखित पैरा अंतःस्थापित किया जाएगा, अर्थात्: -

"खनन पट्टा क्षेत्र के भीतर स्थित धुलाई मशीनों के साथ एकीकृत कोयला खनन परियोजनाओं को कोयला खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार केंद्रीय स्तर या राज्य स्तर पर, यथास्थिति, विचार किया जाना जारी रहेगा।";

(v) मद 2 (ख) के सामने, -

(क) स्तंभ (3) में, विद्यमान प्रविष्टियों का लोप किया जाएगा;

(ख) स्तंभ (4) में, "<0.5 मिलियन टीपीए का उत्पादन" प्रतीक, अंक, शब्द और अक्षर के स्थान पर, "सभी खनिज परिष्करण परियोजना, परिष्करण की प्रक्रिया पर ध्यान दिए बिना" शब्द रखे जाएंगे;

(ग) स्तंभ (5) में, विद्यमान पैरा के पश्चात्, निम्नलिखित पैरा रखा जाएगा,

अर्थात्: -

"भीतर स्थित लाभकारी संयंत्रों के साथ एकीकृत खनन परियोजनाएं खनन पट्टा क्षेत्र पर केंद्रीय स्तर पर विचार किया जाता रहेगा या यथास्थिति, राज्य स्तर, खनन परियोजनाओं के लिए विद्यमान सीमा के अनुसार।";

(vi) मद 7 (क) के सामने,-

(क) स्तंभ (3) में, "सभी परियोजनाओं" शब्दों के स्थान पर "सभी नई परियोजनाएं" शब्द रखे जाएंगे;

(ख) स्तंभ (4) में, निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात्: -

"सभी विस्तार परियोजनाएं, जिनमें हवाई पट्टियां भी सम्मिलित हैं, जो वाणिज्यिक उपयोग के लिए हैं।"

[फा. सं. आईए 3-22/10/2022-आईए. III]

डॉ. सुजीत कुमार बाजपेयी, संयुक्त सचिव

टिप्पण: मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड III, उप-खंड (ii), संख्या का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की गई थी और अधिसूचना संख्या का.आ. 1807(अ), तारीख 12 अप्रैल, 2022 द्वारा अंतिम संशोधन किया गया था।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 20th April, 2022

S.O. 1886(E).—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006), vide number S.O.1533 (E), dated the 14th September, 2006 for mandating prior environmental clearance for certain category of projects;

And whereas, the State Environment Impact Assessment Authorities (SEIAAs) have been constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for implementation of the EIA Notification, 2006 at State level for exercising delegated powers to consider and grant Environmental Clearance (EC) for all proposals under Category B;

And whereas, the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process and the process at the State level has also been made completely online through the PARIVESH portal for efficient and transparent disposal of EC proposals;

And whereas, the Central Government deems it necessary to further decentralise the EC process for facilitating clearances at State level;

And whereas, as on date, category 'B' projects, relating to national defence and strategic importance with significant element of security involvement are also being appraised at the State level which, the Central Government deems it necessary to be appraised centrally taking into account national security concerns;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, hereby makes the following further amendments in the notification of the Government of India, in the erstwhile Ministry of Environment and Forests, number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

(1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely:-

(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;

(2) in the Schedule,-

(i) against item I(a),-

(a) in column (3),-

(A) for ">100 ha. of mining lease area in respect of non-coal mining lease", the following shall be substituted, namely:-

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),-

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely:-

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters “≤ 150 ha”, the symbols, figures and letters “≤ 500 ha” shall be substituted;

(ii) against item 1(c),-

(a) in column (3),-

(A) in serial number (i), for the symbols, figures and letters “≥ 50 MW”, the symbols, figures and letters “≥100 MW” shall be substituted;

(B) serial number (ii) and the entries relating thereto shall be omitted;

(b) in column (4),-

(A) in serial number (i), for the symbol, figures and letters “< 50 MW”, the symbol, figures and letters “< 100 MW” shall be substituted;

(B) in serial number (ii),-

(I) the word, symbol and figures “and < 50,000 ha.” shall be omitted;

(II) in point (c) in the table, the word, symbol and figures “to < 50,000” shall be omitted;

(c) in column (5), after serial number (ii), the following serial number shall be inserted, namely:-

“(iii) Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category.”;

(iii) against item 1(d),-

(a) in column (3), for the symbols, figures and letters “≥ 50 MW”, the symbols, figures and letters “≥100 MW” shall be substituted;

(b) in column (4), for the symbol, figures and letters “< 50 MW”, the symbol, figures and letters “< 100 MW” shall be substituted;

(iv) against item 2(a),-

(a) in column (3), for the symbols and figure “≥1”, the symbols and figures “≥ 2.5” shall be substituted;

(b) in column (4), for the symbols and figure “<1”, the symbols and figures “< 2.5” shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

“Integrated coal mining projects with washeries located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for coal mining projects.”;

(v) against item 2 (b),-

(a) in column (3), the existing entries shall be omitted;

(b) in column (4), for the symbol, figures, words and letters “< 0.5 million TPA throughput”, the words “All mineral beneficiation projects irrespective of the procedure for beneficiation” shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

“Integrated mining projects with beneficiation plants located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for mining projects.”;

(vi) against item 7 (a),-

(a) in column (3), for the words “All projects”, the words “All new projects” shall be substituted;

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[PART II—SEC. 3(ii)]

(b) in column (4), the following shall be inserted, namely:—

“All expansions projects, including airstrips, which are for commercial use.”.

[F. No. IA3-22/10/2022-IA.III]

Dr. SUJIT KUMAR BAJPAYEE, Jt. Secy.

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section III, sub-section (ii), vide, number S.O. 1533(E), dated the 14th September, 2006 and was last amended, vide, the notification number S.O. 1807(E), dated the 12th April, 2022.

*From GPN
M*

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Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**Original Application No. 461/2022
(I.A. No. 255/2022)

Social Action for Forest & Environment (SAFE)

Applicant

Versus

Union of India

Respondent

Date of hearing: 07.12.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**Applicant: Mr. K. Sultan Singh, Senior Advocate with Mr. Saksham
Maheshwari & Mr. Samar Vijay Singh, Advocates

Respondent: Ms. Suhasini Sen, Advocates for MoEF & CC

ORDER

1. Challenge in this application is to Notification dated 20.04.2022 and Clause A (i) of Notification dated 09.05.2022 under section 3 of the Environment (Protection) Act, 1986 (EP Act) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986 amending the EIA Notification dated 14.09.2006 on the ground of the said notifications being ultra vires the EP Act.

