

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SITTING AT PRINCIPAL BENCH NEW DELHI**

**ORIGINAL APPLICATION NO. 636 OF 2022**

**IN THE MATTER OF:**

ASHISH CHAUBEY

...**APPLICANT**

**VERSUS**

ACP TOLL PLAZA PRIVATE LIMITED

...**RESPONDENT**

**WRITTEN SUBMISSION**

That the present Original Application was filed on 23-08-2022 by the applicant against the permanent illegal construction of a toll plaza and administrative building in the Eco Sensitive Zone of Kaimoor Wild Life Sanctuary Area (notified on 10-08-1982, **page no. 753, Vol. 15**) without requisite environmental clearance and in violation of NOC dated 31-03-2014, granted to the M/s ACP Tollways Pvt. Ltd. – Respondent no. 1.

**ENVIRONMENTAL CLEARANCE**

The respondent no. 1 entered into agreement dated 08-12-2011 with Uttar Pradesh State Highways Authority (for short referred as UPSHA), for Four Lanning (With Paved Shoulder) of Varanasi – Shaktinagar Road upto Hathi Nala (SH-5A) in the State of Uttar Pradesh on Design, Build, Finance, Operate and Transfer. As per the agreement, it was the obligation of the concessioner to undertake and

perform, before commencement of construction, all such acts, deeds and things which as may be necessary or required before commencement of construction work in accordance with agreement. [page no. 288 & 264 of Vol. 5]

Before we proceed further, it is important to note that that Government of India, through Ministry of Environment and Forest, had issued a notification dated 14 September, 2006 (for short EIA Notification) for environmental clearance in various development projects. The said notification provided in details list of projects or activities which require prior environmental clearance, and present project of R1 is dealt with in para **7f category B [Page no. 475 Vol. 10]** of the schedule given in EIA notification, which required prior environmental clearance from the Central Government, as per general condition stated in the said EIA notification, which reads as under;

***“General Condition (GC):***

*Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani, Matheran, Pachmarhi, Dahanu,*

*Doon Valley, and (iv) inter-State boundaries and international Boundaries”*

Which is applicable to the project [**page no. 476 Vol. 10**] because the project is situated within 10 km from the boundary of Kaimoor Wildlife Sanctuary Area. The EIA notification also stated that the project proponent was required to submit the authenticated map by Chief Wildlife Warden showing features and location of the project at the time of environmental clearance, when the project is located within 10 km of the National Park, Sanctuary, Biosphere Reserve and Migratory Corridor of Wild Animals. [**page no. 485 Vol. 10**]

It is submitted that EIA Notification 2006 as **amended on 2011 is not applicable to the project**, the same is only applicable to the all-new State Highway project. The project before the Tribunal is not new State Highway. The present project will be guided by EIA Notification 2006.

The Government of India, Ministry of Environment & Forests, issued several Office Memorandum (OMs) regarding the procedure for obtaining environmental clearance under the EIA Notification, 2006, for projects involving forest land and/or wildlife habitat. which includes:

- i. OM No. J-11013/41/2006-IA. II(I) Regarding- Procedure for consideration of proposals for grant of environmental clearance under EIA Notification, 2006, which involve forestland and or wildlife habitat dated 02-12-2009 in (Para

iii) *“The proposal from environmental angle will be appraised by the respective Expert Appraisal Committee and recommendations made on the same which will be processed by the IA Division and approval obtained from the Competent Authority. However, while granting environmental clearance to projects involving forestland, wildlife habitat (core zone of elephant/tiger reserve etc.) and or located within 10 km of the National Park / Wildlife Sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4.12.2006 in writ petition no. 460 of 2004 in the matter of Goa Foundation Vs Union of India), a specific condition shall be stipulated that the environmental clearance is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as applicable. Further, it will also be categorically stated in the environment clearance that grant of environmental clearance does not necessarily implies that forestry and wildlife, clearance shall be granted to the project and that their proposals for forestry and wildlife clearance will be considered by the respective authorities on their merits and decision taken. The investment made in the project, if any, based on environmental clearance so granted, in anticipation of the clearance from forestry and wildlife angle shall be entirely at the cost and risk of the project*

