

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 837/2018

IN THE MATTER OF:-

SANDEEP MITTAL

APPLICANT

VS.

MINISTRY OF ENVIRONMENT FOREST
AND CLIMATE CHANGE & ORS.

RESPONDENT(S)

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(P.K. GUPTA)
SCIENTIST -E
CENTRAL POLLUTION CONTROL BOARD
PARIVESH BHAWAN, EAST ARJUN NAGAR,
DELHI-110032

PLACE: DELHI
DATE: 28.01.2020



Central Pollution Control Board, Delhi

A report in pursuance of Hon'ble NGT order dated 22/11/2019, in matter of OA No. 837 of 2018, titled Sandeep Mittal Vs Ministry of Environment Forests and Climate Change Ors.

1.0 Background

Hon'ble NGT vide its order dated 22/11/2019, in the matter of O.A. No. 837 of 2018, titled Sandeep Mittal Vs. Ministry of Environment Forests and Climate Change Ors (**Annexure- I**), regarding verification of Environment Clearance conditions for Category A and Category B projects, has directed:

- *That the present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.*
- *The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs. No satisfactory mechanism exists at present, as shown by the above affidavit itself*
- *Therefore, for meaningful monitoring, all Category A projects be monitored not less than twice in a year and all Category projects are monitored not less than once in a year.*
- *Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs.*

2.0 Status

In pursuance of Hon'ble NGT order dated 22/11/2019, a meeting of the Secretary, MoEF&CC and Chairman, CPCB along with Experts was convened on 20.1.2020. It is understood that MoEF&CC has filed an affidavit in this regard.


(P. K. Gupta)
Scientist 'E'

Item No. 03

Court No. 1

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

Original Application No.837/2018
(M.A. No. 1549/2018 & I.A. No. 290/2019
I.A. No. 701/2019)

Sandeep Mittal

Versus

Applicant(s)

Ministry of Environment, Forests &
Climate Change & Ors.

Respondent(s)

Date of hearing: 22.11.2019

CORAM:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s):

Mr. Rahul Rathore, Advocate

For Respondent(s):

Mr. Divya Prakash Pande and Mr. Mohit
Singhal, Advocates for MoEF&CC

ORDER

1. The question for consideration is the effectiveness of monitoring mechanism for compliance of conditions of Environmental Clearance (EC) as per Notification dated 14.09.2006 under the Environment (Protection) Act, 1986. Environment Impact Assessment is an essential component of the 'Precautionary' as well as the 'Sustainable Development' principles. Laying down conditions for EC based on appraisal is not enough unless compliance thereof is duly monitored and ensured with a view to achieve the said objects of the said principles.
2. Faced with the grievance that there was flagrant violation of conditions of Environmental Clearance and adequate monitoring was not taking place, vide order dated 30.10.2018, the Tribunal observed that compliance of conditions of Environmental Clearance must be monitored on periodical

basis, atleast once in a quarter. Accordingly, the Ministry of Environment, Forest and Climate Change (MoEF&CC) was directed to review and strengthen the mechanism for the purpose and furnish a report.

3. The matter was thereafter listed for further consideration on 29.04.2019 and it was observed:-

- “4. On due consideration of status of monitoring, we find the same to be highly inadequate. There is no monitoring to the extent of 92% of category -B projects and 33% of category-A projects. Further, the 3 monitoring mechanism only involves issuance of show cause notices and seeking action taken reports but there is no application of ‘Polluter Pays’ principle by assessing and recovering compensation where violations are found. Apart from there being no data from the Chennai, there is no separate data with regard to category A and B projects. In respect of compliance status, we find that even where major non-compliance has been found, no compensation has been recovered even for such major violations. This calls for urgent remedial action.
5. Let remedial measures be taken forthwith by incorporating the requirement of recovery of compensation for the violation of environmental conditions on laid down scale and method of online maintenance of data with regard to category A and B projects separately. In spite of repeated adjournments, MoEF&CC has not been able to give adequate and correct data which shows that urgent measures need to be taken.
6. We also note that there is plea of inadequate staff which is sought to be remedied by outsourcing from empanelled institutions. Primary and essential regulatory functions must be discharged by the statutory authorities and it is only validation which may be outsourced. Wholesale outsourcing may make it difficult to have any accountable mechanism.
7. Let remedial measures be taken by the MoEF&CC for meaningful compliance of environmental Rule of law and protection of environment. The mechanism may provide for 100% checking of Environmental Clearance conditions with respect to category-A projects and a reasonable percentage of category-B projects in view of 4 significance of the subject. A revised affidavit be filed by the concerned Joint

Secretary, MoEF&CC who may remain present in person for assistance of the Tribunal on the next date of hearing.

