

notification of 1994. The public hearing for the said project was done under the regime of 1994 notification. Further the Environment Impact Assessment Report was also prepared under the 1994 notification. Therefore, all the procedural steps were taken and completed under the EIA notification of 1994.

3. It is submitted that the Environment Impact Assessment Report, public hearing report, rehabilitation & resettlement plan etc. were all considered by EAC in its 52nd meeting held on 21/22.02.2007 at New Delhi. The expert committee **considered the subject project under EIA notification 1994 as is evident from the said minutes and sought for some clarification for the State of Maharashtra on some aspects.** The discussion in respect of subject project is at Item No.8 in the minutes of said meeting. The same is quoted hereunder for ready reference:

“8. Lower Penganga project in Maharashtra

*The committee noted that this project was accorded environmental clearance during 1984. However, no construction work has been started till date. The project authority has prepared EIA report and public hearing completed. **The proposal was considered for EC under EIA Notification 1994.***

It was noted that the project envisages construction of 35.63 m high earthen dam with central gated masonry spillway at about 2 km upstream of Tahsil village in Yavatmal district across Penganga river. The project will irrigate 1,40,818 ha in Maharashtra and 19.232 ha in Adilabad district of Andhra Pradesh. In addition to irrigation 4 MW power also likely to be generated. Total land requirement for the project is 18,826 ha which include 17184 ha private land, 998 ha. of forest land and 644 ha Government land. The project will affect 46 villages, out of which 32 villages will be fully affected and 14 villages partially affected. The number of project affected families is 8136.

After critically examining all the environment related issues the committee desired to have the following information –

.....

.....

.....

.....”

4. It is submitted that the decision taken in the said meeting by expert committee was communicated by communication dated 09.03.2007 to the Superintending Engineer, Irrigation Department. In the said

communication, it is reiterated that the project has been considered for EC under EIA notification 1994. Accordingly, clarifications were sought for the State of Maharashtra to the queries raised by the EAC.

5. The Irrigation Department by communication dated 14.03.2007 supplied the all the information sought by the expert committee. It is submitted that since the required information was supplied, the proposal for environment clearance on the basis of previous meeting was taken up for further consideration in the next meeting i.e the 53rd meeting of expert committee held on 22.03.2007 at New Delhi.
6. The expert committee was satisfied with the information that was supplied in response to the queries raised in the previous meeting. The expert committee accordingly recommended environment clearance to the subject project under EIA notification 1994. Accordingly, EC was issued by communication dt. 17.05.2007.
7. It is submitted that the aforesaid two minutes of meeting are the primary documents which clearly show that the subject project was considered by the Expert Committee for environment clearance

under EIA notification of 1994 and not under EIA notification of 2006. Therefore, the recommendation of the EAC was under the 1994 notification as is evident from the said minutes and letter dt. 9.03.2007.

8. Further, condition no.8 of the EC clearly states that the environment clearance is valid for five years from the date of issue of this letter **“for commencement of construction work”**. This condition is also as per EIA notification of 1994 and, therefore, the same was incorporated in the said communication as EC was granted under 1994 notification.
9. However, the Additional Director on his own without any basis on record, added one sentence in the EC that the EC is issued under 2006 notification. The said addition was without authority of law and without any foundation on the record. The said sentence in EC cannot prevail over the primary document i.e. minutes of meeting of February, 2007 and March, 2007. The said communication to the extent it states in para-4 that the environment clearance is granted as per EIA notification of 2006 is contrary to the minutes of meeting and the record of the respondent no.2 and, therefore, to

that extent factually incorrect. Further, nothing turns on the said addition as condition no. 8 of the EC clearly states that the EC is valid for 5 years for commencement of the work.

10. In view of the above facts, this Hon'ble Tribunal by order dated 24.02.2025 had posed a very pertinent query to the respondent no.2. The relevant portion of the said order is quoted hereunder for ready reference:

“We also would like to have a clear reply from respondent No.2- MoEF&CC as to how it happened that EAC has considered the grant of EC and recommended the same under EIA Notification 1994, which is reflected from the Minutes of 52nd & 53rd Meeting of the Expert Appraisal Committee and subsequently, EC came to be issued under EIA Notification 2006, para 8 (ii) of which provides “The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or

State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days". We expect that reply in this regard shall be filed by Respondent No.2 within two weeks and no more."

11. Pursuant to aforesaid order dt. 24.02.2025 passed by this Hon'ble Tribunal, the respondent no.2- MoEF&CC filed various affidavits. However, in none of the affidavits the respondent no.2 has answered the aforesaid query posed by this Hon'ble Tribunal.

12. In order to answer the query of this Hon'ble Tribunal, the respondent no.4 verified the original record of respondent no.2. On perusal of entire record of respondent no.2 the following facts are evident.

- a) The Regulatory Authority never disagreed with the recommendations of Expert Appraisal Committee (EAC) reflected in 52nd and 53rd meeting of EAC.
- b) Further, the Regulatory Authority never requested the EAC for reconsideration of its decision taken in 52nd and 53rd meeting of EAC.

13. Therefore, the decision of EAC as contained in the minutes of said meeting was accepted as final, conclusive and was acted upon. The EC issued to project proponent was therefore, issued pursuant to the decision in the 52nd and 53rd meetings of EAC as the Regulatory Authority never disagreed with the decision of EAC taken in the said meetings. That since aforesaid facts apparent on the record of the respondent no.2 would go against it, the respondent no.2 has avoided to file affidavit pointing out the said facts.