2. By Notification dated 20.04.2022, the EC process in respect of certain Category 'B' projects has been decentralized power to grant EC assigned to SEIAA instead of EAC of MoEF&CC while by Notification dated

Time limit out
of order,
MS

09.05.2022, duration of convening rescheduled public hearing meeting has been shortened and authority allowed to be given to supervise the public hearing to the SDM, where the project is in jurisdiction of one sub-division.

3. The impugned notifications are as follows:

Notification dated 20.4.2022

“S.O. 1886(E).—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA Notification, 2006), vide number S.O.1533 (E), dated the 14th September, 2006 for mandating prior environmental clearance for certain category of projects;

And whereas, the State Environment Impact Assessment Authorities (SEIAAs) have been constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 for implementation of the EIA Notification, 2006 at State level for exercising delegated powers to consider and grant Environmental Clearance (EC) for all proposals under Category B;

And whereas, the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process and the process at the State level has also been made completely online through the PARIVESH portal for efficient and transparent disposal of EC proposals;

And whereas, the Central Government deems it necessary to further decentralise the EC process for facilitating clearances at State level;

And whereas, as on date, category B projects, relating to national defence and strategic importance with significant element of security involvement are also being appraised at the State level which, the Central Government deems it necessary to be appraised centrally taking into account national security concerns;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule(4) of rule 5 of the Environment (Protection) Rules, 1986, **the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, hereby makes the following further amendments** in the notification of the Government of India, in the erstwhile Ministry of Environment and Forests, number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

- (1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely:-

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(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;

(2) in the Schedule,-

(i) against item 1(a),-

(a) in column (3),-

(A) for ">100 ha. of mining lease area in respect of non-coal mining lease", the following shall be substituted, namely:-

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),-

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely:-

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters "≤ 150 ha", the symbols, figures and letters "≤ 500 ha" shall be substituted;

(ii) against item 1(c),-

(a) in column (3),-

(A) in serial number (i), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(B) serial number (ii) and the entries relating thereto shall be omitted;

(b) in column (4),-

(A) in serial number (i), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(B) in serial number (ii),-

(I) the word, symbol and figures "and < 50,000 ha." shall be omitted;

(II) in point (c) in the table, the word, symbol and figures "to < 50,000" shall be omitted;

(c) in column (5), after serial number (ii), the following serial number shall be inserted, namely:-

"(iii) Irrigation projects involving Inter-State issues shall be appraised at Central level without change in category.";

(iii) against item 1(d),-

(a) in column (3), for the symbols, figures and letters "≥ 50 MW", the symbols, figures and letters "≥100 MW" shall be substituted;

(b) in column (4), for the symbol, figures and letters "< 50 MW", the symbol, figures and letters "< 100 MW" shall be substituted;

(iv) against item 2(a),-

(a) in column (3), for the symbols and figure "≥1", the symbols and figures "≥ 2.5" shall be substituted;

(b) in column (4), for the symbols and figure "<1", the symbols and figures "< 2.5" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

"Integrated coal mining projects with washeries located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for coal mining projects.";

(v) against item 2 (b),-

(a) in column (3), the existing entries shall be omitted;

(b) in column (4), for the symbol, figures, words and letters "< 0.5 million TPA throughput", the words "All mineral beneficiation projects irrespective of the procedure for beneficiation" shall be substituted;

(c) in column (5), after the existing paragraph, the following paragraph shall be inserted, namely:-

"Integrated mining projects with beneficiation plants located within mining lease area shall continue to be considered at Central level or State level, as the case may be, as per the extant threshold for mining projects.";

(vi) against item 7 (a),-

(a) in column (3), for the words "All projects", the words "All new projects" shall be substituted;

(b) in column (4), the following shall be inserted, namely:-

"All expansions projects, including airstrips, which are for commercial use."

Notification dated 09.05.2022

"S.O. 2163(E).—Whereas, the Central Government in the erstwhile Ministry of Environment and Forests, in exercise of its powers under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 has published the Environment Impact Assessment Notification, 2006 (hereinafter referred to as the EIA

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Notification, 2006) vide number S.O.1533 (E), dated the 14th September, 2006, for mandating prior Environmental Clearance (EC) for certain category of projects;

And whereas, for the grant of prior EC, public hearing is mandatory and it is an integral part of the EC process, unless specifically exempted for certain activities as mentioned in the EIA Notification 2006, as amended from time to time;

And whereas, on certain occasions, the public hearings have been postponed due to various reasons often being beyond the control of the Project Proponent and as per the provisions of the EIA Notification 2006, the whole process for the public hearing is to be started afresh resulting in undue delay in completing the EC process;

And whereas, one of the factors which results in delay or postponement of the public hearings is the non-availability of the District Magistrate or his representative not below the rank of an Additional District Magistrate to preside over the proceedings of the public hearing;

And whereas, the Central Government has been receiving representations to streamline the public hearing process;

And whereas, the Central Government taking into account the public interest involved, deems it necessary **to streamline the process of the public hearing by reducing undue delays and facilitating public participation without interrupting the access to the information pertaining to the project and also make a provision for the District Magistrate to authorise an officer not below the rank of Sub-Divisional Magistrate to preside over the Public Hearing to avoid such delay;**

And whereas, the Central Government further deems it necessary to clarify the ambiguity in Schedule 1(b) with regard to off-shore and on-shore oil and gas exploration, development and production, as amended vide notification no. S.O. 236(E), dated the 16th January, 2020 and as the Central Government has delegated the power to the State Environmental Impact Assessment Authority to grant ECs to all minor mineral mining projects, irrespective of mine lease area, the applicability of the general condition for minor minerals has lost its relevance thereby, in this regard, the Central Government also deems it necessary to remove the applicability of the general condition for mining of minor minerals;

Now therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule(4) of rule 5 of the Environment (Protection), Rules, 1986, the Central Government, **after having dispensed with the requirement of notice under clause (a) of sub-rule(3) of rule 5 of the said rules, in public interest,** hereby makes the following further amendments in the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006, namely:-

In the said notification,-

(A) In the Schedule,-

(i) against item 1(a), in column (5), for the portion beginning with the words "General Conditions shall apply except:" and ending with the words "on account of inter-state boundary", the following shall be substituted, namely:-

"General Conditions shall apply except for mining of minor minerals.";

(ii) against item 1(b), in column (3), for word "except", the words "with or without" shall be substituted;

(B) in Appendix IV,-

(i) in paragraph 3, after sub-paragraph 3.3, the following sub-paragraph shall be included namely :-

"3.3 (a) In the event of any such postponement referred to in sub-paragraph 3.3, the time *duration for convening the rescheduled public hearing should not be less than forty-five days from the date of first advertisement already published in accordance to para 3.1 for initial date of public hearing and it shall be ensured that a minimum notice period of fifteen days shall be provided to the public before the re-scheduled date of the public hearing,* for furnishing the responses in writing: Provided that SPCB or UTPCC along with concerned authorities, as mentioned at para 2.2, shall ensure that all requisite documents are available to public in accordance with sub-paragraphs 2.3 and 2.4 from the date of first advertisement published for the initial date of public hearing till convening of the rescheduled public hearing.";

(ii) in paragraph 4.0,-

(a) after the words "his or her representative not below the rank of an Additional District Magistrate", the words "or any other District Level Officer authorised by him or her in this behalf" shall be inserted;

(b) after the existing paragraph, the following proviso shall be inserted, namely :-

"Provided that in case the project or activity is confined to the territorial jurisdiction of one sub-division, the District Magistrate/District Collector/Deputy Commissioner, as the case may be, may alternatively authorise any officer not below the rank of Sub-Divisional Magistrate to supervise and preside over the entire public hearing process assisted by a representative of SPCB or UTPCC, as the case may be.".

