

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

Original Application No.159 of 2024 (SZ)

V. Ramesh

...Petitioner

Vs

The District Collector,  
Thiruvallur District & Others

...Respondents

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BEHALF OF 2<sup>ND</sup> RESPONDENT**

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Certified that the above documents are the true copies of their originals.

Dated at Chennai on this the 15<sup>th</sup> day of July 2024.



Counsel for 2<sup>nd</sup> Respondent

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

Original Application No.159 of 2024 (SZ)

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Vs

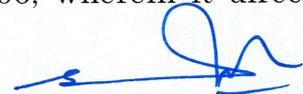
The District Collector, Thiruvallur District & Others

...Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF 2<sup>ND</sup> RESPONDENT**

I, A.R. Rahul Nadh, I.A.S., aged about 36 years, working as Member Secretary, State Level Environment Impact Assessment Authority, Tamil Nadu (SEIAA-TN) having office at Third Floor, Panagal Maaligai, Saidapet, Chennai – 600015, do hereby solemnly affirm and sincerely state as follows:

1. I respectfully submit that I am filing counter affidavit on behalf of 2<sup>nd</sup> Respondent herein and as such I am well acquainted with the facts and the circumstances of the case from the records available in this office.
2. I respectfully submit that at the outset, I deny all the averments stated in this petition as false except those that are specifically admitted hereunder and put the Petitioner to strict proof of the same.
3. It is respectfully submitted that, in exercise of the powers conferred under sub section 1 clause (v) of subsection (2) of section 3 of the Environment Protection Act, 1986 read with clause (d) of sub rule (3) of rule 5 of the Environment (Protection) Rules 1986, and in supersession of the earlier Environment Impact Assessment Notification, 1994, the Central Government issued EIA Notification 2006, wherein it directs



**Member Secretary**  
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN  
Panagal Maligai, No.1, Jeeris Road,  
Saidapet, Chennai - 15

Member Secretary  
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Panagal Maligai, No.1, Jeeris Road,  
Saidapet, Chennai - 15

that any new project or expansion of the existing project shall be undertaken in any part of India only after the prior Environmental Clearance from the Central Government or as the case may be, by the State Level Environmental Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the EP Act in accordance with the procedures laid down therein in the said Notification 2006.

4. It is respectfully submitted that, as per Para 2 of the EIA Notification 2006, the projects or activities, listed therein in the Schedule appendix therein, shall require prior Environmental Clearance from the concerned regulatory authority i.e., The Central Government in the Ministry of Environment and Forest for matters falling under Category 'A' and at State level, the State level Environmental Impact Assessment Authority for matters falling under Category 'B'.
5. It is respectfully submitted that, New National Highways and Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignment and 60 m on re-alignment or by-passes is Category A project under the Project 7(f) and it requires prior Environmental Clearance as per EIA Notification, 2006 as amended.
6. It is respectfully submitted that, since this project is Category A, it requires appraisal by MoEF&CC, hence, the proponent submitted his proposal to MoEF&CC for Environmental Clearance and the same was granted vide EC Identification Number EC22A034AP110261 dated 21.12.2022.
7. It is respectfully submitted that vide the notification dated 28<sup>th</sup> March 2020 the MoEF&CC in Appendix IX provided for exempting certain cases



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from the requirement of obtaining EC. The Appendix-IX provided that the prior EC will not be required in thirteen cases set out therein.

*“Appendix-IX*

Exemption of certain cases from requirement of Environmental Clearance: The following cases shall not require Prior Environmental Clearance, namely: -

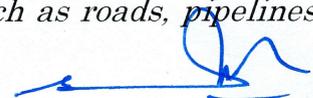
....

*6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.”*

8. It is respectfully submitted that, MoEF&CC vide OM, F.No. 3-70/2020-IA.III [141127] dated 08.08.2022 stated that,

*“4. The matter was referred to the concerned Expert Appraisal Committee (EAC) for deliberation. After due deliberation, the EAC was of the opinion that if such linear project has obtained EC based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process. However, if such sourcing of material is not considered in the EIA or such linear project does not attract provisions of EC, then such individual activities will be subject to extant environmental regulations as per EIA Notification 2006, as amended and/ or applicable environmental safeguard related directions issued by the State Government /SPCB which need to be observed while sourcing construction material.*

*5. Based on the recommendations of the EAC and keeping in view the direction of Hon'ble NGT, the matter has been examined by the Ministry in detail and it has been decided that the exemption from EC provided vide S.O. 1224 (E) dated 28.03.2020 for "extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines*



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*etc." shall be subject to Standard Operating Procedure (SOP) as enclosed to this Office Memorandum."*

9. It is respectfully submitted that, MoEF&CC vide OM, F.No. 3-70/2020-IA.III [141127] dated 21.08.2023 issued Standard Operating Procedure/ environmental safeguards for (i) Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. and (ii) dredging and de-silting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management.
10. It is respectfully submitted that; item 6 was substituted by further notification dated 30<sup>th</sup> August 2023 in the notification dated 28<sup>th</sup> March 2020:

*"6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time."*

11. It is respectfully submitted that, in the case of *Noble M. Paikada vs Union of India (CIVIL APPEAL NOS. 1628-1629 OF 2021)* the Hon'ble Supreme Court of India in its order dated 21.03.2024 stated that

*"32. Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28th March 2020 and item 6 of the amended impugned notification dated 30th August 2023. Accordingly, we quash item 6 in the two notifications above."*

12. Subsequently, this order was clarified by the Hon'ble Supreme Court of India vide clarificatory order dated 15/05/2024 in the same proceedings,



**Member Secretary**

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i.e., *Noble M. Paikada vs Union of India (CIVIL APPEAL NOS. 1628-1629 OF 2021)*, wherein it is stated that

*“For the time being, we clarify that the projects for which work orders were issued by the applicant-NHAI prior to 21st March, 2024 will remain unaffected by the judgment dated 21st March, 2024.”*

and

*“Needless to add that in those cases where work order has not been issued prior to 21st March, 2024., the applicant-NHAI will be bound by the decision of this Court dated 21st March, 2024.”*

13. It is respectfully submitted that, extracting of ordinary earth comes under the Activity of 1(a), Mining of Minerals under EIA Notification, 2006 as amended as follows:

|      | Project or Activity   | Category with threshold limit  |  | Conditions if any  |
|------|---|--|--|--|
|      |   | A  | B  |  |
| (1)  | (2)   | (3)  | (4)  | (5)  |
| 1    | <b>Mining, extraction of natural resources and power generation (for a specified production capacity)</b> |  |  |  |
| 1(a) | (i) Mining of minerals  | >250 ha mining lease area in respect of major mineral mining lease other than coal | All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of | <b>General Conditions shall apply except:</b><br><br>“General Conditions shall apply except for mining of minor minerals.” |



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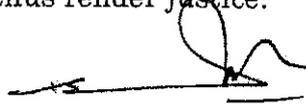
|  |   |  |  |   |
|--|---|--|--|---|
|  | <p>(ii) Slurry pipelines (coal, lignite and other ores) passing through national parks / sanctuaries / coral reefs, ecologically sensitive areas.</p> | <p>&gt; 500 ha of mining lease area in respect of coal mine lease</p> <p>Asbestos mining irrespective of mining area.</p> <p>All projects.</p> | <p>major mineral mining lease other than coal</p> <p>≤ 500 ha of mining lease area in respect of coal mine lease</p> | <p>Note: (1) Mineral prospecting is exempted;</p> <p>(2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI;</p> <p>(3) The evacuation or removal and transportation of already mined out material lying within the mining leases</p> <p>expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by</p> <p>the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to</p> <p>the successful bidder, selected</p> |
|--|---|--|--|---|

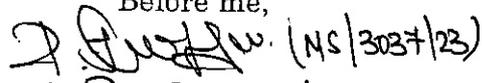
|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  | through auction as per the procedure provided under that Act and the rules made there under. |
|--|--|--|--|--|

14. It is respectfully submitted that, to grant concessions for minor minerals, execution of lease deeds with lessees, issue of permit to quarry the minerals and inspection of mines comes under the purview of Department of Geology and Mining / District Collector in accordance with Tamil Nadu Minor Mineral Concession Rules, 1959. In this case it is reported that illegal mining was carried out. It comes under the purview of the Department of Geology and Mining / District Collector. It is also submitted that, illegal mining does not come under the purview of SEIAA.

Therefore, humbly prayed that this Hon'ble Court may be pleased to record and pass orders as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of this case and thus render justice.

Solemnly affirmed at Chennai,  
on this the 27<sup>th</sup> day of June, 2024  
and signed their name in my  
presence.

  
**Member Secretary**  
STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY - TN  
Paragal Maligal, No.1, Jeannie Road,  
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Before me,  
 (NS/3037/23)  
2A, Royapuram, Ch-13  
Advocate, Chennai  
(R. KUMARESAN)

ENVIRONMENTAL  
CLEARANCE

**Government of India**  
**Ministry of Environment, Forest and Climate Change**  
**(Impact Assessment Division)**

To,

The PD  
National Highways Authority of India  
National Highways Authority of India, Sri Towers 3rd Floor, DP 34 SP  
Industrial Estate, Guindy, Chennai,,Chennai,Tamil Nadu-600032

**Subject:** Grant of Environmental Clearance (EC) to the proposed Project Activity under the provision of EIA Notification 2006-regarding

Sir/Madam,

This is in reference to your application for Environmental Clearance (EC) in respect of project submitted to the Ministry vide proposal number IA/AP/MIS/75727/2018 dated 22 Dec 2020. The particulars of the environmental clearance granted to the project are as below.