14. Pursuant to the EC and the condition number 8 therein, the work on the subject project was commenced and substantial expenditure was incurred towards the project. The Superintending Engineer of the Irrigation Department by communication dated 18.06.2012 informed the Ministry of Environment and Forest that the condition no.8 stipulated in the environment clearance that the work of the project should have **commenced** within five years of the environment clearance has been complied with. The Superintending Engineer submitted a detailed compliance report with proof to establish that the work has commenced and substantial expenditure has been incurred.

15. The Ministry of Environment and Forest issued notification dated 21.08.2013 clearly stating that as per the EIA notification 1994 the environment clearance is for a period of five years **for** commencement of construction and operation and not for five years **from** the commencement of construction and operation.

16. After all these events and after the condition no.8 in the EC was complied with by the State of Maharashtra, the respondent no.2 issued the corrigendum dated 27.09.2013. It is submitted that issue

of environment clearance had concluded with the grant of environment clearance and commencement of project. Thereafter, there is no power with the Ministry of Environment and Forests to issue any corrigendum. The said corrigendum was, therefore, totally without authority of law.

17. The said corrigendum states that it has issued with the approval of competent authority. This assertion in the said corrigendum is factually incorrect and contrary to record. It is submitted that the said corrigendum has been issued without approval of competent authority and the same is the result of ignorance of minutes of meeting of February, 2007 and March, 2007. It is submitted that if the said corrigendum is issued with approval of any competent authority, the respondent no.2 ought to have placed the same on record.

18. It is submitted that the said corrigendum was issued on 27.09.2013.

Prior to issuance of said corrigendum, the project in question had commenced and substantial expenditure had already been incurred towards the project. This is evident from the contemporaneous communication dated 18.06.2012. Therefore, the condition no.8 of

the communication dated 17.05.2007 was acted upon and complied with within a period of five years stipulated therein. The said condition, therefore, could not have been altered as there is no power of review to alter the said condition. Therefore, the corrigendum dated 27.09.2013 is without authority of law and contrary to record and inconsequential.

19. Further, the said corrigendum has been issued without hearing the answering respondent or the State of Maharashtra. The said corrigendum is therefore *ex facie* violative of Art. 14 of Constitution of India and therefore a nullity.

20. It is submitted that the present application is beyond limitation. It is submitted that the applicant is actually aggrieved of environment clearance dated 17.05.2007 which vide condition no.8 states that environment clearance is granted for 5 years for commencement of project. However, challenge to said EC is time barred. Therefore, in order to overcome the bar of limitation the applicant has only challenged the consequential tender issued by the answering respondent for appointment of private contractor. This cannot be

permitted. The instant application suffers from gross delay and laches and is therefore be dismissed as such.

21. It is submitted that the subject tender is a consequence of aforesaid facts and is a consequential action. It is submitted that unless the applicant challenges the EC dt. 17.05.2007, the challenge to consequential actions is not tenable.

22. It is submitted that for the Telangana part of the subject project, environment clearance has been granted.

23. Lastly, expenditure to the tune of more than 800 crores has already been incurred for the subject project. The situation today is therefore irreversible. The project is an irrigation project, the benefits of which outweigh injury, if any, caused to the applicant. The public interest therefore is in favour of continuing with the project.

24. The respondent no.2 MOEF has relied upon paragraph no.45 of the judgment dated 10.03.2014 of this Hon'ble Tribunal in the case of "Lower Painganga Dharan Virodhi and another v. The State of Maharashtra and others" to contend that EC in question is issued

under 2006 notification. There is no merit in the said contention. The submissions of the respondent no.4 on the said decision are as under:

- a. It is submitted that the applicant in the said case had contended that procedure under EIA notification of 2006 was not complied with. This Hon'ble tribunal considered the material before it and concluded that procedure under EIA 1994 was followed and therefore procedure under EIA 2006 notification was not required to be followed. The said application was accordingly rejected by this Hon'ble Tribunal. Some of the relevant excerpt from the said decision are quoted hereunder for ready reference:

“34..... For a moment, keeping aside the relevant requirement of the Notification dated September 14, 2006, it would be necessary to pinpoint that the public hearing was required to be held in accordance with Notification issued by the MoEF of January 27th, 1994. The present case is not covered by the subsequent Notification dated September 14th, 2006 in as much as the public hearing was concluded in first week of May 2006. Schedule-IV of the Notification dated January 27, 1994, to the extent.....”

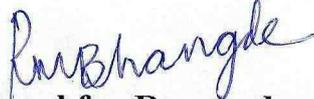
“37..... In our opinion, the Notification of 1994, has been duly complied with, when thirty (30) day's period was given to call for responses of the public members.....”

- b. Further, the issue whether EC dt. 17.05.2007 was recommended and granted under EIA notification of 1994 or 2006 was not an issue in the said proceedings. Therefore, none of the parties to the said *lis* had placed on record the minutes of meetings of the EAC of Feb, 2007 and March, 2007. This Hon'ble Tribunal therefore did not consider the said minutes and did not examine the issue which is being considered by this Hon'ble Tribunal.

25. In view of the above, it is crystal clear that the E.C. in question is issued under 1994 notification. Further condition no.8 of the EC was complied with and, therefore, there is no merit in the instant application. The same may, therefore, kindly be dismissed with costs.

Nagpur

Date: 15.09.2025


Counsel for Respondent no.4