

Application No 107 / 2019

Goa Foundation v/s Dept of Mines & Geology &Ors

Written Submissions of the Applicant

Brief Synopsis

This application is filed u/s 14, 15 & 18 of the NGT Act. The substantial question relating to the environment in this application is that the Vedanta Ltd. (Resp No 4) is operating two beneficiation plants for processing mineral ore without obtaining prior Environment Clearance. This is a mandatory requirement under the Environment Impact Assessment Notification, 2006, issued under the Environment Protection Act, 1986. Thus, this activity of the Resp No 4 violates both the EIA Notification, 2006 and the Environment Protection Act, 1986.

The approval for the use of the beneficiation plants is from the Director of Mines and Geology but it is subject to the Resp No 4 obtaining necessary permissions and approvals. This would include an EC. However, on the basis of a Consent to Operate from the State Pollution Control Board, the Resp No. 4 commenced operating the two beneficiation plants in November 2019. Till date, there is no Environment Clearance under the EIA Notification, 2006, from the Ministry of Environment & Forests & Climate Change.

The applicant has sought stay of the operations of the two beneficiation plants, withdrawal of the order of consent to operate and action / penalties, to be taken / levied on the Resp No 4 for his deliberate flouting of the Environment Protection Act and the EIA Notification. The applicant is also concerned that the State Pollution Control Board, although not an enforcing authority under the EPA, is permitting, through its consent orders, the EPA to be violated. This Hon'ble Tribunal may pass appropriate directions in this regard.

Facts of the Case in Capsule Form

- The two operating beneficiation plants (BPs) are identified as 2A & 4A
- BP Nos 2A & 4A were constructed in or around 2012 i.e post 2006
- EIA Notification, 2006 lists Mineral Beneficiation at Sr. No 2(b) in the Schedule of projects / activities requiring prior EC from the Ministry of Environment (Resp No. 5)
- There is no record of consent to establish having been granted for the two BPs by the State Pollution Control Board (Resp No. 2). However, consent to operate was first granted on 19.6.2015 and thereafter renewed on 19.9.2019
- The BPs are located in Sy No. 24/1 of Codli village, which was part of mining lease No. 70/52.
- After the mining leases were cancelled and all mining operations were halted by the Supreme Court, vide its judgment dated 7.2.2018 in GF v/s Sesa Sterlite Ltd. [(2018) 4 SCC 218], the land of the erstwhile mining lease has reverted to the Goa Govt.
- On 30.7.2019, the Resp No 4 (Vedanta) submitted a proposal to the Chief Minister to utilise the two BPs to process e-auctioned ore.
- On 22/23. 8.2019, the Resp No 4 purchased 1.44 MT of e-auctioned ore.
- On 10.9.2019 the Director of Mines and Geology (Resp No 1) granted permission to operate the BPs subject to necessary permissions being obtained
- On 19.9.2019, the Resp No 2 (GSPCB) granted Consent to Operate the two BPs
- On 15.11.2019, the Govt intimated its approval to lease 13.67 ha. of Sy No. 24/1 of Codli village to Resp No 4 for 1 year
- On 28.11.2019, the Collector handed possession of the land to Resp No 4.

- In November 2019, the Resp No 4 commenced operation of BP Nos 2A and 4A
- The Resp No 4 admits in its affidavit dated 26.02.2020, that the BP Nos. 2A & 4A do not have an EC for their operations and that they have never been the subject matter of an EC. He also states that the plants have been in existence since 1979.

Detailed Submissions (5 in number)

1. OPERATION OF BPs WITHOUT PRIOR EC IS PROHIBITED & CONSTITUTES VIOLATION OF EPA, 1986

The operation of BP Nos 2A & 4A is in violation of the EPA as the BPs do not have a prior EC for their operations, as is mandatory in the EIA Notification 2006. The Hon'ble NGT must take serious note of the brazen, continued violation of law by the Resp No 4, in defiance of regulations designed to ensure environment protection.

It is undisputed that mineral beneficiation is an activity which is listed at Sr. No 2 (b) in the Schedule of projects / activities requiring prior EC. The SPCB has granted the Resp No 4 consent to process a quantity of 2.1 MT of iron ore p.a. by its order dated 19.9.2019. As mineral beneficiation operations of > 1 MTPA require prior EC from the MoEF, the Resp No 4 was required to obtain an EC from the Resp No 5 before commencing the operation of the BPs. It has not done so and hence its activities are in violation of the EIA Notification 2006. The plant operations commenced around November 2019. This application was filed on 17th December 2019, i.e., shortly after beneficiation operations commenced. Thus, for the past ten

months – despite the applicant having drawn this violation of the EPA to the attention of the authorities both at Central Govt and State Govt levels - none has bothered to rein in the illegal activities of the Resp No 4 and halt the beneficiation plant operations or withdraw the NOCs and other approvals granted for their operation.