- |   |  |
|---|--|
| 1. <b>EC Identification No.</b>                   | <b>EC22A034AP110261</b>  |
| 2. <b>File No.</b>                                | 10-49/2018-IA.III  |
| 3. <b>Project Type</b>                            | New  |
| 4. <b>Category</b>                                | A  |
| 5. <b>Project/Activity including Schedule No.</b> | 7(f) Highways  |
| 6. <b>Name of Project</b>                         | Construction of 6-lane highway from Chittoor to Thatchur from Design Ch. 0+000 to Ch. 126+550 of newly declared National Highway NH-716B in the state of Andhra Pradesh and Tamil Nadu under Bharatmala Pariyojana |
| 7. <b>Name of Company/Organization</b>            | National Highways Authority of India   |
| 8. <b>Location of Project</b>                     | Andhra Pradesh   |
| 9. <b>TOR Date</b>                                | 09 Oct 2018  |

The project details along with terms and conditions are appended herewith from page no 2 onwards.

Date: 21/12/2022

(e-signed)  
**Amardeep Raju**  
Scientist E  
IA - (INFRA-1 sector)

*Note: A valid environmental clearance shall be one that has EC identification number & E-Sign generated from PARIVESH. Please quote identification number in all future correspondence.*

*This is a computer generated cover page.*



2. The above mentioned proposal was considered by the Expert Appraisal Committee (EAC) for Infrastructure, CRZ and other miscellaneous projects in its 251st meeting on 28th December, 2020.
3. This is a new greenfield alignment project. The Chittoor to Thachur Section (Newly declared NH 716) is proposed 6-lane highway having total length of 126.550 Km in the states Andhra Pradesh and Tamil Nadu. The Project start (Ch. 0+000) from junction of proposed Bangalore-Chennai expressway (Ch. 152+100) near Chittoor in Andhra Pradesh and ends at NH 5 near Thatchur in the proposed Chennai Peripheral Road project (Ch.126+550) in Thiruvallur district in Tamil Nadu. The proposed alignment is newly declared National Highway-716B. It passes through 2 districts namely Chittoor district in Andhra Pradesh and Thiruvallur district in Tamil Nadu. The proposed project is comprising of 4 number of major bridges, 19 number of minor bridges, 2 number of ROB's, 65 number of Vehicular Underpasses, and 8 number of Interchanges. All safety measures will be considered as per NHA Safety Manual and IRC: SP 88. The proposed Right of Way (ROW) requirement is 70 meter throughout the corridor.
4. The proposed proposal fall under 7(f), Category A as per EIC notification 2006. The overall cost of the project is Rs. 3,840.00 Crore. Total Environmental Budget considered is Rs. 46.5 Crores. Term of Reference (ToR) was issued vide letter No.10-49/2018/IA.III dated 9<sup>th</sup> October 2018. Public hearing was conducted at Thiruvallur and Chittoor district on 5<sup>th</sup> July, 2019 and 30<sup>th</sup> August 2019, respectively.
5. Total land acquisition for the proposed project alignment is approx. 849.782 Ha (including AP Section: 541.050 Ha + TN Section: 308.822 Ha). Resettlement & rehabilitation (R&R) Plan and Social Impact Assessment (SIA) has been prepared for the said project. Total No. of Project Affected households (HHs) Losing Privately owned structures are 192. Project Affected Persons (PAPs) are 768 (No. of PAPs was calculated as per the avg. HH size of the District). The impacted persons are calculated based on affected persons and structures. Apart from this there are seven community properties. Also, there are 329 minor assets like hand pump, bore well pump house etc. Approximately a total number of 45 kiosks and local mobile vendors are affected. Land acquisition (LA) and R&R Budget was prepared based on Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR) and National Highways Act 1956.
6. Altogether, about 3,642 numbers of trees falls within the Corridor of Impact (CoI). However, trees with less than 30 cm girth size have been categorized as poles. The total number of poles is 16,042. The total number of trees and poles is 19,684. There are about 830 trees in forest section of the Road. Efforts will be made to minimize trees loss by restricting tree cutting within formation width. Avenue plantation shall be carried out as per IRC SP: 21:2009 on available ROW apart from statutory requirements.
7. Total 2,504,101 cum of fly ash are proposed to be used for the construction of embankment subject to the availability of the same, from Ennore Thermal Power Station, North Chennai.
8. Total water requirement for construction is estimated approx. 36.5 lacs KL for 2 years that will be sourced from purchasing Tankers. However, the ground water will be extracted for bare minimum requirement after obtaining the permission of appropriate authorities. Provision of rainwater recharge pits at every 500 m interval (staggered) is supposed; subject to the first aquifer below 10m. DG sets will be used as a source of energy.

9. The proposed project requires diversion of 18.569 Ha of forest land. The IRO, MoEFCC vide its letter No 4-APB182/2022-VIJ/579 dated 26<sup>th</sup> September, 2022 accorded diversion of 4.54 Ha of forest land in compartment No 297, Pulikundaram RF/Pulikundram Beat, Puttur range of Chittoor East Division, Andhra Pradesh. The IRO, MoEFCC vide its letter No. 4-TNC099/2022-CHN/1382 dated 21<sup>st</sup> December, 2022 has granted diversion of 14.029 Ha of forest land in Tiruvallur forest division, Tamil Nadu.

10. The project will give significant economic benefits to the State. Development of highway will lead to better connectivity and will play a significant role in reducing the pollution due to traffic congestion in city area as well as it will help in changing the socio-economic condition of the people living in the region. Installation of proper road safety system through signage, barricades, crash barriers, noise barrier etc. on project road will further enhance the road safety and minimize human-animal conflicts. The project will also generate direct and indirect employment to the local people of the State. The indirect benefits include savings in vehicle operating costs, less fuel consumption and decreased cost and time of passenger travel. About 2000 Workers will be employed for three years during the construction Phase and 200 Workers will be employed during the Operation Phase.

11. Details of Court cases: No court cases are pending against the proposed project.

12. The project proponent along with the EIA consultant M/s ....., made a presentation through Video Conferencing during 251<sup>st</sup> meeting held on 28<sup>th</sup> December, 2020. The EAC based on the information submitted and clarifications provided by the project proponent and detailed discussions held on all the issues, recommended the project for grant of environmental clearance with stipulated specific conditions along with other Standard EC Conditions.

13. The Ministry of Environment, Forest and Climate Change has considered the proposal based on the recommendations of the Expert Appraisal Committee (Infrastructure, CRZ and other Miscellaneous projects) and hereby decided to grant Environmental Clearance for the “**Construction of 6-lane highway from Chittoor to Thatchur NH-716B (Km0.000 to 126.550) from District Chittoor, Andhra Pradesh to Thatchur, District Tiruvallur, Tamil Nadu**” under the EIA Notification, 2006 as amended, subject to strict compliance of the following specific conditions, in addition to all standard conditions applicable for such projects.

#### A. SPECIFIC CONDITIONS

- (i) Proponent shall keep the finish road level sufficiently elevated from ground level with provision of railing on both sides to restrict animal crossing in order to avoid the possibility of wildlife injury/death. Sufficient animal passes shall be provided by NHAI at regular interval as suggested in the Mitigation Plan and the Wildlife Conservation Plan prepared and approved by Chief Wildlife Warden as per recent guidelines of Wildlife Institute of India for linear infrastructure projects.
- (ii) Prepare the traffic prediction report for complete project (including all packages of this project) considering the cumulative impact of the traffic on the environment and submit to the Ministry and concerned Regional Office within 3 months.
- (iii) The recommendations of Cumulative Impact Assessment studies and proposed mitigation measures for all the packages shall be implemented in toto and be submitted to the concerned Regional Office of the MoEF&CC along with half yearly compliance report.

- (iv) All the major, minor bridges and culverts should not affect the drainage systems. Flood plains of the rivers/ drainage systems are not to be disturbed.
- (v) No Ground water shall be extracted and used during the construction and post-construction phases. Approval/permission of concerned authority shall be obtained before drawing surface water from canal or any other sources.
- (vi) The proponent shall obtain permission from the competent authorities for tree felling along the proposed alignment.
- (vii) Quarry areas shall be developed as water reservoirs with proper fencing around quarry area. Rain water harvesting pit shall be at least 3 - 5 m above the highest ground water table.
- (viii) The RoW shall not exceed 70 m at any point of the proposed alignment, except for the junction improvement at the intersections of the other roads. Standardisation of ROW for plain land, undulating land, hilly and mountain terrain and forest land to be defined and to be remain constant for all the packages.
- (ix) As per the Ministry's Office Memorandum F. No. 22-65/2017-IA.III dated 30<sup>th</sup> September, 2020, the project proponent shall abide by all the commitments made by them to address the concerns raised during the public consultation. The project proponent shall initiate the activities proposed by them, based on the commitment made in the public hearing, and incorporate in the Environmental Management Plan and submit to the Ministry. All other activities including pollution control, environmental protection and conservation, R&R, wildlife and forest conservation/protection measures including the NPV, Compensatory afforestation etc., either proposed by the project proponent based on the social impact assessment and R&R action plan carried out during the preparation of EIA report or prescribed by EAC, shall also be implemented and become part of EMP.