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, section 3, sub section(ii), vide number S.O. 1533(E), dated the 14th September, 2006 and was

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last amended, vide the notification number S.O. 1953(E), dated the 27th April, 2022.”

(emphasis added)

4. The matter was earlier considered on 11.07.2022 in the light of averments in the application and it was observed that EC process is not a formality but requires stringent appraisal of the impact on environment before granting EC as held inter alia in *Hanuman Laxman Aroskar vs. Union of India*, (2019)15 SCC 401. It was noted that performance of SEIAAs remain inadequate as per performance audit conducted by the MoEF&CC in pursuance of orders of this Tribunal in respect of Maharashtra and UP, SEIAA. Thus, even if decentralize process was desirable, the same had to be accompanied by capacity building of the SEIAAs. This required periodical trainings and continuous monitoring at the level of MoEF&CC.

5. The observations in the last order are as follows:-

“1&2.....xxx.....xxx.....xxx

3. *We have heard learned Counsel for the applicant. It is submitted that both the Notifications are ultra-vires the Environment (Protection) Act, 1986 and Rules. Decentralizing the power of appraisal of large projects and assignment of such power to SEIAA will be against the interest of environment in absence of capacity of the said bodies. General Condition appended to the EIA notification dated 14.9.2006 has been wrongly dispensing with in respect of minor mineral projects so that in situations stipulated in the said Condition, appraisal will now be done by SEIAA and not by the MoEF&CC. Procedure of Draft Notification under Rule 5(3) of the EP Rules has been wrongly avoided.*

xxx.....xxx.....xxx

5. *From the notification, it is seen that several projects are sought to be decentralized by giving power to SEIAA for grant of EC which power was being exercised by MoEF&CC. Object of appraisal of impact of a project on environment and grant of EC is to give effect to the ‘Precautionary’ principle of environmental law, which is part of sustainable development. Such appraisal has to be meaningful as held inter-alia in *Hanuman Laxman Aroskar vs. Union of India*, (2019)15 SCC 401. **The environmental regulation mechanism for conducting such appraisal must be effective. Authority/agency conducting such appraisal must have requisite capacity. In its absence such large-scale decentralization may defeat the object of sustainable development and appraisal may be farce.***

Inadequacy of capacity of environmental regulators has been noted by this Tribunal inter-alia in order dated 01.06.2020 in OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh as follows:

“xxx

.....xxx.....xxx

*37. Dealing with environmental issues, including unfortunate incidents, the Tribunal has found need to revamp the existing regulatory framework quantitatively and qualitatively. **The Tribunal has noted the observations of the CAG and parliamentary Committees on the subject. Reference may be made to order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors. after noting the status of current monitoring mechanism of the MoEF:***

“5. Further affidavit has been filed on 25.09.2019 on behalf of the MoEF&CC stating as follows:-

“1 to 6 xxx xxx xxx

7. That according, if only the projects issued EC during 2013-2019 are taken, then the best case scenario in terms of their monitoring could be 2.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenario would be 4.5 years with Man in Position (MIP) which is 32 at present across the ten (10) ROs in the country. Accordingly, the repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in the above two scenarios. That if all the projects issued EC since 1994 onwards are taken then the best case scenario is 6.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenarios is 13 years with MIP indicating that. The repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in these two scenarios.

8. That for Category ‘B’ projects for which compliance monitoring has been directed to be responsibility of SEIAA and SPCB, following to be taken note of:

- a. Sanctioned staff strength and MIP of SEIAAs and SPCBs/PCCS are still not available.*
- b. SEIAA and SPCBs are under the administrative control of State Government.*
- c. There is ambiguity with respect to their present involvement in monitoring of EC conditions.*
- d. Accordingly, it has been difficult to speculate the timeframe for taking up and completion of monitoring of Cat B projects at present.*
- e. The SEIAAs and SPCBs have been asked to provide information so that the above timeframe may be calculated.*

9. That as directed, a Six Monthly Action Plan has been prepared to reduce the timeline, enhance coverage and

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transparency, reduce requirement of additional human resources while ensuring comprehensive compliance of environmental conditions, thereby resulting in greater protection of the environment on a continuing basis. The Six Monthly Action Plan is placed at Annexure R-2.

10. That as enumerated in the Action Plan, the Ministry plans to carry out a thorough assessment of the quantum of work involved and available human resources and accordingly take up the initiatives for comprehensive refining of the existing monitoring mechanism. Based on this exercise the following action are to be undertaken:
 - a. **Filling up of vacant posts wherever applicable.**
 - b. **Creation of additional posts in all the agencies to be involved in monitoring and compliance viz. ROs, CPCB, SEIAA and SPCBs; if required.**
 - c. **Hiring of young professionals as per feasibility.**
 - d. **Creation of new ROs, if required.**
 - e. **Utilizing services of CPCB and SPCBs to effectively discharge responsibilities of monitoring.**
 - f. **Strengthening Monitoring Cell within the Ministry.**
 - g. **Develop web based online mechanism to automate the entire process of inspection and compliance monitoring.**

11. That the Action Plan provides a detailed roadmap for the coming months which includes:
 - a. **Hiring of an Independent Agency to assess the work requirement.**
 - b. **Constitution of Monitoring Evaluation Committee (MEC) to steer and supervise a new monitoring mechanism.**
 - c. **Engagement of Consultant for development of web based mechanism for end to end digitization.**

12. That in the interim, till the larger Action Plan is implemented, in order to improve the monitoring process, following actions has been/will be taken up:
 - a. **Filling up on nine vacant posts of Scientists in the ROs.**
 - b. **Strengthening the Monitoring Cell in the Ministry.**
 - c. **Delegation of the action on monitoring reports of Category 'B' projects to SEIAA as per the Notification no. SO 637 (E) dated 28th February 2014.**
 - d. **Evolving a mechanism for online maintenance of monitoring and compliance data with regard to Category-A and Category-B projects and integrating it with the existing PARIVESH portal of the Ministry."**