2. FALSE CLAIM MADE ON OATH THAT THE BPs WERE OPERATING PRIOR TO EIA 2006

The Resp No 4 has committed a fraud on this Tribunal by swearing on oath that the two plants were constructed way back in 1979, prior to the EIA Notification 2006 coming into force, and hence they do not require EC, since there has been neither expansion nor modernization of the project since that time. This is a blatantly false statement, deliberately made on oath by the Resp No.4. The Hon'ble NGT should take serious note of the same and appropriate penalty be imposed on the Resp. company.

The Resp No 4 states in its affidavit dated 26.02.2020 that the two BPs have been in operation since 1979. Thus, according to the Resp No 4 they were constructed much prior to the coming into force of the EIA Notification 2006. Further, that since 1979, the plants are operating at the same capacity as prior to the EIA Notification, 2006. Hence the two BPs are not covered by the notification which is only applicable to new plants or expansion of existing projects, neither of which is applicable to BP Nos. 2A & 4A.

The statement that the two BPs were constructed in 1979 is a blatantly false statement, knowingly made by the Resp No 4 to cover up the illegality of its operations. As per the records with the SPCB, the two BPs were constructed around 2012, i.e., long after the EIA Notification 2006 came into force. That the BPs are constructed post 2006 is supported by the following documents:

(i) The location / construction of plants was reported in an inspection report by 2 SPCB experts on 21.05.2012. The inspection report states that there are presently a total of 4 BPs (one having been dismantled earlier). *Construction of two more plants are under progress. As soon as the installation of these two plants is complete*, the existing two plants with capacity of 250MTH will be dismantled. From this report it is clearly established that two new BPs were under construction in or around the year 2012.

(ii) There is no record of consent to establish BP Nos 2A & 4A by the SPCB in the Board's files. These two plants appear by their number for the first time in the file records only in the consent to operate order dated 19.6.2015 for four BPs (including IIA and IVA) and a dry screening plant. Thereafter, renewal of consent to operate is once again issued for the two BPs on 19.09.2019.

(iii) Applicant has annexed 4 Google images of the site taken in the years 2007, 2011, 2013 and 2015. The first image dated 11.12.2007 of the site where the two BPs are presently located shows the area without any plant whatsoever. Area is marked in a square. The second photograph of the same site dated 27.3.2011 shows some development works at the site. The third photograph dated 26.1.2013 shows the two plants constructed as does the fourth photograph dated 22.10.2015.

The most important fact to note is that there were absolutely no constructions at the present site prior to 2006. Thus the two BPs have come up after the EIA Notification, 2006 and it was mandatory for the Resp No 4 to have obtained EC for the plants. The Resp Company has resorted to blatant lies to try and cover up its misdeeds and has falsely stated on oath that these two plants were constructed in 1979.

The Resp No 4 has therefore committed a fraud on this Hon'ble Tribunal by falsely stating that the two plants were constructed in 1979, prior to the EIA Notification coming into force in order to argue that there was no need for an EC for their operations. Such perjury, that too deliberately made by a company, must be dealt with a firm hand.

3. SPCB GRANTS CONSENT TO OPERATE WITHOUT ENSURING PARTY HAS PRIOR EC

Although the SPCB was aware that the two BPs did not have an EC and that this was a mandatory requirement under the EIA Notification, the SPCB did not make procurement of EC a requirement before the Resp No 4 could commence operations. Although the SPCB is not an enforcing authority under the EPA, it is nonetheless a statutory body whose function is to control pollution. Hence, knowing full well that the beneficiation process causes a lot of pollution, at the very least, the GSPCB should have made its consent to operate subject to the Resp. No 4 obtaining an EC for the BPs.

The SPCB is not an authority under the EPA. However, it is the primary authority responsible for the control of air and water pollution under the Air and Water (Prevention and Control of Pollution) Acts, 1981 and 1974 respectively. The SPCB is aware that the mineral beneficiation process generates considerable pollution as the operations involve processes to enhance quality of the ore, leaving behind substantial rejects. Further, that the consent to operate issued by the Board is almost always the final licence that is required to commence industrial activity. Hence the GSPCB ought to be especially circumspect to ensure that unless the industry satisfies all the mandatory requirements for control of pollution, it does not issue a consent to operate.

In this case, the GSPCB was aware that two new plants were being set up to replace two earlier plants which were being dismantled. As can be seen from the Google images, the older plants were not at the present location which was being used for the BPs for the first time. Even if the Resp. Company had not applied for consent to establish, the fact that two new plants were under construction was drawn to the Board's attention by its own experts in 2012 in the inspection report they had prepared, pursuant to an inspection of the mine site following local citizens' complaint about pollution.

The Board was thus clearly aware that it had not granted consent to establish the two plants. But it did absolutely nothing to stop the plants from being constructed. Worse, it then granted both plants consent to operate first in 2015 and then renewed the same in 2019 – both times without examining by what authority the plants had been constructed in the first place. The Board did not even take the precaution of making its consent to operate subject to the Resp. company obtaining an environment clearance, despite the pollution that would be caused to the environment.