*proponent and Ministry of Environment & Forests shall not be responsible in this regard in any manner.”*

- ii. OM No. F. No. 5-3/2007-FC (Pt) regarding Guidelines for diversion of forest aid. for non-forest purposes under the Forest (Conservation) Act, 1980 - clarification regarding forest areas outside National Park / sanctuary but within 10 km radius from the boundary - reg. dated 19-08-2010, states that:

*“The Ministry has been receiving representations from various project proponents and State Government seeking directions / clarifications regarding rules and regulations to be followed for prior approval under section 2 of the Forest (Conservation) Act, 1980 to forest areas outside National Park / sanctuary but within 10 km radius from their boundary.*

*The matter has been examined in the Ministry in the light of Hon'ble Supreme Court order dated 4' Dec, 2006 in I.A. No. 460 of 2004, inter-alia, directing that all cases where environmental clearance (EC) under EIA Notification, 2006 has been given by the Ministry be put up to the Standing Committee of National Board of Wildlife. Accordingly, the environmental clearances to the projects coming within 10 km from the boundary are being granted with the condition to obtain recommendation of the Standing Committee of National Board of Wildlife as one of the stipulations.*

*I am further directed to inform that in case of those projects, which environmental clearance under EIA Notification, 2006 and also involve diversion of forest land for non-forest purposes falling within 10 km of National Park/Sanctuary will have to be placed before the Standing Committee of the National Board of Wild Life as per this Ministries Office memorandum no. J-1 1013/41/2006-IA. II(1) dated 02.12.2009 (copy enclosed).*

*In view of the above, I am directed to inform that the decision of the Central Government for prior approval under section 2 of the Forest (Conservation) Act, 1980 will be conveyed to the State/UT Governments with the stipulation that the EIA for the case, wherever required, be placed before the Standing Committee of the NBWL. ”*

- iii. OM No. F. No. 6-10/2011 WL regarding guidance document for taking up non-forestry activities in wildlife habitats in order dated 15-03-2011 (Para 1.4) states that

*“1.4 Activities within 10 Kms from boundaries of National Parks and Wildlife Sanctuaries:*

*In pursuance to the order of Hon'ble Supreme Court in Writ Petition (Civil) No. 460/2004, the Ministry of Environment and Forests has issued an Office Memorandum on 2nd December 2009 (Annexure-1), indicating that Environmental Clearances for all such projects that fall within 10 Kms*

*boundary of the National Parks and Sanctuaries will be subject to recommendation of the Standing Committee of NBWL.”*

- iv. OM No. F. No. 6-30/2019-WL dated 06-05-2022 regarding guidelines for seeking recommendations of Standing Committee of National Board for Wild Life for activities in protected areas - reg. in (Para 1.6).

*“1.6 ACTIVITIES INSIDE ECO-SENSITIVE ZONES:*

*Notifications of Eco-Sensitive Zones (ESZ) specify the activities which are prohibited, regulated and promoted in the ESZ. Proposals for prohibited activities should not be forwarded for consideration of the SCNBWL. For taking up any activity within an ESZ, if notified, or within 10 km zone of the boundary of National Parks/Wildlife Sanctuaries, if ESZ has not been notified, prior approval of the NBWL/SCNBWL shall be required if the activity/project is listed in the schedule of the EIA Notification 2006 as amended from time to time.”*

According to the Guidelines on requirement for Environmental Clearance for Road Projects issued by Indian Roads Congress, 2011, IRC:SP:93-2011, regarding the Procedure of wildlife clearance, a prior clearance is necessary for each project proponent by the National Board of Wildlife, and general condition, as stated above, shall apply.