6. We have considered the above averments as well as contents of annexures R-I and R-II giving data of the projects and 'six monthly action plan'. We are of the view that the mandate of law is not complied with by the above stand of the MoEF&CC. **It is well acknowledged that there is rampant violation of the Environmental Clearance (EC) conditions. This Tribunal has, in order dated 21.11.2019, noticed serious violations of EC conditions with respect to A Category 'housing projects' in Haryana and found monitoring of conditions of EC ineffective.¹ The said order also refers to earlier orders wherein similar serious violations have been noticed. The violations include absence of scientific management of sewage and solid waste, not having open spaces, illegal drawal of ground water, construction in excess of sanctioned plan etc. It is difficult to say such violations are limited to State of Haryana. In absence of adequate mechanism, such rampant violation are bound to continue defeating the environmental principle of precautionary and sustainable development. In this regard, it is apt to note that this aspect was considered by the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61. Reference was made to the observations in Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and that the monitoring mechanism for the clearance conditions was not satisfactory. The Hon'ble Supreme Court also referred to a report on 'Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)' for the Ministry of Environment and Forests, Government of India prepared by Department of Management Studies, Indian Institute of Technology, Delhi. Therein it was found that there are huge gaps in monitoring and enforcement of clearance conditions which defeats the purpose of Environmental Clearance process. The said finding quoted in the judgment is as follows:**

"Several studies have pointed toward the poor monitoring of the clearance conditions. Huge gaps in monitoring and enforcement of clearance conditions actually defeats the very purpose of grant of conditional environmental clearance."²

7. We also note the observations from Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. Reasons for such shortfalls are inadequate staff, inadequate database, not assigning clear responsibility for post EC

¹ Order dated 21.11.2019, O.A. No. 506 / 2019, Mukund Dhote v. UOI & Ors.

² Para 10

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monitoring, absence of monitoring at regular intervals particularly for critically polluted areas.

8. *Thus, there is dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs Post EC monitoring processes need revamping in quantitative as well as qualitative terms. There is need to prioritize the projects where potential environmental degradation is high on account of nature of activity as well as area being ecologically sensitive. In respect of such projects and in such areas, monitoring may have to be more intensive and at higher frequency. In no case frequency of monitoring should be less than once in a year.*
9. *The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.*
10. *Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.*
11. *On being asked, learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking. With a view to plan such monitoring, the percentage of compliance must be ascertained. Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data. Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.*
12. *In view of the above, remedial action may be planned at the earliest. The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.*

13. *There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.*
14. *No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.*
15. *We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.*
16. *Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs."*

(emphasis supplied)

38. Similarly, vide order dated 11.01.2019 in O.A. No. 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors., following observations may be noted:

- "37. ..The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCE. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. **Frequent failures of regulatory bodies need to be**

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remedied for meaningful enforcement of environmental norms. This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*³, held that **State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.**

38. It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases⁴. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.
39. It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.
40. As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable

³ O.A. No. 110(THC)/2012 Order dated 04.01.2019 para 28-29

⁴ https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf. India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>. Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFT063r7x4Ti8ZbHF7mM.html>. Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf. WHO Water Quality Index.

activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.

41. **We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB", this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of River Yamuna⁵, Ganga⁶, Hindon⁷, Ghaggar⁸, Sutlej and Beas⁹, Son¹⁰, Subarnarekha¹¹, Ami¹² were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.**
42. **This Tribunal in News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"¹³ has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this**

⁵ Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018

⁶ M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018

⁷ Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018

⁸ Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018

⁹ Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018

¹⁰ Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018

¹¹ Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018

¹² Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018

¹³ Original Application No. 681/2018 Order dated 08.10.2018

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Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.

43. *In re: Compliance of Municipal Solid Waste Management Rules, 2016¹⁴, the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.*
44. *As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels" vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays Principle'.*
45. *In Techī Tagī Tara Vs. Rajendra Singh Bhandari & Ors.¹⁵, the Hon'ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or*

¹⁴ Original Application No. 606/2018 Order dated 31.08.2018

¹⁵ (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

- (a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.
- (b) The Belliappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.
- (c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.
- (d) The Menon Committee - Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.¹⁶ The appointments being made did not inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:

"Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."

46. *In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.¹⁷*
47. *During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of TechI Tagi Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed*

¹⁶ *Ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

¹⁷ Accessible at:
<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf>

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are not having technical or professional qualifications or background as expected.

48. This Tribunal, on 20.07.2018, in *Satish Kumar vs. U.O.I & Ors.*¹⁸ also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.
49. The order of this Tribunal dated 07.08.2018 in *Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)*¹⁹ noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.
50. **The Tribunal in the order on 08.08.2018 in *Doaba Paryavaran Samiti Vs. State of U.P. & Ors.*²⁰ noted that statutory authorities had miserably failed and were required to be held accountable for their failure.**
51. In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.²¹
52. Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.
53. There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream."

(emphasis supplied)

39. Vide order dated 28.08.2019 in O.A. No. 95/2018, *Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors.*, following observations may be noted:

¹⁸ O.A No. 56 (THC) of 2013

¹⁹ O.A. No. 138/2016 (T_{NHRC})

²⁰ O.A. No. 231/2014

²¹ *Supra* note 18

13. Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.
14. **What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.**

.....

Directions:

- iii. Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above."

(emphasis supplied)

6. Further, finding inadequacy in performance of SEIAAs, in the context of Maharashtra, vide order dated 8.6.2021 in OA No. 13/2021

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(WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors* Appeal No. 34/2020(WZ), the Tribunal directed performance audit of SEIAA as follows:

“Since the allegations of this nature are frequently being made before this Tribunal and prima facie there appears to be fundamental flaw in working of the SEIAA in question, resulting in defeating the statutory mandate of prior EC and directions of the Hon’ble Supreme Court, we direct constitution of a three-member Committee of Ministry of Environment, Forest and Climate Change (MoEF&CC) headed by an officer not below the level of Additional Secretary with the assistance of Chairman, Central Pollution Control Board (CPCB) to conduct functional audit of SEIAA, Maharashtra to find out how such frequent blatant violations are taking place and how the situation can be remedied.”

7. Similar observations were made in the context of SEIAA, UP vide order dated 13.8.2021 in OA 199/2021, *Saviour Park Apartment Owners Assn vs. State of UP and others*:

“We are of the view that on the pattern of above orders passed by this Tribunal in Appeal No. 34/2020(WZ) and OA No. 13/2021 (WZ), apart from considering the remedial action against violations, two-member Committee comprising Additional Secretary, MoEF&CC, to be nominated by the Secretary MoEF&CC and the Chairman, CPCB need to conduct functional audit of SEIAA, UP to find out how frequent blatant violations are taking place and how the situation can be remedied.”