#### **B. STANDARD CONDITIONS:**

- i. Responsibility for implementation of EC conditions rests with the project proponent only.
- ii. Cut and fill works shall be carried out strictly in accordance with the design drawings proposed at the time of appraisal of the project.
- iii. The project proponent shall obtain necessary permission from the owning agencies of water bodies/temple/tanks etc., as applicable, before execution of works.
- iv. The project proponent shall obtain necessary permission from the concerned State(s) Irrigation Department(s) before drawing water from the river sources for the purpose of the proposed construction activity.
- v. Blasting shall be carried out during fixed hours (preferably during mid-day) or as permitted by the concerned authority. The timing shall be made known to all the people within 1000 m (200 m for pre-splitting) from the blasting site in all directions.
- vi. The fly ash shall be used for the proposed project to comply with the Fly Ash Notification, 1999, as amended.
- vii. Rehabilitation of project affected families (PAFs) and payment of compensation to PAFs shall be carried out as per the extant policy of the Central/State Government,

as provided under the law. All the Indian Road Congress (IRC) guidelines wherever applicable may be followed.

- viii. All entry/exit/access points on this highway shall be appropriately designed and preferably frozen to avoid traffic congestion and pollution.
- ix. Rain water harvesting including oil and grease trap shall be provided as prescribed by CGWB guidelines. Water harvesting structures shall be located at every 500m along the road. Vertical drain type rainwater harvesting structures shall be set up to minimize surface runoff losses of rainwater.
- x. All the recommendations of the EMP shall be complied in both letter and spirit. All the mitigation measures submitted in the EIA report shall be prepared in a matrix format and the compliance for each mitigation plan shall be submitted to MoEF&CC.
- xi. Sidewalk shall be provided along the bridges.
- xii. The seismic nature of the area shall be taken into account while designing the project.
- xiii. IRC guidelines shall be followed for widening & up-gradation of road.
- xiv. The drain shall be at least 1m away from the toe of the embankment of the road adopting IRC guidelines. Longitudinal drains shall be provided all along the project road to ensure proper drainage of the area. In addition, adequate number of under passes and culverts to act as cross drainage structures shall also be provided.
- xv. The solid waste generated shall be used for rehabilitating the borrow areas.
- xvi. For providing safety to the crossing animals and avoid road accidents speed breakers/rumbled strips shall be constructed at the identified locations of the animal movements. Enough hoardings and signages shall also be put up for the public and vehicles convenience.
- xvii. Necessary clearance/approval shall be obtained for extraction of sand from the rivers.
- xviii. The embankments/slopes and the slopes left after cutting shall be provided with vegetative growth to avoid soil erosion.
- xix. The hot mix plant shall be located at least 500m away from habitation and on the barren land to avoid its adverse impact on the human population.
- xx. For road safety, IRC guidelines in respect of road signages, service roads, bus bays, inter-sections, pedestrian crossings, etc. shall be strictly adhered to.
- xxi. The responses/commitments made to the issues raised during public hearing shall be complied in both letter and spirit. A hard copy of the action taken shall be submitted to the MoEF&CC and also to its concerned Regional Office.
- xxii. Beside fulfilling obligations under Corporate Social Responsibilities as per Company's Act, 2013, the proponent has to adhere to the followings Environment Responsibilities:
  - (a) The Company shall have a well laid down Environment Policy approved by the Board of Directors.
  - (b) The Environment Policy shall prescribe for standard operating process/procedures to bring into focus any infringements/ deviation/violation of the environmental or forest norms/ conditions.

- (c) The hierarchical system or Administrative Order of the company to deal with environmental issues and for ensuring compliance with the environmental clearance conditions shall be furnished.
  - (d) To have proper checks and balances, the company shall have a well laid down system of reporting of non-compliances/ violations of environmental norms to the Board of Directors of the company and/or shareholders or stakeholders at large.
- xxiii. Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality.
- xxiv. Borrow sites for each quarry sites for road construction material and dump sites must be identified keeping in view the following:
- (a) No excavation or dumping on private property is carried out without written consent of the owner.
  - (b) No excavation or dumping shall be allowed on wetlands, forest areas or other ecologically valuable or sensitive locations.
  - (c) Excavation work shall be done in close consultation with the Soil Conservation and Watershed Development Agencies working in the area, and
  - (d) Construction spoils including bituminous material and other hazardous materials must not be allowed to contaminate water courses and the dump sites for such materials must be secured so that they shall not leach into the ground water.
- xxv. As per MoEF&CC's circular no. J-11013/41/2006-IA.II (I) dated 22.09.2008, provision shall be made for supply of kerosene or cooking gas and pressure cooker to the labourers, mobile toilets, mobile STP, safe drinking water, medical health care, Crèche and temporary structures for living during construction phase.
- xxvi. Adequate precautions shall be taken during transportation of the construction material so that it does not affect the environment adversely.
- xxvii. Borrow pits and other scars created during the road construction shall be properly levelled and treated.
- xxviii. The project proponent will set up separate environmental management cell for effective implementation of the stipulated environmental safeguards under the supervision of a Senior Executive.
- xxix. Full support shall be extended to the officers of this MoEF&CC and its Regional Office by the project proponent during inspection of the project for monitoring purposes by furnishing full details and action plan including action taken reports in respect of mitigation measures and other environmental protection activities.
- xxx. MoEF&CC or any other competent authority may stipulate any additional conditions or modify the existing ones, if necessary, in the interest of environment and the same shall be complied with.
- xxxi. In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the MoEF&CC.
- xxxii. The project proponents shall inform the Regional Office concerned as well as the MoEF&CC, the date of financial closure and final approval of the project by the concerned authorities and the date of start of land development work.

xxxiii. The funds earmarked for environmental protection measures shall be kept in separate account and shall not be diverted for other purpose. Year-wise expenditure shall be reported to MoEF&CC and its concerned Regional Office.

14. In addition to above mentioned conditions following general guidelines are to be adhered:

- i. The above stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and control of Pollution) act 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991, EIA Notification, 2006 and its subsequent amendments. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department, the Forest Conservation Act, 1980 and the Wildlife (Protection) Act, 1972 etc. shall be obtained, as applicable by project proponents from the respective competent authorities.
- ii. The project proponent shall advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded Environmental Clearance and copies of clearance letters are available with the State Pollution Control Board and may also be seen on the website of the Ministry of Environment, Forest and Climate Change at <http://www.envfor.nic.in>. The advertisement shall be made within Seven days from the date of receipt of the Clearance letter and a copy of the same shall be forwarded to the concerned Regional office of the MOEF&CC.
- iii. A copy of the clearance letter shall be sent by the proponent to concerned Panchayat, Zila Parishad/Municipal Corporation, Urban Local Body and the Local NGO, if any, from whom suggestions/ representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the company by the proponent.
- iv. A copy of the environmental clearance letter shall also be displayed on the website of the concerned State Pollution Control Board. The EC letter shall also be displayed at the Regional Office, District Industries centre and Collector's Office/Tehsildar's office for 30 days.
- v. The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of the Ministry, the respective Zonal Offices of CPCB and the SPCB.
- vi. The project proponent shall also submit six monthly report on the status of the compliance of stipulated EC Conditions including results of monitored data (both in hard copies as well as by email) to the concerned Regional Offices of MoEF&CC/CPCB/SPCB.
- vii. The environmental statement for each financial year ending 31<sup>st</sup> March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of the Ministry/CPCB/SPCB by e-mail.

15. Any appeal against this clearance shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

16. The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.

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



**(Amardeep Raju)**  
Scientist-E

Copy to:

1. The Principal Secretary, Department of Forests & Environment and Chairman, Govt. of Andhra Pradesh, A.P. Secretariat, Velagapudi, Amaravathi, A.P.
2. The Chairman, Central Pollution Control Board, Parivesh Bhawan, CBD-cum-Office Complex, East Arjun Nagar, Delhi – 32
3. The Member Secretary, AP Pollution Control Board, Chalamalavari Street, Kasturibaipet, Vijayawada – 520 010.
4. The APCCF (C), Tulja Guda Complex, building, M.J. Market, Hyderabad, (Andhra Pradesh) – 500001
5. The Member Secretary, Tamil Nadu Pollution Control Board, No. 76, Mount Salai, Guindy, Chennai - 32
6. The APCCF (C), MoEF& CC, RO Regional Office (SEZ), Ist and IInd Floor, Handloom Export Promotion Council, 34, Cathedral Garden Road, Nungambakkam, Chennai - 34
7. Monitoring Cell, MoEF&CC, Indira Paryavaran Bhavan, New Delhi.
8. Guard File/Record File
9. Notice Board.