According to the Guidelines on requirement for Environmental Clearance for Road Projects issued by Indian Roads Congress, vide No. IRC.SP.93-2017 in November 2017, chapter 6 Other Relevant Clearance:

*“6.1 Clearance for Eco-Sensitive Zones*

*All the PAs have Eco-Sensitive Zones (ESZ) earmarked all along the periphery of a particular PA. The limits of an ESZ are notified, and vary across the PAs, and along different directions outside a PA. However, unless such boundaries are notified, a 10 km radius from the boundary of a PA is taken as the ESZ Clearance for such areas is required, only in case the project requires Environment Clearance. In such an eventuality, clearance for the ESZ of a PA is granted by the Standing Committee of the National Board of Wildlife, as per the procedures for Wildlife Clearance.”*

According to the CONSOLIDATED GUIDELINES AND CLARIFICATIONS issued under VAN (SANRAKSHAN EVAM SAMVARDHAN) ADHINIYAM, 1980 and VAN (SANRAKSHAN EVAM SAMVARDHAN) RULES, 2023 CHAPTER- 12 DIVERSION PROPOSALS PROPOSED IN AND AROUND THE PROTECTED AREAS in para 1.6 at page 107 states as under: -

*“12.6 Prior recommendation of Standing Committee of NBWL under the provisions of 12 Wildlife (Protection) Act, 1972 shall be obtained, if required. for taking developmental activities in/over an*

*area falling within eco sensitive zones (10 km if ESZ is not notified and listed) around notified PAs in addition to prior approval of diversion of forest land for non-forest purposes if such area involved is forest land.”*

These memorandum and guidelines clarify that projects within 10 km of a National Park or Wildlife Sanctuary, irrespective of whether the Eco-Sensitive Zone (ESZ) is notified or not, require clearance from forestry and wildlife authorities, including the Standing Committee of the National Board for Wildlife.

Further, Government of India, Ministry of Environment & Forest issued a letter dated 15-03-2011 with regard to guidance for taking up non-forestry activities in wildlife habitats. [**page no. 789 Vol. 15**] wherein, para 1.4 clearly states that for activities within 10 km from boundary of National Park and Wildlife Sanctuary, environmental clearance in the said area shall be subject to recommendation of the Standing Committee of NBWL. [**page no. 791 Vol. 15**]

### **VIOLATIONS COMMITTED AND REPORTS**

Pursuant to the order of the Hon'ble Tribunal, Joint Committee submitted was constituted and submitted its report dated 17-01-2023, whereby Committee observed that the Toll plaza and the administrative building are constructed in the Eco-Sensitive Zone of the Kaimoor Wildlife Sanctuary Area and in respect of the said construction (toll plaza & administrative building), no permission/ documents from National Board of Wildlife and Government of

India were found, more so, construction was not as per the layout plan [page 55, 56 & 62 Vol. 2]. Thereafter, R5-DFO in its report dated 17-08-20023 sated further violations, where the Respondent has changed the layout without the permission of the Central Government and non-installation of cement pillars which are in clear violation of para no. 7 and para no. 19 of the NOC dated 31-03-2014, confirming above-said report of Joint Committee [page no. 402-405 Vol. 8 DFO Reply] and by the report of UPPCF dated 08-07-2024. [Page 720 Vol. 15].

An action taken report dated 01-01-2024 was also submitted by the MoEF & CC and NHAI and found that the project (Toll-plaza and administrative building) comes under Eco-Sensitive Zone and directed the MoEF & CC to assess the extent and amount of violation of Eco-Sensitive-Zone and to evaluate the compensation which will be levied on the user agency. [Page no. 410 Vol. 9]