8. In pursuance of orders of this Tribunal, performance audit has been conducted and it has been found that SEIAA, Maharashtra and SEIAA, UP need to upgrade their capacity. In report submitted in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors.*, in Chapter 8 and 9 of the report, key findings and recommendations have been given about functioning of SEIAA, Maharashtra, showing that there is huge gap in requirement and capacity of SEIAA. Similar is the position with regard to functioning of SEIAA, UP as per report submitted in O.A No. 199/2021, *Saviour Park Apartment Owners Association v. State of U.O & Ors.* Thus, unless the Central Government is satisfied that functioning of SEIAAs are upgraded to enable it to take requisite load, decentralization may result in irreversible environmental degradation by unchecked violations.

9. Thus, even though decentralization of EC process may not by itself be objectionable, adequacy of capacity for proper appraisal for grant of EC in the light of observations in *Hanuman Laxman (supra)* needs to be ensured.”

6. In pursuance of above, response filed by the MoEF&CC on 13.10.2022 is that the Ministry is periodically reviewing the functioning of SEIAAs who have gained substantial experience in the last 15 years in undertaking appraisal for the grant of EC. Extracts from the said response are as follows:-

“10. That the Ministry in the past has also convened capacity building programs through expert agencies like ASCI (Administrative Staff College of India), Hyderabad for the SEIAA/SEAC officials for effective environmental appraisal of the projects which are submitted for grant of EC/ToR.

11. That, the Ministry periodically reviews the functioning of SEIAA/SEAC at the highest level for ensuring effective and efficient mechanism of environmental appraisal at the SEIAA/SEAC level for category B projects.

12. It is humbly submitted that, it is the constant endeavor of the Ministry to introduce systemic reforms in the EC process without compromising on the environmental safeguards. In pursuance of the same and to streamline the procedure for seeking prior EC, the Ministry amends the EIA Notification from time to time as per requirement.

13. That as the SEIAAs have gained substantial experience over the past fifteen years in the EC appraisal process, the Ministry felt that the SEIAAs have achieved the desired competency. Thus, the EC process has been further decentralized and higher thresholds of projects were delegated to the SEIAAs to facilitate expeditious and transparent appraisal of proposals, without compromising on environmental rigors.

14. That, as the Ministry had delegated the power to the SEIAA to grant ECs to all minor mineral mining projects, irrespective of mine lease area, the applicability of the General Condition for minor minerals has lost its relevance. Therefore, the Respondent Ministry also deemed it necessary to remove the applicability of the General Condition for mining of minor minerals.

15. It is humbly submitted that State Government is empowered to formulate its own rules for preventing illegal mining, transportation and storage of minerals by exercising the powers conferred on it under section 23(C) of the Mines and Minerals (Development and Regulation) Act, 1957. Further, the State Government may, by notification in the Official Gazette, make rules for, regulating the grant of quarry leases, mining leases or other mineral concessions] in respect of minor minerals and for purposes connected therewith. Further, after examination of the data of last three years in terms of issuing EC for minor minerals, it was observed that only 8 ECs were issued at the Central level by the Ministry. Hence it was decided that all the mining lease area in respect of minor mineral leases can be delegated to SEIAA.

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16. It is humbly submitted that the States had already been delegated powers for appraising Mine Lease Area up to 100 ha of non-coal mining projects vide Notification no. S.O. 3977(E) dated 14/08/2018. Over the years, as the SEIAA/ SEAC have gained enough experience, it was felt that they can handle projects with Mine Lease Area up to 250 ha. A copy of the Notification no. S.O. 3977(E) dated 14/08/2018 has been annexed as Annexure A/2.

17. Further, EIA, 2006, as amended, already has provision for constitution of more than one SEAC in the states, in case such recommendation is received from the State Government. At present, there are more than one SEAC in the States of UP, Maharashtra and Rajasthan. Delegation of more powers to States in a way facilitates the Project Proponent to get their projects appraised at State level while ensuring that the process of obtaining clearances becomes more expeditious, transparent, streamlined and hassle-free.

18. Furthermore, in order to keep a check on the approval process at the State level, the Ministry has amended the provisions of the EIA, 2006 to include a provision by which projects that are inordinately delayed at the State Level can be considered at the Central level. A copy of the said notification dated 20/04/2022 is annexed as Annexure A/3.

19. It is humbly submitted that in order to encourage transparency, efficiency and ability, the Ministry issued the criterion for the star rating of the SEIAAs. The said rating system is being made operational through the upgraded P ARIVESH portal of the Ministry which is under development. A copy of the OM dated 17/01/2022 has been annexed as Annexure A/4.

20. It is humbly submitted that the Ministry has powers under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, for dispensing with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules.

21. It is humbly submitted that the main purpose of issuing these notifications was delegation of powers to SEIAA with adequate safeguards to ensure timely and transparent EC to projects at the level of SEIAA while maintaining environmental safeguards. In this regard, as none of the provisions of the existing Notification have been dispensed with or diluted, seeking public comments was dispensed with and the impugned notifications were published without issuing draft notification as per the provisions mentioned at the para above."

7. We have heard learned counsel for the parties on the question of desirability of change in the process of appraisal for grant of EC. Instead of such appraisal being conducted by the MoEF&CC as heretofore, it is now proposed by SEIAA which are not well equipped, while much remains

to be done for effectiveness of such processes by MoEF&CC also as earlier observed.

8. Learned counsel for the applicant submitted that the stand taken by the MoEF&CC is against ground reality which has been noted in the earlier order of this Tribunal. The performance audit reports of the MOEF&CC for two States bely the stand that adequate capacity building has taken place in SEIAAs. Grant of ECs without effective appraisals is resulting in irreversible degradation of environment. The SEIAA should be manned by sectorial experts. After grant of EC continuous monitoring of compliance must be ensured. Safeguards of public hearing should not be diluted.

9. While the contentions raised on behalf of the applicant cannot be brushed aside for the reasons mentioned in earlier orders of this Tribunal, instead of annulling the course of action proposed, we find it appropriate to direct the MoEF&CC to seriously address the concerns raised for ensuring effective appraisals before grant of ECs if the regime in question is to be operationalized.

10. Submission of the MoEF&CC that steps have been taken for enhancing acquaintance and orienting SEIAA and SEAC by organizing institutional programme which can hardly be held to be adequate to address the concerns raised. Considering that tenure of SEIAA and SEAC are generally for three years and they are manned by Government/non-Government Officers without being backed up by experienced technical staff, such as scientists/engineers, it is necessary to ensure proper manning and proper technical support to undertake appraisals and monitoring.