8. In respect of the project involved in the present case, a Joint Committee of representatives of SPCB, CPCB, SEIAA and Regional Office of MoEF&CC may furnish a report of the status of compliance of Environmental Clearance conditions with reference to the allegations in the application within two months by e-mail at ngt.filing@gmail.com. The nodal agency will be the SIEAA for coordination and compliance."

4. The matter was further reviewed on 23.07.2019 in the light of the affidavit filed by the Joint Secretary, MoEF&CC dated 20.07.2019 and also after considering the presentation of the Joint Secretary, who was present in person. The Tribunal observed:-

"Accordingly, an affidavit has been filed by Ms. Geeta Menon, Joint Secretary, MoEF&CC on 20.07.2019 who is also present in person. The affidavit acknowledges the need to enhance and maximize the monitoring mechanism as follows:

- (a) We acknowledge the direction of Hon'ble NGT that primary and essential regulatory functions as monitoring should be discharged by the statutory and it is validation which may be outsourced. That accordingly as elaborated at para (B) above Ministry is working towards empowering the SPCBs and increasing the number of ROs/manpower in CPCB/SPCB/ROs, which has been considered as more acceptable than exclusively engaging outside agencies.
- (b) That in consonance with the direction of Hon'ble NGT it is to submit that the major objective of Third Part Monitoring Mechanism is validation of 6 monthly compliance reports submitted by the Project Authority.
- (c) The third-party monitoring mechanism will be mainly for monitoring of Category-B projects through validation of their 6 monthly and Category-A projects will continue to be monitored by ROs of the Respondent. Taking into account the quantum of ECs to be monitored, third-party monitoring will be used only to supplement essential to strengthen existing efforts of the Respondent towards strengthening the existing Monitoring mechanism for EC and to improve compliance through comprehensive validation and technical expertise.

(d) That the third-party monitoring mechanism will involve government organization, research institutes, universities, etc of repute which will also serve to fill the technological and information gaps that may exist.

(e) We acknowledge the significance of "Polluter Pays" principle by assessing and recovering compensation where violation are found. That in case of directions of Hon'ble NGT to the Ministry for implementation of the same in specific cases, such directions can be implemented with the involvement of CPCB, utilizing their reports and guidelines.

During interaction, the Tribunal has conveyed to the Joint Secretary that with regard to category 'A' projects, the data validation has to be the primary concern of the MoEF&CC and ought not be outsourced. For category 'B' projects, such data validation may be done through SEIAA. It is necessary to have an action plan providing for revamping the existing mechanism by providing 100% monitoring of category 'A' projects through the mechanism of regional offices of MoEF&CC and CPCB. The Monitoring of category 'B' projects may be done through instrumentalities of the SEIAA and the State Boards in the same manner. Accordingly both the regional offices of MoEF&CC and the CPCB for category 'A' projects and SEIAAs and State Boards/PCCs for category 'B' projects need to be strengthened by way of gap analysis and providing of adequate man force/human resources/scientific/technical personnel as and when needed. The action plan in this regard may be prepared within one month which may be implemented in two phases of three months each."

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

"1to 6 xxx

xxx

xxx

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

can only happen after 2.5 yrs and 4.5 yrs, respectively in these two scenarios.