Thus, taking advantage of the lackadaisical attitude of the Board, the Resp company was able to neatly bypass the mandatory requirement of EC before commencing operations. The applicant has not alleged malafides and connivance of the authorities with the Resp Company in this application, as it came to know only recently, after obtaining inspection of the files, that the plants were brand new plants constructed only after 2006.

This Hon'ble Tribunal may censure the SPCB for its lapses and direct that, in future, Consent to Operate ought not to be issued unless all permissions are obtained and in the alternative the consent document should

categorically make its order subject to the party obtaining all necessary permissions.

4. THE OPERATION OF THE BENEFICIATION PLANTS VIOLATE THE HON'BLE SUPREME COURT'S JUDGMENT AND ORDER DATED 7.2.2018

By its judgement dated 7.2.2018, the Hon'ble Supreme Court directed a halt to all mining operations until fresh leases were granted and *fresh ECs were issued* by the Ministry of Environment. The reasons for this drastic order are contained in the judgment. Therefore, any activity in the nature of mining operations would be a violation of the Hon'ble Supreme Court's order. Beneficiation being the final stage in the winning of the mineral, is definitely within the prohibition imposed by the Hon'ble Supreme Court in its order dated 7.2.2018.

The Resp No 4 avers that the ban imposed by the Hon'ble Supreme Court is in relation to strictly 'mining operations' and not mineral beneficiation as the ban is on the conducting of mining operations on the mining lease. He further states that 'mining operations' is defined in the MMDR Act as "any operations undertaken for the purpose of winning any minerals."

Applicant submits that the definition of mining operations itself shows that there are more than one operation leading to the winning of the ore – extraction being among the first of them while beneficiation is among the last. Mineral beneficiation is explicitly covered under the Mineral Conservation and Development Rules 2017, issued under the MMDR Act, 1957. It is defined u/s 3 (d) of the 2017 Rules as "the processing of minerals or ores for the purpose of upgrading the quality, purity or assay grade of the desired product by removing unwanted constituents like gangue minerals or

tailings.” Thus, the ore is finally won, i.e., ready to be certified as ore only after it is beneficiated (impurities removed).

The EIA Notification states that a mining proposal with mineral beneficiation is to be appraised together for grant of an EC. The Ministry of Environment affirms in para 7 of its affidavit that this is the procedure which is followed.

Being a mining operation a BP can only be located on a mining lease. Sy No 24/1 was part of ML No 70/52. When the Hon’ble Supreme Court banned mining operations on 7.2.2018 w.e.f. 15.3.2018, all activities on the lease halted including the operation of the BPs. No mining lease was issued after that date. In the absence of a mining lease the Resp No 4 could not resume the operations of the BPs as has been done in the present case. The beneficiation operations of the Resp No 4 therefore violate the Supreme Court’s order with impunity.

5. MAINTAINABILITY OF THE O.A:

The Resp No 4 has raised arguments concerning the maintainability of the “appeal” filed by the applicant since it impugns the Consent Order passed by the SPCB, submitting that the remedy for an appeal against the consent order lies with the appellate authority and not the NGT. He also points to the liberty granted by the High Court to the applicant to file appeal before the Administrative Tribunal.

Petitioner has responded to this challenge vide its Rejoinder dated 31-8-2020 (pg 137 of the paperbook) and the same is briefly set out here.

(i) OA 107/2019 is not an appeal. It is an application u/s 14, 15 and 18 of the NGT Act. There is no alternative remedy for applications. Only for appeals.

(ii) When the applicant first approached the Hon'ble High Court with a PIL on this issue, considering that alternative remedy is available, the Court gave liberty to the applicant to avail of any alternative remedy available to them. The liberty was not restricted to filing an appeal before the Administrative Tribunal only.

(iii) O.A 107/2019 does not seek quashing of the consent order for violation of the Air / Water Acts. The application solely seeks implementation of the mandatory provisions of the EIA Notification. The Consent order enables the Resp No 4 to violate the EIA Notification as it has been issued without any condition that prior EC should be obtained before operating the BPs. Action for not obtaining EC is liable against the Company under the EPA, 1986 and this is the principal cause of action of the application. On this ground, applicant has no remedy available except to file its matter before this Hon'ble Tribunal. However as the plants have commenced operations without an EC owing to the consent order of the GSPCB, applicant is compelled to seek withdrawal of the consent Order. It may be noted that the applicant has not prayed for cancellation of the Consent Order but for its withdrawal. In other words, consent may not be issued without the plants first obtaining an EC for operations.



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ANNEXURE A

Site of Beneficiation Plants, Nos 2A & 4A (Sy No 24/1) Codli Village

Google Earth Site Position as of 11.12.2007: No construction or plant at the site



Google Earth Site Position as of 27.3.2011. Some development activity has commenced. New plants either under construction or in operation.



Google Earth Site Position as of 26.1.2013: Beneficiation Plant Nos. 2A and 4A are identified at the site. Some other structures / plants also constructed at the site.



Google Earth Site Position as of 22.10.2015: Beneficiation Plant Nos. 2A and 4A receive Consent to Operate from the Pollution Control Board on 19.8.2015