Composition of SEIAA and SEAC of several States like Chhattisgarh, Kerala, Gujarat, Telangana, Tamil Nadu, Punjab, Maharashtra, MP,

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Jharkhand, Karnataka and UP shows that they are composed of three Members and SEACs comprise 8 to 15 Members. In some States, as per geographical and subject specific consideration, 2 or 3 SEACs are set up. MoEF&CC thus, needs to prescribe qualifications and experience as well as require scientific and technical staff to back up the functioning of such constituted Authorities and Committees for effective enforcement of law.

11. In the light of above observations, the MoEF&CC may constitute a three-Member Committee headed by its Additional Secretary with two other members being CPCB and Director, NEERI. The Committee may meet within one month and formulate guidelines/safeguards to be followed by the SEIAAs.

12. We also quote for ready reference earlier observations of this Tribunal *inter-alia* in order dated 01.02.2021 in O.A. No. 837/2018, *Sandeep Mittal v. MoEF & Ors.* and also vide order dated 8.6.2021 in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors Appeal No. 34/2020(WZ)* and vide order dated 13.8.2021 in OA 199/2021, *Saviour Park Apartment Owners Assn. vs. State of UP & Ors.*:-

“1to6...xxx.....xxx.....xxx

7. In order dated 01.06.2020 in O.A No.73/2020, *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh, the Tribunal dealt with an incident of gas leak in a chemical factory at Vishakhapatnam resulting in death of 12 persons and injuries to more than 100 on 07.05.2020. Since the incident was on account of failure to follow safety norms which were not being duly monitored, the Tribunal found that it was necessary that regulatory/oversight framework is strengthened to avoid such incidents. It was observed:-*

“

36. *Safety of citizens and environment are of prime concern. Any economic or industrial activity, however necessary, has to be consistent with the safety of human beings and the environment. The damage to human life, human health and environment has to be restored by applying the ‘Sustainable Development’ principle, of which ‘Precautionary’ and ‘Polluter*

Pays' principles are part. In this regard, significant role has to be played by the statutory authorities constituted under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

37. *Dealing with environmental issues, including unfortunate incidents, the Tribunal has found need to revamp the existing regulatory framework quantitatively and qualitatively. The Tribunal has noted the observations of the CAG and parliamentary Committees on the subject. Reference may be made to order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors. after noting the status of current monitoring mechanism of the MoEF:*

"5. Further affidavit has been filed on 25.09.2019 on behalf of the MoEF&CC stating as follows:-

"1 to 6 xxx xxx xxx

7. That according, if only the projects issued EC during 2013-2019 are taken, then the best case scenario in terms of their monitoring could be 2.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenario would be 4.5 years with Man in Position (MIP) which is 32 at present across the ten (10) ROs in the country. Accordingly, the repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in the above two scenarios. That if all the projects issued EC since 1994 onwards are taken then the best case scenario is 6.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenarios is 13 years with MIP indicating that. The repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in these two scenarios.

8. *That for Category 'B' projects for which compliance monitoring has been directed to be responsibility of SEIAA and SPCB, following to be taken note of:*
- a. **Sanctioned staff strength and MIP of SEIAAs and SPCBs/PCCS are still not available.**
 - b. **SEIAA and SPCBs are under the administrative control of State Government.**
 - c. **There is ambiguity with respect to their present involvement in monitoring of EC conditions.**
 - d. **Accordingly, it has been difficult to speculate the timeframe for taking up and completion of monitoring of Cat B projects at present.**
 - e. *The SEIAAs and SPCBs have been asked to provide information so that the above timeframe may be calculated.*
9. *That as directed, a Six Monthly Action Plan has been prepared to reduce the timeline, enhance coverage and transparency, reduce requirement of additional human*

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resources while ensuring comprehensive compliance of environmental conditions, thereby resulting in greater protection of the environment on a continuing basis. The Six Monthly Action Plan is placed at Annexure R-2.

10. That as enumerated in the Action Plan, the Ministry plans to carry out a thorough assessment of the quantum of work involved and available human resources and accordingly take up the initiatives for comprehensive refining of the existing monitoring mechanism. Based on this exercise the following action are to be undertaken:
 - a. **Filling up of vacant posts wherever applicable.**
 - b. **Creation of additional posts in all the agencies to be involved in monitoring and compliance viz. ROs, CPCB, SEIAA and SPCBs; if required.**
 - c. **Hiring of young professionals as per feasibility.**
 - d. **Creation of new ROs, if required.**
 - e. **Utilizing services of CPCB and SPCBs to effectively discharge responsibilities of monitoring.**
 - f. **Strengthening Monitoring Cell within the Ministry.**
 - g. **Develop web based online mechanism to automate the entire process of inspection and compliance monitoring.**

11. That the Action Plan provides a detailed roadmap for the coming months which includes:
 - a. **Hiring of an Independent Agency to assess the work requirement.**
 - b. **Constitution of Monitoring Evaluation Committee (MEC) to steer and supervise a new monitoring mechanism.**
 - c. **Engagement of Consultant for development of web based mechanism for end to end digitization.**

12. That in the interim, till the larger Action Plan is implemented, in order to improve the monitoring process, following actions has been/will be taken up:
 - a. **Filling up on nine vacant posts of Scientists in the ROs.**
 - b. **Strengthening the Monitoring Cell in the Ministry.**
 - c. **Delegation of the action on monitoring reports of Category 'B' projects to SEIAA as per the Notification no. SO 637 (E) dated 28th February 2014.**
 - d. **Evolving a mechanism for online maintenance of monitoring and compliance data with regard to Category-A and Category-B projects and integrating it with the existing PARIVESH portal of the Ministry."**

6. We have considered the above averments as well as contents of annexures R-I and R-II giving data of the projects and 'six monthly action plan'. We are of the view that the mandate of law is not complied with by the above stand of the MoEF&CC. **It is well acknowledged that there is rampant violation of the Environmental Clearance (EC) conditions. This Tribunal has, in order dated 21.11.2019, noticed serious violations of EC conditions with respect to A Category 'housing projects' in Haryana and found monitoring of conditions of EC ineffective.²² The said order also refers to earlier orders wherein similar serious violations have been noticed. The violations include absence of scientific management of sewage and solid waste, not having open spaces, illegal drawal of ground water, construction in excess of sanctioned plan etc. It is difficult to say such violations are limited to State of Haryana. In absence of adequate mechanism, such rampant violation are bound to continue defeating the environmental principle of precautionary and sustainable development. In this regard, it is apt to note that this aspect was considered by the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61. Reference was made to the observations in Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and that the monitoring mechanism for the clearance conditions was not satisfactory. The Hon'ble Supreme Court also referred to a report on 'Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)' for the Ministry of Environment and Forests, Government of India prepared by Department of Management Studies, Indian Institute of Technology, Delhi. Therein it was found that there are huge gaps in monitoring and enforcement of clearance conditions which defeats the purpose of Environmental Clearance process. The said finding quoted in the judgment is as follows:**

"Several studies have pointed toward the poor monitoring of the clearance conditions. Huge gaps in monitoring and enforcement of clearance conditions actually defeats the very purpose of grant of conditional environmental clearance."²³

7. We also note the observations from Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. Reasons for such shortfalls are inadequate staff, inadequate database, not assigning clear responsibility for post EC monitoring, absence of monitoring at regular intervals particularly for critically polluted areas.