**(Amardeep Raju)**  
Scientist-E

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

New Delhi, the 28th March, 2020

**S.O. 1224(E).**—WHEREAS, *vide* the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10<sup>th</sup> day of January, 2020 and, *inter alia*, new section 8B relating to the provisions for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14<sup>th</sup> September, 2006 (hereinafter referred to as the EIA Notification, 2006);

AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;

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 the rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29<sup>th</sup> November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-

In the said notification,-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”;

(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-

“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;

(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-

## “APPENDIX-IX

## EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.
6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.
7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.
9. Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.
10. Digging of wells for irrigation or drinking water purpose.
11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.
12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.
13. Activities declared by the State Government under legislations or rules as non-mining activity.”

[F. No. Z-11013/47/2018-IA.II (M)]

GEETA MENON, Jt. Secy.

**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 14<sup>th</sup> September, 2006 and subsequently amended *vide* the following numbers:-

1. S.O. 1949 (E), dated the 13<sup>th</sup> November, 2006;
2. S.O. 1737 (E), dated the 11<sup>th</sup> October, 2007;
3. S.O. 3067 (E), dated the 1<sup>st</sup> December, 2009;
4. S.O. 695 (E), dated the 4<sup>th</sup> April, 2011;
5. S.O. 156 (E), dated the 25<sup>th</sup> January, 2012;
6. S.O. 2896 (E), dated the 13<sup>th</sup> December, 2012;
7. S.O. 674 (E), dated the 13<sup>th</sup> March, 2013;
8. S.O. 2204 (E), dated the 19<sup>th</sup> July, 2013;
9. S.O. 2555 (E), dated the 21<sup>st</sup> August, 2013;
10. S.O. 2559 (E), dated the 22<sup>nd</sup> August, 2013;
11. S.O. 2731 (E), dated the 9<sup>th</sup> September, 2013;
12. S.O. 562 (E), dated the 26<sup>th</sup> February, 2014;
13. S.O. 637 (E), dated the 28<sup>th</sup> February, 2014;

14. S.O. 1599 (E), dated the 25<sup>th</sup> June, 2014;
15. S.O. 2601 (E), dated the 7<sup>th</sup> October, 2014;
16. S.O. 2600 (E), dated the 9<sup>th</sup> October, 2014;
17. S.O. 3252 (E), dated the 22<sup>nd</sup> December, 2014;
18. S.O. 382 (E), dated the 3<sup>rd</sup> February, 2015;
19. S.O. 811 (E), dated the 23<sup>rd</sup> March, 2015;
20. S.O. 996 (E), dated the 10<sup>th</sup> April, 2015;
21. S.O. 1142 (E), dated the 17<sup>th</sup> April, 2015;
22. S.O. 1141 (E), dated the 29<sup>th</sup> April, 2015;
23. S.O. 1834 (E), dated the 6<sup>th</sup> July, 2015;
24. S.O. 2571 (E), dated the 31<sup>st</sup> August, 2015;
25. S.O. 2572 (E), dated the 14<sup>th</sup> September, 2015;
26. S.O. 141 (E), dated the 15<sup>th</sup> January, 2016;
27. S.O. 648 (E), dated the 3<sup>rd</sup> March, 2016;
28. S.O. 2269(E), dated the 1<sup>st</sup> July, 2016;
29. S.O. 2944(E), dated the 14<sup>th</sup> September, 2016;
30. S.O. 3518 (E), dated 23<sup>rd</sup> November 2016;
31. S.O. 3999 (E), dated the 9<sup>th</sup> December, 2016;
32. S.O. 4241(E), dated the 30<sup>th</sup> December, 2016;
33. S.O. 3611(E), dated the 25<sup>th</sup> July, 2018;
34. S.O. 3977 (E), dated the 14<sup>th</sup> August, 2018;
35. S.O. 5733 (E), dated the 14<sup>th</sup> November, 2018;
36. S.O. 5736 (E), dated the 15<sup>th</sup> November, 2018;
37. S.O. 5845(E), dated the 26<sup>th</sup> November, 2018;
38. S.O. 345(E), dated the 17<sup>th</sup> January, 2019;
39. S.O. 1960(E), dated the 13<sup>th</sup> June, 2019;
40. S.O. 236(E), dated the 16<sup>th</sup> January, 2020;
41. S.O. 751(E), dated the 17<sup>th</sup> February, 2020; and
42. S.O. 1223(E), dated the 27<sup>th</sup> March, 2020.

F. No. 3-70/2020-IA.III [141127]  
 Government of India  
 Ministry of Environment, Forest and Climate Change  
 (IA Division)

Indira Paryavaran Bhawan  
 Jor Bagh Road, Aliganj,  
 New Delhi - 110003

Dated: 8<sup>th</sup> August, 2022

OFFICE MEMORANDUM

**Subject: Clarification on the applicability of EIA Notification 2006 for excavation of Ordinary Earth from borrow area for linear projects - reg.**

The Ministry, vide Notification S.O. 1224 (E) dated 28.03.2020, amended the appendix IX of EIA Notification to inter-alia provide exemption from Environmental Clearance (EC) for "*extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc.*"

2. Subsequently, the above mentioned Notification was challenged before the National Green Tribunal, Principal Bench in Original Application No. 190/2020 in the matter of Noble M. Paikada Vs. Union of India & Ors., wherein the Hon'ble Tribunal while disposing of the application vide order dated 28/10/2020, *inter-alia* held that "*.....the exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum...*" and directed to revisit the impugned notification dated 28.03.2020.

3. Subsequently vide order dated 31/05/2022, the Hon'ble NGT in M.A. No. 07/2022(WZ) & M.A. No. 08/2022(WZ) in Original Application No. 68/2020(WZ) titled Shri Rajiv Babasaheb Waman & Ors. vs. Ministry of Environment, Forest & Climate Change & Ors inter-alia held that "*... that excavation of earth and mining of sand and other minor minerals being hazardous activity having serious adverse impact on environment in view of 'Precautionary' and 'Sustainable Development' principles, such activity cannot be left unregulated by statutory enforceable mechanism. Blanket exemption is against ecologically sustainable development norms and judgment of Hon'ble Supreme Court...*"

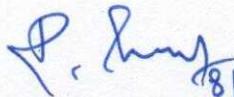
4. The matter was referred to the concerned Expert Appraisal Committee (EAC) for deliberation. After due deliberation, the EAC was of the opinion that if such linear project has obtained EC based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process. However, if such sourcing of material is not considered in the EIA or such linear project does not attract provisions of EC, then

such individual activities will be subject to extant environmental regulations as per EIA Notification 2006, as amended and/or applicable environmental safeguard related directions issued by the State Government /SPCB which need to be observed while sourcing construction material.

5. Based on the recommendations of the EAC and keeping in view the direction of Hon'ble NGT, the matter has been examined by the Ministry in detail and it has been decided that the exemption from EC provided vide S.O. 1224 (E) dated 28.03.2020 for "extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc." shall be subject to Standard Operating Procedure (SOP) as enclosed to this Office Memorandum.

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

Encl: as above.

  
8/8/22  
(Sundar Ramanathan)  
Scientist 'E'

To

1. Chairman and Member Secretaries of SEIAA/ SEACs.
2. Chairman, Central Pollution Control Board (CPCB).
3. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
4. All the Officers of I.A. Division

**Copy for information to:**

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to DGF&SS (EF&CC)
5. PPS to AS(TK)/PPS to JS (SKB)
6. Website, MoEF&CC/Guard file

ANNEXURESOP for Borrow Area Identification; its operation, safety and redevelopment

The activity relates to identification of borrow areas to obtain earth/soil materials; its operation, safety and redevelopment shall be carried out as per the following criteria:

1. Selection of site, operation and site-specific measures to adopt

- i. Environmental issues like siting borrow pit location, soil erosion aspects, accumulation of run-off and associated problems, disposal of debris by local community in open borrow area, transport of borrow earth to construction site, preservation of top soil of 15m depth and reuse for plantation, reinstatement of borrow pits and sites shall be considered before selection of site.
- ii. Guidelines, Manuals, Notifications etc issued by various agencies from time to time like IRC, MoRTH, MoEFCC etc shall be followed.
- iii. For selection of the site for the borrow area, agricultural land, cut material available from other road construction projects, dredging material from dredging operations of ponds, lakes, rivers and canals, material from barren land or land without tree cover outside the road RoW, material from excavation of proposed culverts can be considered. Provided further that, highly productive top-soil shall be stored separately and used for planation activity.
- iv. Borrowing shall be avoided on the lands close to toe line, irrigated agricultural lands, grazing land, lands within settlements, 1 Km from environmentally sensitive areas such as Reserve Forests, Protected Forests, Sanctuary, National Parks, Conservation Reserve, Wetlands etc, unstable and fragile side-hills, streams and seepage areas, areas supporting rare plants/ animal species. It should be ensured that unsuitable soft rock is not prominent within the proposed depth of excavation which will render rehabilitation difficult.