8. That for Category 'B' projects for which compliance monitoring has been directed to be responsibility of SEIAA and SPCB, following to be taken note of:
 - a. Sanctioned staff strength and MIP of SEIAAs and SPCBs/PCCS are still not available.
 - b. SEIAA and SPCBs are under the administrative control of State Government.
 - c. There is ambiguity with respect to their present involvement in monitoring of EC conditions.
 - d. Accordingly, it has been difficult to speculate the timeframe for taking up and completion of monitoring of Cat B projects at present.
 - e. The SEIAAs and SPCBs have been asked to provide information so that the above timeframe may be calculated.
9. That as directed, a Six Monthly Action Plan has been prepared to reduce the timeline, enhance coverage and transparency, reduce requirement of additional human resources while ensuring comprehensive compliance of environmental conditions, thereby resulting in greater protection of the environment on a continuing basis. The Six Monthly Action Plan is placed at Annexure R-2.
10. That as enumerated in the Action Plan, the Ministry plans to carry out a thorough assessment of the quantum of work involved and available human resources and accordingly take up the initiatives for comprehensive refining of the existing monitoring mechanism. Based on this exercise the following action are to be undertaken:
 - a. Filling up of vacant posts wherever applicable.
 - b. Creation of additional posts in all the agencies to be involved in monitoring and compliance viz. ROs, CPCB, SEIAA and SPCBs; if required.
 - c. Hiring of young professionals as per feasibility.
 - d. Creation of new ROs, if required.
 - e. Utilizing services of CPCB and SPCBs to effectively discharge responsibilities of monitoring.
 - f. Strengthening Monitoring Cell within the Ministry.
 - g. Develop web based online mechanism to automate the entire process of inspection and compliance monitoring.
11. That the Action Plan provides a detailed roadmap for the coming months which includes:

a. Hiring of an Independent Agency to assess the work requirement.

b. Constitution of Monitoring Evaluation Committee (MEC) to steer and supervise a new monitoring mechanism.

c. Engagement of Consultant for development of web based mechanism for end to end digitization.

12. That in the interim, till the larger Action Plan is implemented, in order to improve the monitoring process, following actions has been/will be taken up:

a. Filling up on nine vacant posts of Scientists in the ROs.

b. Strengthening the Monitoring Cell in the Ministry.

c. Delegation of the action on monitoring reports of Category 'B' projects to SEIAA as per the Notification no. SO 637 (E) dated 28th February 2014.

d. Evolving a mechanism for online maintenance of monitoring and compliance data with regard to Category-A and Category-B projects and integrating it with the existing PARIVESH portal of the Ministry."

6. We have considered the above averments as well as contents of annexures R-I and R-II giving data of the projects and 'six monthly action plan'. We are of the view that the mandate of law is not complied with by the above stand of the MoEF&CC. It is well acknowledged that there is rampant violation of the Environmental Clearance (EC) conditions. This Tribunal has, in order dated 21.11.2019, noticed serious violations of EC conditions with respect to A Category 'housing projects' in Haryana and found monitoring of conditions of EC ineffective.¹ The said order also refers to earlier orders wherein similar serious violations have been noticed. The violations include absence of scientific management of sewage and solid waste, not having open spaces, illegal drawal of ground water, construction in excess of sanctioned plan etc. It is difficult to say such violations are limited to State of Haryana. In absence

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

of adequate mechanism, such rampant violation are bound to continue defeating the environmental principle of precautionary and sustainable development. In this regard, it is apt to note that this aspect was considered by the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad Vs. Union of India & Ors.* (2014) 4 SCC 61. Reference was made to the observations in *Lafarge Umiam Mining Private Limited Vs. Union of India*, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and that the monitoring mechanism for the clearance conditions was not satisfactory. The Hon'ble Supreme Court also referred to a report on 'Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)' for the Ministry of Environment and Forests, Government of India prepared by Department of Management Studies, Indian Institute of Technology, Delhi. Therein it was found that there are huge gaps in monitoring and enforcement of clearance conditions which defeats the purpose of Environmental Clearance process. The said finding quoted in the judgment is as follows:

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

7. We also note the observations from Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring 2016 that there are shortfalls in

² Para 10

monitoring of environmental parameters. Reasons for such shortfalls are inadequate staff, inadequate database, not assigning clear responsibility for post EC monitoring, absence of monitoring at regular intervals particularly for critically polluted areas.

8. Thus, there is dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs. Post EC monitoring processes need revamping in quantitative as well as qualitative terms. There is need to prioritize the projects where potential environmental degradation is high on account of nature of activity as well as area being ecologically sensitive. In respect of such projects and in such areas, monitoring may have to be more intensive and at higher frequency. In no case frequency of monitoring should be less than once in a year.

9. The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.

10. Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.

11. On being asked, learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking. With a view to plan such monitoring, the percentage of compliance must be ascertained. Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data. Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.
12. In view of the above, remedial action may be planned at the earliest. The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.
13. There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. The principle of Sustainable

Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.

14. No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.

15. We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.

16. Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs.

A copy of this order be sent by e-mail to the Chairmen of SEIAAs in all States/UTs.

List for further consideration on 29.01.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 22, 2019
Original Application No. 837/2018
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