²² Order dated 21.11.2019, O.A. No. 506 / 2019, Mukund Dhote v. UOI & Ors.

²³ Para 10

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8. *Thus, there is dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs Post EC monitoring processes need revamping in quantitative as well as qualitative terms. There is need to prioritize the projects where potential environmental degradation is high on account of nature of activity as well as area being ecologically sensitive. In respect of such projects and in such areas, monitoring may have to be more intensive and at higher frequency. In no case frequency of monitoring should be less than once in a year.*
9. *The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.*
10. *Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.*
11. *On being asked, learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking. With a view to plan such monitoring, the percentage of compliance must be ascertained. Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data. Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.*
12. *In view of the above, remedial action may be planned at the earliest. The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.*
13. *There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in*

improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.

14. *No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.*
15. *We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.*
16. *Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs."*

(emphasis supplied)

38. *Similarly, vide order dated 11.01.2019 in O.A. No. 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors., following observations may be noted:*
 - “37. *..The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. **Frequent failures of regulatory bodies need to be remedied for meaningful enforcement of environmental norms.** This Tribunal*

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*in Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.²⁴, held that **State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.***

38. *It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases²⁵. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.*
39. *It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.*
40. *As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable*

²⁴ O.A. No. 110(THC)/2012 Order dated 04.01.2019 para 28-29

²⁵ https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf. India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>. Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFTQ63r7x4TI8ZbHF7mM.html>. Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf. WHO Water Quality Index.

activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.

41. ***We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB", this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of River Yamuna²⁶, Ganga²⁷, Hindon²⁸, Ghaggar²⁹, Sutlej and Beas³⁰, Son³¹, Subarnarekha³², Ami³³ were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.***
42. ***This Tribunal in News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"³⁴ has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to***

²⁶ Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018

²⁷ M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018

²⁸ Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018

²⁹ Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018

³⁰ Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018

³¹ Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018

³² Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018

³³ Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018

³⁴ Original Application No. 681/2018 Order dated 08.10.2018

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human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.

43. In re: Compliance of Municipal Solid Waste Management Rules, 2016³⁵, the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.

44. As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels" vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays Principle'.

45. In Techī Tagī Tara Vs. Rajendra Singh Bhandari & Ors.³⁶, the Hon'ble Supreme Court noted that the

³⁵ Original Application No. 606/2018 Order dated 31.08.2018

³⁶ (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

- (a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.
- (b) The Bellappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.
- (c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.

State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.³⁷ The appointments being made did not inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:

“Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”

46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.³⁸

(d) The Menon Committee – Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

³⁷ *ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled “Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards” which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

³⁸ Accessible at:
<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf>

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47. **During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of Techī Tagī Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.**
48. This Tribunal, on 20.07.2018, in *Satish Kumar vs. U.O.I & Ors.*³⁹ also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.
49. The order of this Tribunal dated 07.08.2018 in *Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)*⁴⁰ noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.
50. **The Tribunal in the order on 08.08.2018 in *Doaba Paryavaran Samiti Vs. State of U.P. & Ors.*⁴¹ noted that statutory authorities had miserably failed and were required to be held accountable for their failure.**
51. In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.⁴²
52. Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.
53. There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and

³⁹ O.A No. 56 (THC) of 2013

⁴⁰ O.A. No. 138/2016 (TNHRC)

⁴¹ O.A. No. 231/2014

⁴² *Supra* note 18

shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream."

(emphasis supplied)

39. *Vide order dated 28.08.2019 in O.A. No. 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors., following observations may be noted:*

"13. *Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.*

14. ***What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.***

.....
Directions:

iii. *Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough*

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analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.”

(emphasis supplied)”

8. *In Original Application No. 85/2020, (Earlier O.A.No.22/2020 (WZ)), Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. & Anr., the Tribunal dealt with an incident of blast in a chemical factory in Gujrat resulting in death of 11 persons and injuries and displacement of large number of persons. The Tribunal appointed an Expert Committee, headed by Justice B.C. Patel, former Chief Justice Delhi to look into the causes of an industrial accident and to suggest remedial measures to avoid such accidents in future. The Committee found that safety protocols were not being followed and there was no adequate oversight by the statutory authorities. It was also found that while granting permission to set up such units it was necessary to ensure availability of health services in the vicinity. The Committee suggested periodical safety audits and other measures for strengthening the oversight mechanism by the statutory regulators. The extract from the report is as follows:*

SECTION 8

STEPS REQUIRED TO AVOID SUCH INCIDENT (NATIONALDISASTER MANAGEMENT AUTHORITY)

55. *The question is how such accidents can be avoided. There is National Disaster Management Authority (NDMA) of the Government of India, which has issued guidelines for Chemical Disasters (Industrial).*

56. *The common causes for chemical accidents, deficiencies, safety management system and human errors are noted. The chemical accidents fire, explosion and/or toxic release were resulting irreversible pain, suffering and death. To minimise such accident and to improve emergency preparedness at all levels, substantial efforts are still required to predict the occurrence of disaster. (Page xvii)*

57. *It is also stated that it has been realised that effective Chemical Disaster Management (CDM) is possible by the adoption of preventive and mitigation strategies as most chemical disasters are preventable in comparison to natural disasters that are difficult to predict and prevent. Statutory inspection, safety audit and testing of emergency plan, onsite emergency plan, offsite emergency plans, medical emergency plans, information on chemical, technical information have been given importance.*

58. *It is indicated that the disclosure of information via Material Safety Data Sheets (MSDS) by occupiers to workers on chemical hazards is a statutory requirement. The information in MSDS is generally complex and exhaustive, therefore, supervisory staff and*

workers find it difficult to comprehend the information available to them. (In the instance case, the workers have not been questioned by the officers of the DISH in this regard. Why? If they would have been questioned, the officers would have known that the unit is conveying about the hazardous chemicals).

59. It is specifically indicated that *No Objection Certificates (NOCs)* for establishing a storage facility often lack sufficient scientific knowledge and need to undergo appropriate training.

Before granting the permission of tank farm by the relevant authority, if they would have studied the effect of mixing the chemicals even by accident, they would have realized that certain acids cannot be kept nearby, if they would not have allowed Nitric Acid in the tank farm area and would have asked to store at separate place the accident could have been avoided.