2. The General Guidelines

- i. The preservation of topsoil will be carried out in stockpile.
- ii. A 15 cm topsoil will be stripped off from the borrow pit and this will be stored in stockpiles in a designated area for height not exceeding 2m and side slopes not steeper than 1:2 (Vertical: Horizontal).
- iii. Preservation of Top Soil of 15cm depth and its reuse for plantation
- iv. Validation of the work of re-use of Top Soil by the AE/IE. Competent authority to check the re-use anytime if warranted.
- v. Borrowing of earth will be carried out up to a depth of 2m from the existing ground level.
- vi. Borrowing of earth will not be done continuously throughout the stretch.
- vii. Ridges of not less than 8m widths will be left at intervals not exceeding 300m.
- viii. Small drains will be cut through the ridges, if necessary, to facilitate drainage.
- ix. Depends upon the location of borrow areas, the safeguard measures & management specific treatment as a particular borrow area depending upon its

location viz Agriculture Land, Elevated Land, Waterbody, near Settlement and along the alignment.

### 3. Re-development of Borrow Areas

The objective of the rehabilitation programme is to return the borrow pit sites to a safe and secure area, which the general public should be able to use safely. Securing borrow pits in a stable condition is fundamental requirement of the rehabilitation process. This could be achieved by filling the borrow pit approximately to the road level. Following measures shall be taken for Rehabilitation:

- i. Borrow pits shall be backfilled with rejected construction wastes (unserviceable materials) including fly ash, compacted and will be given a turving or vegetative cover on the surface. If this is not possible, then excavation slope should be smoothed, and depression is filled in such a way that it looks more or less like the original ground surface.
- ii. During works execution, the Contractor shall ensure preservation of trees during piling of materials; spreading of stripping material to facilitate water percolation and allow natural vegetation growth; re-establishment of previous natural drainage flows; improvement of site appearance; digging of ditches to collect runoff; and plantation may be carried out wherever feasible or pit may be developed for water storage as per Amrit Sarovar Scheme of MoRTH.

### 4. Development of Amrit Sarovar

Under Amrit Sarovar Programme, water bodies are being developed by MoRT&H/NHAI/other road development agencies and the desilting of existing water body is also being taken up for water harvesting and re-charge of ground water. The earth available from development of such water bodies is to be utilised for road works and plantations as per suitability of soil. The State Authorities have already been advised not to levy any royalty for borrowing of earth for development of water bodies under Amrit Sarovar Programme.

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F. No. 3-70/2020-IA.III [141127]  
Government of India  
Ministry of Environment, Forest and Climate Change  
(IA Division)

Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj,  
New Delhi - 110003

Dated: 21<sup>st</sup> August, 2023

**OFFICE MEMORANDUM**

**Subject: Monitoring and enforcement mechanism for the Standard Operating Procedure (SoP)/environmental safeguards issued for (i) Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. and (ii) dredging and de-silting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management - reg.**

The Ministry vide Notification S.O. 1224 (E) dated 28/03/2020 had *inter-alia* provided exemption from prior Environmental Clearance for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc., and dredging and de-silting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management.

2. Subsequently, in pursuance to the order dated 28/10/2020 of Hon'ble National Green Tribunal, Principal Bench in Original Application No. 190/2020 in the matter of Noble M. Paikada Vs. Union of India & Ors, the MoEF&CC issued Office Memoranda of even number dated 8/8/2022 and 12/07/2023 respectively regarding the Standard Operating Procedure (SoP)/environmental safeguards to be followed for the entries 6 and 7, as mentioned below, under the Appendix IX of the EIA Notification, 2006 which have been exempted from the requirement of obtaining environment clearance vide Notification dated 28/03/2020 :

6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.*

3. The Ministry deems it necessary to ensure that aforementioned SoP/environmental safeguards are implemented in letter and spirit at the field level, for which a monitoring and enforcement mechanism needs to be put in place.

4. In this regard, it is enjoined upon all the Project Proponents availing of the aforesaid provisions and carrying out activities related to entries 6 and 7 of Appendix IX of the EIA Notification, 2006 to inform the concerned State Pollution Control Board (SPCBs) / Pollution Control Committees (PCCs) at least a fortnight before start of such activities in writing giving details of such activities and the environment safeguards being observed by them as laid out in the applicable SOP referred to in the para number 2 above.

5. All the State Pollution Control Board (SPCBs) / Pollution Control Committees (PCCs) shall independently monitor the compliance status of the aforementioned SoP/environmental safeguards as the case may be. All the State Pollution Control Board (SPCBs) / Pollution Control Committees (PCCs) shall also monitor the aforementioned SoP/environmental safeguards while monitoring the compliances of the CTE (Consent to Establish) and CTO (Consent to Operate) conditions. Further, the SPCBs/PCCs shall initiate legal action against the project proponent under the relevant provisions of Environment (Protection) Act, 1986 for the projects not complying with the aforesaid SoP/environmental safeguards, as may be applicable.

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

  
(Sundar Ramanathan)  
Scientist 'E'

To

1. Chairman, Central Pollution Control Board (CPCB)
2. Chairman and Member Secretaries of SEIAA/ SEACs
3. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
4. All the Officers of I.A. Division

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6. Website, MoEF&CC/Guard file



# भारत का राजपत्र

## The Gazette of India

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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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NEW DELHI, THURSDAY, AUGUST 31, 2023/BHADRA 9, 1945

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 30 अगस्त, 2023

का.आ. 3840(अ).—केंद्रीय सरकार द्वारा पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा (3) की उपधारा (1) और उपधारा (2) के खंड (v) के अधीन तत्कालीन पर्यावरण एवं वन मंत्रालय में परियोजनाओं के कतिपय प्रवर्गों के लिए पूर्व पर्यावरणीय मंजूरी को आज्ञापक बनाने के लिए संख्यांक 1533 (अ), तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात ईआईए अधिसूचना कहा गया) द्वारा एक अधिसूचना जारी की गई;

और, केंद्रीय सरकार ने, अन्य बातों के साथ, कतिपय परियोजनाओं के संबंध में पूर्व पर्यावरण मंजूरी की अपेक्षित कतिपय क्रियाकलापों में छूट देने के लिए अधिसूचना संख्या 1224(अ), तारीख 28 मार्च, 2020, द्वारा ईआईए अधिसूचना में परिशिष्ट-IX में संशोधन किया;

और, राष्ट्रीय हरित अधिकरण, नई दिल्ली की प्रधान न्यायपीठ ने नोबल एम पाइकाडा बनाम भारत संघ और अन्य के मामले में 2020 के मूल आवेदन संख्या 190 में अपने तारीख 28 अक्टूबर, 2020 के आदेश द्वारा उक्त अधिसूचना पर पुनः विचार करने के निर्देश पारित किया;

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 नियम के नियम 5 के उप-नियम (3) के खंड (क) के अधीन नोटिस की अपेक्षा को समाप्त करने के पश्चात, सार्वजनिक हित में, भारत सरकार की अधिसूचना संख्या का. आ.1533(अ), तारीख 14 सितम्बर, 2006 में निम्नलिखित संशोधन करती है: अर्थात्:-

उक्त अधिसूचना में, परिशिष्ट-IX में, क्रम संख्या 6 और 7 और उससे संबंधित प्रविष्टियों के स्थान पर, निम्नलिखित क्रम संख्या और प्रविष्टियाँ रखी जाएंगी, अर्थात्:-

"6. सड़क, पाइपलाइन आदि जैसी रैखिक परियोजनाओं के लिए साधारण मिट्टी की निकासी, या सोर्सिंग या प्रयोग करना इस संबंध में समय-समय पर जारी मानक संचालन प्रक्रियाओं और पर्यावरणीय सुरक्षा उपायों के अनुपालन के अधीन होगा।

7. बांधों, तालाबों, मेड़ों, बैराजों, नदी और नहरों के अनुरक्षित और आपदा प्रबंधन के प्रयोजन के लिए तलमार्जन और गाद निकालना इस संबंध में समय-समय पर जारी मानक संचालन प्रक्रियाओं और पर्यावरणीय सुरक्षा उपायों के अनुपालन के अधीन होगा।

[फा.सं. 3-70/2020-आईए.III]

डॉ. सुजीत कुमार बाजपेयी, संयुक्त सचिव,

**टिप्पण:** मूल अधिसूचना भारत के राजपत्र, असाधारण भाग- 2, खंड 3, उप-खंड (ii) संख्या का. आ.1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित की गई और अधिसूचना क्रमांक का. आ. 2226(अ), तारीख 18 मई, 2023 द्वारा अंतिम बार संशोधित किया गया।

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

### NOTIFICATION

New Delhi, the 30th August, 2023

**S.O. 3840(E).**—WHEREAS, the Central Government in the erstwhile Ministry of Environment and Forests, under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 issued a notification vide number S.O.1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification) for mandating prior environmental clearance for certain categories of projects;

AND WHEREAS, the Central Government, *inter alia*, amended Appendix-IX to the EIA Notification vide notification number S.O. 1224(E), dated the 28th March, 2020, to exempt certain activities from the requirement of prior environmental clearance in respect of certain projects;

AND WHEREAS, the National Green Tribunal, Principal Bench at New Delhi vide its order dated the 28<sup>th</sup> October, 2020 in Original Application No. 190 of 2020 in the matter of Noble M Paikada vs. Union of India & Ors. passed the directions for revisiting the said notification;

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 following further amendments in the notification of the Government of India number S.O 1533( E), dated the 14<sup>th</sup> September, 2006, namely:-

In the said notification, in Appendix-IX, for serial numbers 6 and 7 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

*"6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.*

*7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time."*

[F. No. 3-70/2020-IA.III]

DR. SUJIT KUMAR BAJPAYEE, Jt. Secy.