It is further submitted that R9-UPPCB submitted its status report dated 11-06-2024 and observed that environmental clearance was required for the Highway project as per the notification issued by the Government of India, vide O.S no. 1533, dated 14-09-2006. [page 594 Vol. 12]. It has also come to our knowledge by report dated 08-07-2024 by DFO, that an additional building has been constructed apart from the Toll-plaza and administrative building by R1. [page 720 Vol. 15] The Sub-Divisional Magistrate in its report dated 06-07-2024 further pointed that Toll-plaza and administrative building are under the Eco-Sensitive Zone of Kaimoor Wildlife Sanctuary

[page no. 803 Vol. 16] and further R10- SEIAA has observed in its reply dated 19-07-2024, that R1 had not submitted any application for environmental clearance as per the provision of EIA notification 2006. [page no. 812 Vol. 17]

That pursuant to the above findings, DFO, Kaimoor, imposed penalty of Rs 3,88,33,361/- and penalty of Rs 17,29,350/- on R1 which has not been deposited yet. [page no. 751 of Vol. 15 & 817 Vol. 18]

It is further submitted that R1 has filed a completion certificate dated 08-04-2016, on 20-08-2024 when the arguments on completion certificate were laid before this Hon'ble Tribunal. It is important to note that the said completion certificate is neither as per the agreement dated 08-12-2011 and nor issued by the Independent Engineer. The said certificate was issued on request of M/s APCO INFRATECH LTD. For the purpose of Prequalification of Govt. or Private sector projects. An objection in this regard has already been filed before this Hon'ble Tribunal dated 14.10.2024. [Page 926-927 Vol. 21]

### LIMITATION

It is admitted fact that the R1 entered into an agreement with UPSHA-R3 for the above said project. The R1 claims that the said project was completed in the year 2018 [para 18, page no. 228 Vol. 5], whereas, on contrary, R3 stated in its counter that project was completed on 20-10-2016 [page no. 327, Vol. 7] and asserted the

same date as project completion date, again in its supplementary affidavit [**page no. 506, para 6**].

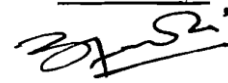
It is submitted that both the R1 and R3 have ignored the agreement dated 08-12-2011, which has specifically provided in para 14.2, certificate for completion of project clause, which shall be issued by Independent Engineer only upon completion of project. However, R1 and R3 on their own, considered provisional certificate clause provided in para no. 14.3 as completion certificate, which can be issued even if project is not completed, at the request of project proponent. [**page no. 291 Vol. 5**] which in no sense can be considered as completion certificate by any man of general prudence and certainly no completion took place as per their own agreement.

It is important to note that Independent Engineer (certificate issuing authority) wrote a letter dated 20-01-2020 to R3 for a report regarding clearance of three obstructions mentioned in the letter so that a decision on the issuance of Completion Certificate can be taken. [**page no. 250 Vol. 5**] R1 and R3 despite knowing that completion certificate has not been issued, stated false twice before the Hon'ble Tribunal that project is completed. It is also brought to notice of the Hon'ble Tribunal that in the past Independent Engineer has issued provisional certificate thrice to R1 on 29-10-2015 [**page 242-243**], on 30-03-2015 [**page no. 245-246**] and on 27-10-2016 [**page no. 247-248**], thus, considering above stated points it is very clear that no completion certificate has been issued till now.

It is further submitted that a report dated 08-07-2024 had found the violation of the NOC dated 31.03.2014 whereas an additional building has been constructed apart from the Toll-plaza and administrative building which was not in the initial layout plan. This violation was not found in the Joint Committee Report dated 17.01.2023 which shows that the further construction by the Respondents has been carried out after the issuance of the Joint Committee Report. This shows that a continuous violation the terms and conditions of the NOC by the respondents.

Therefore, cause of action arose in terms of Section 14 and Section 15 of the National Green Tribunal Act, 2010 has not been completed in the instant OA, as no completion certificate, in accordance with the agreement dated 08-12-2011, is granted to R1 even till now, by the competent authority.

**Filed by:**



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(Advocate for the Applicant)  
Advocate-on-Record  
Supreme Court of India

Date: 14-02-2025  
Place: New Delhi