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SECTION 12
RECOMMENDATIONS

5. Shortage and training of manpower:

- i. ***It is necessary to appoint adequate number of Scientists and other officers as well as other staff considering the number of industries so as to effectively monitor the manufacturing units. Shortage of staff is also referred in the report of the Comptroller and Auditor General of India on Environmental Clearances and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. One of the reasons mentioned in the report is the shortfall/inadequate staff. Considering the numbers of Environmental clearance by MoEF & CC, New Delhi as well as SEIAA Gujarat (No. of ECs issued by MoEF & CC, New Delhi-Approx. 1500 & by SEIAA Approx. 8300 for the state of Gujarat only), the scientific staff in Ministry's regional offices should be strengthened for post EC monitoring at regular intervals. Thus, for having an eye over all the units, the Committee feels that the government should take appropriate steps for appointing adequate staff. The PESO also pointed out the same concerned the Gujarat being most industrialized state having about 40,000 licensed premises covered under various Acts and Rules including 1800 Major Accident Hazards premises, this is one of the pressing problems.***

7. Management & study:

- ii. *HAZOP study direction / instruction must be carried out strictly and regularly by the unit.*
- iii. *Management to educate the staff on Materials Safety Data Sheet (MSDS) and engineers & operators in the plant must study the same.*

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5. DCG, Hospitals:

- iv. All Industrial Zone/SEZ should have their own Local Crisis Group. The District Crisis Group should give surprise visit to the factories regularly at least once in a quarter and check the operation of factories. At the end of the visit, they should generate a report and submit to the State Crisis Group.
- v. As per the Chemical Accidents (Emergency, Planning, Preparedness, Response) Rules, 1996, brought out under the Environment Protection Act 1986, it is mandatory to have State Crisis Group (SCG) and District Crisis Group (DCG) to help the State Disaster Management Authority (SDMA) and District Disaster Management Authority (DDMA) under the Disaster Management Act, 2005 in advisory roles to deal with Chemical Disaster Management (CDM). There is no emergency response centre / disaster management centre within the SEZ. Therefore, the authorities must provide urgently such centers. As the Industry in the instant case failed to report in this behalf there must be a provision for not reporting immediately to the DCG and DDMA or at emergency control room for chemical disasters in the state (as in the instant case it is at Vadodara). The Rule making authority though having prescribed 48 hrs. time limit within which the competent authority is required to be informed but there is no provision for the breach with regard to non-informing immediately or within 48 hrs. (In the instant case it is admitted the report was submitted on 9th June, 2020 against the incident on 3rd June, 2020).
- vi. **The requirement of a Hospital in an industrial zone or SEZ and particularly industries are engaged in hazardous chemicals is a must. Even Hospitals at distance of 50 kms are general hospitals and not specialised in chemical burns and injuries arising out of accident on account of hazardous materials.**
- vii. District crisis group must undertake mock drill under off site emergency plan and crisis management in every industrial cluster or SEZ on failure action should be taken against DCG. (In the instant case they were satisfied with mock drill in one place in a district. In the instant case in one district there are more cluster of industries. Therefore, in each cluster an exercise aforesaid is a must - DISH has admitted that such exercise is not carried out in all clusters).
- viii. As at other places in the state of Gujarat in the industrial clusters, the GPCB has provided tower for air quality monitoring and same is being monitored by the GPCB. Dahej - I & II or the SEZ being an industrial town and factories are particularly engaged in hazardous chemicals, the committee is of the opinion that there should be Continuous Ambient Air Quality Monitoring Systems (CAAQMS) at all strategic locations. So that everyone in that area is aware about the air pollution.

6. Safety audit:

- ix. For the purpose of auditing the safety, **the government must make a panel of safety auditors to inspect the factory**

independently twice in a year and they should submit their report directly to the DISH. The safety auditor should be made answerable to the government.

- x. The committee is of the opinion that sub-rule (9) of Rule 68(J) of the Gujarat Factories Rules 1963, refers to safety report and safety audit reports, under that Rule sub rule 2 gives a choice to industry to select the auditor for the purpose of the safety audit. The committee of the opinion that the state government be requested to consider the case and particularly safety report from independent auditor and to amend the Rule as below:

2). After the commencement of these Rules, the occupiers of both the new and existing industrial activities and isolated storage must be checked by the government through the safety auditor which is accredited by an accreditation board to be constituted by the Ministry of labour, Government of India.

3). The auditor within 30 days of audit shall send the report to the chief inspector with respect to the audit recommendations and which shall be examined by the government within a period of 1 month and the industry shall be directed to carry out within the period specified the recommendation that may be made by the Government in this behalf.

7. **For SEZ / Industrial zone:**

- xi. Ordinarily a buffer zone of 500 meter is provided if there is a residential zone. **But in case of hazardous chemicals the buffer zone should be of 1000 meter minimum in view of the nature of the chemicals hazards associated with it. (In the instant case it is found that industries are close to village Luvara & Lakhigam). In a buffer zone, industries as well as government should provide proper plantation for pollution free atmosphere to the residents.**
- xii. **In SEZ or industrial zone for the benefit of the residents in that area the government should provide sewerage network so that the domestic wastewater generated by the residents treated in the sewage treatment plant.**

8. **Other recommendation:**

- xiii. **Constant monitoring is required under the direction of the Hon. Tribunal to the urgent need for expediting the matter of providing effluent pipeline (4.5 km) for deep sea discharge by GIDC as per NIO recommendation to ensure adequate dilution and dispersion of effluent (Despite reminders GIDC has failed)."**

9. Apart from other measures, the MoEF&CC needs to consider the above recommendations and take urgent measures to revamp the monitoring mechanism in a time bound manner in the interest of safety and health of the citizens and protection of the environment so as to ensure monitoring of compliance of EC conditions of atleast 'red' category industries, not less than once in a quarter. MoEF&CC may give due attention for proper constitution of SEIAs in the States to ensure the projects of category 'B' and 'B-1' are properly scrutinized.

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The CPCB and the State PCB/PCCs may also take measures to conduct monitoring of EC conditions at their level atleast once every quarter for all 'Red' category units, in the interest of safety of the citizens, which may also be looked into by the Chief Secretaries of the all States/UTs."

13. The Committee after its first meeting in terms of para 11 above, may review the progress atleast once in three months. The proceedings of the Committee may be placed on the website of the MoEF&CC. This may be continued atleast for one year.

The application is disposed of. If any, grievance survives, it will be open to the aggrieved parties to take remedies in accordance with law.

A copy of this order be forwarded to the Additional Secretary, MoEF&CC, CPCB and Director, NEERI by e-mail for compliance.

I.A. No. 255/2022 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

December 07, 2022
O.A. No. 461/2022
(I.A. No. 255/2022)
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