**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 last amended vide the notification number S.O. 2226(E), dated the 18th May, 2023.



Reportable

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 1628-1629 OF 2021**

**Noble M. Paikada**

**... Appellant**

*versus*

**Union of India**

**... Respondent**

**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL ASPECTS**

**1.** These appeals take exception to the judgment and order dated 28<sup>th</sup> October 2020 (for short, ‘the impugned judgment’) passed by the National Green Tribunal, Principal Bench, New Delhi (for short, ‘the NGT’). There is also a challenge to the order dated 24<sup>th</sup> December 2020, by which, the NGT rejected the review petition filed by the appellant for seeking review of the impugned judgment.

**2.** A notification was issued on 14<sup>th</sup> September 2006 (for short, ‘the first EC notification’) by the Ministry of Environment and Forests (for short, ‘MoEF’) in exercise of powers under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short, ‘the EP Act’) read with clause (d) of sub-rule (3) of Rule 5 of the Environment

(Protection) Rules, 1986 (for short, 'the EP Rules'). Clause 2 of the first EC notification is material, which reads thus:

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

(i) All new projects or activities listed in the Schedule to this notification;

ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

3. The notification provided that the projects falling under categories A and B set out in the Schedule to the notification will require prior Environmental Clearance (EC) from the concerned Regulatory Authority. The Regulatory Authorities for different projects have been named in clause (2) of the first EC notification. For the A category, the Central Government in the MoEF was named as the Regulatory Authority. For projects in the B category, the State Environment Impact Assessment Authority (for short, 'SEIAA') was named as the Regulatory Authority. Various procedural aspects regarding applying for a grant of EC, its processing, etc., have been incorporated in the first EC notification. There were subsequent modifications to the first EC notification. Another notification was issued on 15<sup>th</sup> January 2016 (for short, 'the second EC notification'), by which the first EC notification was partly modified. Clause 7B and Appendix-IX were added to the first EC notification, providing for an exemption to specific categories of projects from the requirement of obtaining EC. Item 6 in the said Appendix-IX reads thus:

**“Appendix-IX**

**Exemption of certain cases from requirement of Environmental Clearance**

The following cases shall not require prior environmental clearance, namely:

.....  
.....

- 6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their

maintenance, upkeep and disaster management.

.....”

Though the NGT struck down a part of the second EC notification, Appendix-IX was not touched.

4. In the Original Application subject matter of these appeals, the challenge before the NGT was to the notification dated 28<sup>th</sup> March 2020 (for short, ‘the impugned notification’), which modified earlier EC notifications. Appendix IX to the second EC notification provided for exempting certain cases from the requirement of obtaining EC. By the impugned notification, Appendix-IX was substituted. The substituted Appendix-IX provided that the prior EC will not be required in the thirteen cases set out therein. We are concerned with items 6 and 7 of the substituted Appendix-IX, which read thus:

**“Appendix-IX**

**Exemption of certain cases from requirement of Environmental Clearance:** The following cases shall not require Prior Environmental Clearance, namely:-

.....  
.....

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

.....”

Thus, item 6 in Appendix IX of the second EC notification was maintained but was renumbered as item 7. Item 6 was newly added.

5. Before we go into the challenge to the impugned notification, we must note here that items 6 and 7 were substituted by further notification dated 30<sup>th</sup> August 2023 (for short, ‘amended impugned notification’) issued during the pendency of these appeals. Substituted items 6 and 7 in the amended impugned notification read thus:

“6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.”

6. The impugned notification was challenged on several grounds before the NGT by filing the Original Application subject matter of these appeals. Apart from other grounds, it was contended that the impugned notification violated the directions issued by this Court in the case of **Deepak Kumar**

**& Ors. v. State of Haryana & Ors**<sup>1</sup>. Even the ground that the impugned notification was arbitrary and violative of Article 14 of the Constitution of India was invoked. We must note that in the Original Application, the specific challenge was only to item 6 of the impugned notification.

7. By the impugned judgment, it was held that the exemption under item 6 should strike a balance. The finding recorded on this aspect in paragraph 8 of the impugned judgment reads thus:

“8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and desilting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. **It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any**

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<sup>1</sup> (2012) 4 SCC 629

**explanation thereon.** Learned counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal under section 20 read with section 15 of the NGT Act, 2010.”

(emphasis added)

Accordingly, the Original Application was disposed of by directing the Ministry of Environment, Forest and Climate Change (for short, ‘MoEF&CC’) to revisit the impugned notification within three months. An application for review was filed, which was dismissed by the second impugned order dated 24<sup>th</sup> December 2020.

**8.** Notice was ordered to be issued on 13<sup>th</sup> December 2021 on the appeals. On 10<sup>th</sup> August 2023, submissions were heard, and the judgment was reserved. After the judgment was reserved, the respondent-Union of India filed an affidavit of Dr Sujit Kumar Bajpayee, Joint Secretary, MoEF&CC, dated 12<sup>th</sup> September 2023. Along with the affidavit, two documents were also filed on record. The first document was the Office Memorandum dated 21<sup>st</sup> August 2023 issued by the MoEF&CC, purportedly laying down the enforcement mechanism for items 6 and 7 in the impugned notification. The second document brought on record was the amended impugned notification. In view of the issuance of the amended impugned notification, even after the verdict was reserved, the

parties were permitted to make further submissions on the legality and validity of the amended impugned notification.

### **SUBMISSIONS**

9. The learned senior counsel appearing for the appellant submitted that the object of the EP Act is to provide for the protection and improvement of the environment. She invited our attention to Section 3 of the EP Act, which confers a power on the Central Government to take such measures as it deems necessary or expedient for protecting and improving the quality of the environment and preventing and abating environmental pollution. She pointed out that the first EC notification was issued in the exercise of powers conferred under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act. Clause (v) empowers the Central Government to take measures for restrictions of the areas, in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. She also invited our attention to the EP Rules and, in particular, Rule 5 thereof. It lays down that the Central Government may consider the factors set out in sub-rule (1) while prohibiting or restricting the location of industries and carrying out operations and processes in different areas. She pointed out that before issuing the first EC notification, the process laid down in sub-rule (3) of Rule 5 was followed.

10. The learned senior counsel invited our attention to a decision of this Court in the case of ***Hanuman Laxman***

**Aroskar v. Union of India**<sup>2</sup>. She also relied upon a decision of this Court in the case of **Deepak Kumar**<sup>1</sup>. She pointed out that as a result of item 6, there will not be any regulation of the extraction of ordinary earth for utilisation in linear projects, such as, roads, pipelines, etc. She submitted that such a blanket exemption will defeat the very object of enacting the EP Act and, in particular, Section 3 thereof. She submitted that the decision of this Court in the case of **Deepak Kumar**<sup>1</sup> and subsequent decisions mandated that there must be a requirement to obtain EC for the minor minerals pertaining to materials used for linear projects. The learned senior counsel submitted that allowing the extraction of the earth in such an indiscriminate manner is wholly arbitrary and violative of Article 14 of the Constitution of India.

**11.** Inviting our attention to the amended impugned notification, the learned senior counsel pointed out that the substituted item 6 provides that extraction of ordinary earth for linear projects shall be subject to compliance with the Standard Operating Procedure (SOP) and safeguards issued in this regard from time to time. Thus, the exemption remains. However, an SOP will be laid down to avail the exemption. She urged that the substituted item 6 is more arbitrary.

**12.** The learned senior counsel also pointed out that the whole issue was directed to be reconsidered under the impugned judgment. But nothing has been placed on record to

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<sup>2</sup> (2019) 15 SCC 401

show that the Central Government made reconsideration in true letter and spirit.

**13.** The learned senior counsel pointed out that the decision of this Court in the case of **Deepak Kumar<sup>1</sup>** still holds the field, which directs that the leases of minor minerals, including their renewal for an area less than 5 hectares, shall be granted by the States/Union territories only after getting EC. She submitted that the impugned notification and the amended impugned notification, insofar as item 6 is concerned, are completely contrary to the directions issued by this Court in **Deepak Kumar<sup>1</sup>**. She also urged that before publishing the draft of the impugned notification, objections to the draft notification were not invited. She submits that this action contravenes the provisions of sub-rule (3) of Rule 5 of the EP Rules.

**14.** The learned Additional Solicitor General appearing on behalf of the respondent – Union of India, submitted that in view of the insertion of Section 8B in the Mines and Minerals (Development and Regulation) Act, 1957 (for short, ‘the MMDR Act’), the amendment to the first EC notification was required to be made. Our attention was invited to Section 8B, incorporated on 13<sup>th</sup> March 2020 and amended Section 8B, effective from 28<sup>th</sup> March 2021. She submits that the provisions of the first EC notification must conform with the amended provisions of the MMDR Act, and therefore, the amendments were necessitated. She also pointed out that in terms of the impugned order, the matter was placed before the

Expert Appraisal Committee (EAC), non-coal mining and EAC, MoEF&CC and others in a meeting. Thereafter, the issue was deliberated in the meeting convened on 30<sup>th</sup> June 2022 under the chairmanship of the Joint Secretary of the concerned department. She invited our attention to the minutes of the said meeting held on 30<sup>th</sup> June 2022. She submitted that the ultimate endeavour is to uphold the principles of sustainable development. Relying upon the amended impugned notification, she submitted that now the exemption granted by items 6 and 7 cannot be said to be arbitrary, and it will be subject to compliance with the SOP issued on this behalf from time to time. Therefore, safeguards have been introduced, and the exemption is not blanket. She also pointed out that the Office Memorandum dated 21<sup>st</sup> August 2023 takes care of the safeguards. It was also submitted that the grant of exemption from the first EC notification is a matter of policy for the Central Government and no interference be called for with policy matters.

### **CONSIDERATION OF SUBMISSIONS**

**15.** We have carefully considered the submissions. The EP Act was brought into force on 19<sup>th</sup> November 1986. The statement of objects and reasons of the EP Act specifically refers to the substantive decline in environmental quality due to increasing pollution, loss of vegetal cover, etc. It also notes the growing risk of environmental accidents and threats to life support systems. It refers to the decisions taken at the United Nations Conference on the Human Environment held in

Stockholm in June 1972. In the said Conference, the world communities resolved to protect and enhance the environmental quality. Clause (3) of the statement of objects and reasons reads thus:

**“(3) In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.”**

(emphasis added)

Even from the preamble of the EP Act, it is apparent that the object is to provide protection to the environment and to improve the environment. Section 3 of the EP Act confers power on the Central Government to take measures to protect and improve the environment. Sub-sections (1) and (2) of Section 3 read thus:

**“3. Power of Central Government to take measures to protect and improve environment.-**

**(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such**

**measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.**

**(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--**

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the

emission or discharge of environmental pollutants from such sources;

**(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;**

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”

(emphasis added)

Section 3 of the EP Act must be read with Rule 5 of the EP Rules. Rule 5 has been enacted to give effect to clause (v) of sub-section (2) of Section 3 of the EP Act, which empowers the Central Government to put restrictions on the areas in which industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Rule 5 of the EP Rules reads thus:

**“5. Prohibition and Restriction on the location of industries and the carrying on processes and operations in different areas.**

(1) The Central government may take into consideration the following factors

while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

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

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

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

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

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

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

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life

(Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

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

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

**(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.**

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

**industries and carrying on of process or operations in that area.**

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

**(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within 1 [three hundred and sixty-five days] from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.**

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

*(emphasis added)*

### **SCOPE OF ADJUDICATION**

**16.** As far as the scope of adjudication in these appeals is concerned, it is necessary to refer to the Original Application

no.190 of 2020 filed by the appellant. There were three prayers made in the said Original Application, which read thus:

“(a) Pass an Order quashing newly inserted Clause 6 of the Impugned Notification dated 28.03.2020 as being violative of Article 14 and 21 of the Constitution of India, ultra vires the provisions of the EPA Act, 1986, the EIA Notification dated 14.09.2006, and in further violation of the Judgment passed by the Hon’ble Supreme Court in the Deepak Kumar case (supra);

(b) Pass an appropriate Order quashing the Impugned Notification dated 28.03.2020 as being violative of the principles of Polluter Pay, Non-regression, sustainable development and Precautionary Principle;

(c) Pass an appropriate Order directing the Respondent not to allow any mining of ordinary earth without a prior environmental clearance.”

From the prayers mentioned above in clauses (a) to (c), it is apparent that the specific challenge was to item 6. Regarding clause (b), perhaps the only ground of challenge taken in the application was that no public interest was involved in exercising the power under sub-rule (4) of Rule 5 of the EP Rules for dispensing with public notice.

**17.** After perusal of the impugned judgment, we find that the submissions made by the learned counsel appearing for the appellant before the NGT were not recorded therein. The order

dated 29<sup>th</sup> June 2021 passed by this Court in the present appeals is relevant, which reads thus:

“X(name masked), learned senior counsel appearing for the appellant, submits that the learned counsel appearing for the appellant before the National Green Tribunal argued that exemption could not have been granted by the Notification of the Ministry of Environment, Forest and Climate Change which has not been considered by the Tribunal. Y(name masked), learned counsel who appeared before the Tribunal, is directed to file an affidavit that he, in fact, raised this point before the Tribunal during the course of hearing.

List the matter after two weeks.”

The advocate filed an affidavit dated 11<sup>th</sup> December 2021. In paragraph 5(a) of the affidavit, he stated thus:

“5. . . . .  
 (a) That the OA No. 190/2020 was listed for hearing before the Hon'ble Tribunal by way of video conferencing on 28.10.2020. On that day the Deponent appeared before the Hon'ble Tribunal and was granted a hearing. **During the course of the hearing the Deponent raised his submissions inter-alia including the fact that the Ministry of Environment and Forests did not have the power to exempt the removal of ordinary earth from the purview of the EIA Notification and that the exemption as granted for the removal of ordinary earth was illegal and ultra vires the Environment Protection Act as well as the**

**judgment of this Hon'ble Court in Deepak Kumar's Judgment.** It is submitted that the aforesaid point was raised, however the Hon'ble Tribunal did not find merit in the said submission as is evident from the judgment dated 28.10.2020.”  
(emphasis added)

Thus, the Advocate-on-Record stated in the affidavit that what was argued before the NGT was the challenge to the exemption granted for the removal of ordinary earth for linear projects. We may note here that item 7 in the substituted Appendix-IX brought on record by the impugned notification was already there as item 6 in Appendix-IX to the second EC notification dated 15<sup>th</sup> January 2016. The appellant did not challenge the notification dated 15<sup>th</sup> January 2016. Even if we set aside or strike down item 7 regarding dredging/desilting in the impugned notification, it will continue to exist as item 6 in the second EC notification. The second EC notification is not under challenge. Therefore, we restrict the challenge to item 6 in the substituted Appendix-IX to the impugned notification.

**CHALLENGE TO ITEM 6 IN THE IMPUGNED NOTIFICATION**  
**Failure to follow the procedure prescribed by sub-rule (3) of Rule 5**

**18.** We have already quoted Rule 5 of the EP Rules. There is no dispute that the first EC notification, the second EC notification and the impugned notification were issued in the exercise of powers under sub-rule (1) of Rule 5 of the EP Rules. Sub-rule (2) of Rule 5 provides that while passing an order prohibiting or restricting the location of industries and carrying

on processes and operations, the Central Government shall follow the procedure laid down in Rule 5. Sub-rule (3) of Rule 5 requires the Central Government to publish a notice of its intention to do so in the official Gazette and in such other manner as the Central Government deems fit. Any person interested is entitled to file objections against the proposed prohibition or restriction. The Central Government is required to consider the objections before issuing the final notification. The said procedure was followed before publishing the first EC notification.

**19.** Sub-rule (4) of Rule 5 empowers the Central Government to dispense with the requirement of publication of notice under sub-rule (3) of Rule 5 when it appears to the Central Government that it is in the public interest to do so. Thus, sub-rule (4) of Rule 5 is an exception to sub-rule (3). The exception can be invoked only on the grounds of public interest.

**20.** Now, we turn to the impugned notification dated 28<sup>th</sup> March 2020. The recitals of the said notification are important, which read thus:

**“S.O. 1224(E).—**WHEREAS, vide the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, inter alia, new section 8B relating to the provisions

for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of 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 (hereinafter referred to as the EIA Notification, 2006);

**AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;**

**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 the rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-**

.....”

(emphasis added)

By the impugned notification, after sub-paragraph (2) of paragraph 11 of the first EC notification, sub-paragraph (3) was inserted to give effect to Sections 8A and 8B of the MMDR Act. An entry has been made in the Schedule against Item 1(a) in column (5) for inserting a clause dealing with the evacuation or removal and transportation of already mined out material.

Appendix IX, which contains the list of projects exempted from obtaining EC, was substituted by the impugned notification.

**21.** We have quoted above the recitals of the impugned notification. The first three recitals refer to the necessity of giving effect to Sections 8A and 8B of the MMDR Act. Thereafter, the last recital refers to the Ministry receiving representations for waiver of the requirement of prior EC for borrowing of ordinary earth for roads. After that, without giving any details, it is mentioned that in the public interest, the requirement of publication of notice under sub-rule (3) of Rule 5 was dispensed with. At this stage, we may refer to the relevant ground specifically taken in the Original Application filed by the appellant before the NGT. Ground J was specifically taken on this aspect, which reads thus:

“J. Because the Respondent has deliberately and ostensibly circumvented the requisite procedures before issuing the Impugned Notification, including evading previous publication, inviting public objections under Rule 5(3) of the EP Rules, 1986, and by wrongly exercising its powers under Rule 5(4) of the EP Rules under the garb of "public interest" during the Covid-19 national lockdown without offering even a shred of reasoning for its actions. It is most respectfully submitted that the amendments brought forth by the Impugned Notification serve and further the interest of private miners and contractors, and the actions of ratifying such illegal and mala fide acts of disregard and disobedience to

environmental norms is in fact against public interest at large.”

**22.** We have carefully perused the counter affidavit filed by the MoEF&CC before the NGT. The said affidavit does not deal with Ground J at all. It does not specify or set out reasons for concluding that in the public interest, the requirement of publication of prior notice was needed to be dispensed with. It is pertinent to note that before the issue of the second EC notification by which Appendix-IX was incorporated, the procedure of inviting objections to the draft notification was followed, and the objections were considered. There is no reason to dispense with this important requirement before publishing the impugned notification. Article 21 guarantees a right to live in a pollution-free environment. The citizens have a fundamental duty to protect and improve the environment. Therefore, the participation of the citizens is very important, and it is taken care of by allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power under sub-rule (4) of Rule 5.

**23.** In the present appeals, the questions of law (e) and (f) have been incorporated regarding the illegal invocation of the power under sub-rule (4) of Rule 5 of the EP Rules. In the grounds of the challenge, ground EE has been taken explicitly on this aspect. We have perused the counter affidavit filed by the MoEF&CC in these appeals. We find from the counter

affidavit that the contention raised regarding the illegal invocation of power under sub-rule (4) of Rule 5 has not been dealt with. We are not going into the question of whether it was necessary for the Central Government to specify reasons in the impugned notification itself why it came to the conclusion that in the public interest, the requirement of public notice should be dispensed with. However, the reasons for the said conclusion ought to have been set out in the counter affidavit filed before the NGT or, at least, in the counter affidavit filed before this Court. The document recording the satisfaction of the competent authority about the existence of public interest and the nature of the public interest ought to have been produced by the Ministry. But, no such document was produced. Only one conclusion can be drawn. The drastic decision to invoke sub-rule (4) of Rule 5 was made without any application of the mind. Hence, the decision-making process has been vitiated.

**24.** The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central

Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

### **ARBITRARINESS**

**25.** There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the damage to the environment must be minimised while implementing projects. When an exception is sought to be carved out by incorporating Appendix-IX to the requirement of obtaining EC in the first EC notification, the exception must be specific. Item 6 grants exemption for “extraction or sourcing or borrowing of ordinary earth for linear projects, such as roads, pipelines, etc.” There is no specification about the quantum of ordinary earth, which can be extracted on the basis of the exemption. There is no specification of the area which can be used to extract ordinary earth. It is also not provided that only that quantity of ordinary earth, which is required to implement the linear projects, is exempted. Importantly, “linear projects” have not been defined. Without the definition, it is difficult to imagine which projects will be termed linear projects. The term “linear projects” is very

vague. The process to be adopted for excavation has not been set out. Thus, item 6 is a case of completely unguided and blanket exemption, which is, *per se*, arbitrary and violative of Article 14 of the Constitution of India. There is no provision for setting up an authority which will decide whether a particular linear project is covered by item 6.

**26.** As stated earlier, during the pendency of the appeals, an amendment was made to item 6 by the notification dated 30<sup>th</sup> August 2023. Even the amended impugned notification does not elaborate on the concept of linear projects. The only addition to item 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard from time to time. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on the quantum of ordinary earth, which can be extracted for linear projects. Therefore, even the amended item 6 continues to suffer from the same vice of arbitrariness, which Article 14 of the Constitution of India prohibits.

**27.** The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21<sup>st</sup> August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary,

the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to protect and improve the environment. Apart from the illegality committed by non-compliance with sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely defeats the very object of the EP Act.

#### **NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT**

**28.** In paragraph 8 of the impugned order, which we have quoted earlier, the NGT observed that the blanket exemption needs to be hedged by appropriate safeguards, such as, the process of excavation and quantum. Therefore, in paragraph 9, a direction was issued to MoEF&CC to revisit the impugned notification in the light of the observations made in paragraph 8. Within the three months provided by the NGT to do so, no steps had been taken to revisit item 6 of the impugned notification.

**29.** The Ministry has filed an additional affidavit dated 18th July 2023, and reliance has been placed on the guidelines for sand mining. As far as item 6 is concerned, in the counter affidavit, reliance was placed on the Office Memorandum dated 8<sup>th</sup> August 2022, purportedly issued in terms of the directions issued in paragraph 9 of the impugned judgment. It records that item 6 shall be subject to the SOP attached to the said

Office Memorandum. We have perused the said SOP. We find that the SOP creates no regulatory machinery to ensure the implementation of the terms of the SOP. The SOP does not refer to item 6 at all; it merely refers to the activities relating to the identification to borrow areas to obtain earth or soil materials. It does not refer to extracting ordinary earth for linear projects, such as roads, pipelines, etc. Therefore, the said SOP can hardly be said to be in terms of what the NGT ordered the Central Government to do in terms of paragraphs 8 and 9.

**30.** We are not entertaining a challenge to item 7 of the impugned notification. As none of the respondents have challenged the impugned notification, they will have to implement the directions issued in terms of paragraph 9 of the impugned judgment regarding item 7.

**31.** Thus, notwithstanding the specific directions issued in paragraph 8 read with paragraph 9 of the impugned judgment, no safeguards have been provided, such as laying down processes, the mode and the manner of excavation and quantum.

**32.** Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28<sup>th</sup> March 2020 and item 6 of the amended impugned notification dated 30<sup>th</sup> August 2023. Accordingly, we quash item 6 in the two notifications above.

33. The appeals are, accordingly, partly allowed on above terms. There will be no order as to costs.

.....J.  
(Abhay S. Oka)

.....J.  
(Sanjay Karol)

**New Delhi;**  
**March 21, 2024.**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

M.A.Diary No.21770 OF 2024  
(IA NO.114119/2024 - FOR CLARIFICATION OF  
THE JUDGMENT DATED 21.03.2024

IN

CIVIL APPEAL NOS.1628-1629 OF 2021

NOBLE M. PAIKADA

... APPLICANT(S)/  
APPELLANT(S)

VS.

UNION OF INDIA

... RESPONDENT(S)

O R D E R

After having heard the learned senior counsel appearing for the applicant/appellant, we make it clear that the judgment delivered in Civil Appeal will not preclude the appellant from filing appropriate proceedings to challenge the E.C.Notification dated 15<sup>th</sup> January, 2016 insofar as clause 6 in Appendix IX therein and all subsequent modifications thereto are concerned. The clause 6 granted exemption to certain category of dredging and de-silting work from requirement of obtaining Environment Clearance.

While filing the proceedings, the applicant/appellant can always invite the attention of the concerned Forum to the fact that the appellant was prosecuting the earlier proceedings in a bona fide manner. The application is accordingly dismissed.

Miscellaneous Application stands disposed of.

.....J.  
(ABHAY S.OKA)

.....J.  
(SANJAY KAROL)

NEW DELHI;  
May 15, 2024.



appearing for the applicant-National Highways Authority of India (NHAI) and the learned senior counsel representing the original appellant.

For the time being, we clarify that the projects for which work orders were issued by the applicant-NHAI prior to 21<sup>st</sup> March, 2024 will remain unaffected by the judgment dated 21<sup>st</sup> March, 2024.

However, we direct the applicant-NHAI to file an affidavit giving a list of the projects for which the work orders were issued prior to 21<sup>st</sup> March, 2024 and produce copies of the work orders and other relevant documents showing service of the work order on contractors within a period of one month from today.

We clarify that the work orders which were issued prior to 28<sup>th</sup> March, 2020 required Environment Clearance and therefore, the clarification which we have issued under this order will not apply to such work orders.

We make it again clear that we are not permitting the work of all projects which are listed at Annexure A-3 to continue. Only those works will continue where work orders have been issued prior to 21<sup>st</sup> March, 2024.

Needless to add that in those cases where work order has not been issued prior to 21<sup>st</sup> March, 2024., the applicant-NHAI will be bound by the decision of this Court dated 21<sup>st</sup> March, 2024.

For considering the compliance made by the applicant-NHAI, list the application on 25<sup>th</sup> July, 2024 at 3.30 p.m.

M.A. Diary No(s). 21770/2024 in C.A. Nos.1628-1629/2021

The application is dismissed and Miscellaneous Application is disposed of in terms of the signed order.

(ANITA MALHOTRA)  
AR-CUM-PS

(AVGV RAMU)  
COURT MASTER

(Signed order in MA Diary No.21770/2024 is placed on the file.)

**BEFORE NATIONAL GREEN  
TRIBUNAL  
SOUTHERN ZONE BENCH AT  
CHENNAI**

O.A. No. 159 of 2024 (SZ)

V. Ramesh

...Applicant

Versus

The District Collector,  
Thiruvallur District  
and Others

...Respondent(s)

**COUNTER AFFIDAVIT  
AND DOCUMENTS  
FILED BY  
2<sup>ND</sup> RESPONDENT**

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**S. DIWAKAR**

Counsel for 2<sup>nd</sup> Respondent

**9884670187**