Item No. 03 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 1017/2018
(I.A. No. 52/2019)

Shashikant Vithal Kamble Applicant

Versus

Union of India & Ors. Respondent(s)

Date of hearing: 23.12.2022

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

ORDER

The Issue

1. Issue for consideration is validity of notification dated 14.11.2018, issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) under the Environment (Protection) Act, 1986, modifying the EIA regime in respect of construction projects with built up area more than 20,000 sq. meters to 50, 000 sq. meters and industrial sheds, educational institutions, hospitals and hostels for educational institutions more than 20,000 sq. meters upto 1,50,000 sq. meters.

2. Instead of appraisal of impact assessment being done by the State Environment Impact Assessment Authorities (SEIAAs), as heretofore, under the Notification dated 14.09.2006, such appraisal is now left to Local bodies such as Municipalities, Development Authorities, District Panchayats. Learned counsel for the applicant submits that delegation of

powers in the impugned notification renders EIA having safeguards for protection of environment to be futile.

3. According to the applicant, such modified regime is against 'Sustainable Development' and 'Precautionary' principles, to be enforced by this Tribunal under sections 15 and 20 of the NGT Act. The matter is identical to the issue earlier dealt with by the Tribunal vide judgment dated 08.12.2017 in Society for Protection of Environment and Biodiversity Vs. Union of India & Ors. – 2018 NGTR (1) PB 1, whereby similar notification was quashed.

Procedural History

4. The matter considered by the Tribunal on 03.12.2018. It was found that prima facie the impugned notifications could not be sustained. Accordingly, while issuing notice to the MoEF&CC, the Impugned Notification was stayed till further orders. Counter affidavit was directed to be filed before the next date. The operative part of the order is reproduced below:-

> *"It is submitted that conducting or non-conducting EIA by a credible mechanism is not a matter of discretion but a power coupled with duty to uphold the concept of sustainable development as well as 'Precautionary Principle'. The said concepts are a part of Article 21 of the Constitution and are required to be upheld by this Tribunal under Section 20 of the National Green Tribunal Act, 2010.*
>
> *3.* ***This Tribunal dealt with the issue vide judgment dated 08.12.2017 in Society for Protection of Environment and Biodiversity Vs. Union of India & Ors. – 2018 NGTR (1) PB 1, and struck down the dilution of norms for Environment Impact Assessment which were found to be deviating from the 'Precautionary Principle' by delegating such power to the local authorities which was held to be a retrograde step. It is failure of the local bodies to apply law which has led to large scale violation of town and country planning laws and the resultant environmental degradation. If such constructions are exempted from the purview of the Expert Appraisal Committee, it will amount to failure to protect the environment, which is the duty of the MoEF&CC under the Environment (Protection) Act, 1986, which was enacted to give***

effect to the international commitment under RIO Convention, 1992. Reliance was placed by the Tribunal in the judgment of the Hon'ble Supreme Court in the case of N.D. Jayal v. Union of India, (2004) 9 SCC 362, laying down that adherence to Sustainable Development Principle is mandate of Article 21 of the Constitution. De-centralisation of mechanism regulation may be desirable but the same has to be by a credible mechanism.

4. In view of settled law on the point, ***we are prima facie of the view that mechanism in the impugned notification to substitute the existing mechanism will fall short of the requirement of the principle of 'Sustainable Development' and 'Precautionary Principle' which are part of Article 21 of the Constitution as laid down by the Hon'ble Supreme Court in in the case of N.D. Jayal v. Union of India (supra).***

Accordingly, while issuing notice, we stay operation of the impugned notification and direct that existing mechanism, prior to this notification will continue till further orders*.*

List for further consideration on 22.01.2019.

Counter affidavit, if any, be filed before the next date."

5. Thereafter, the matter was taken up for further consideration on 22.01.2019. Instead of filing any counter affidavit, the Counsel for the MoEF&CC took the stand that the same issue being under consideration before the *Delhi High Court in WP(C) 12517/2018, Social Action for Forest and Environment vs. Union of India etc.,* proceedings be deferred awaiting further order of the Delhi High Court. Allowing this submission, proceedings were deferred, awaiting proceedings in the High Court. However, even after expiry of more than three years, there being no further progress and this Tribunal being under mandate to deal with matter expeditiously, the matter has been taken again, after intimation to the parties.

Consideration of the matter and finding

6. None appears for either parties. We have considered the matter on merits and also checked up the latest orders of Delhi High Court from its

website. Matter is still pending without any further progress. No reply has been filed by the MoEF&CC. We proceed to deal with the issue.

The impugned notification

7. Operative part of the impugned Notification is reproduced below:-

> *"**S.O. 5733(E).** —In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the **Central Government hereby delegates the power to local bodies such as Municipalities, Development Authorities, District Panchayats as the case may be, to ensure the compliance of the environmental conditions as specified in the Appendix in respect of building or construction projects with built-up area ≥20,000 sq. mtrs. To 50,000 sq. mtrs. and industrial sheds, educational institutions, hospitals and hostels for educational institutions>20,000 sq m upto 1,50,000 sqm along with building permission and to ensure that the conditions specified in Appendix are complied with, before granting the occupation certificate/completion certificate.***
>
> ***APPENDIX***
>
> ***Environmental Conditions for Buildings and Constructions***
>
> ***(Category: Building or Construction projects or Area Development projects and Townships > 20,000 to < 50,000 Square meters as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions from 20,000 sq. m to < 1,50,000 sq. m)"***

S.N.	***MEDIUM***	***ENVIRONMENTAL CONDITIONS***
(1)	***(2)***	***(3)***
1	*Topography and Natural Drainage*	*The natural drain system shall be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.* *Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.*
2	*Water Conservation,*	*A complete plan for rain water harvesting, water efficiency and conservation should be prepared and implemented.*

	Rain Water Harvesting and Ground Water Recharge	*Use of water efficient appliances should be promoted with low flow fixtures or sensors.* *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-laws, 2016.* *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.* *All recharge should be limited to shallow aquifer.*
2(a)		*At least 20 per cent of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks, landscape etc. with at least 50 per cent opening in paving which would be considered as pervious surface.*
3	*Waste Management*	*Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste.* *Sewage: Onsite sewage treatment of capacity of treating 100 per cent waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.* *Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development,* *Central Public Health and EnvironmentalEngineering Organisation (CPHEEO)Manual on Sewerage and Sewage Treatment Systems, 2013.* *The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.*
3 (a)		*All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
3(b)		*Organic waste compost/ Vermiculture pit with a minimum capacity of 0.3 kg per person per day must be installed.*
4	*Energy*	*Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.* *Outdoor and common area lighting shall be Light Emitting Diode (LED). Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.* *Wall, window, and roof u-values shall be as per ECBC specifications.*
4 (a)		*Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1 per cent of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*

4 (b)		*Solar water heating shall be provided to meet 20 per cent of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*
4 (c)		*Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20 per cent of the construction material quantity. These include flyash bricks, hollow bricks, Autoclaved Aerated Concrete (AAC), Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.* *Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification, S.O. 763(E) dated 14th September, 1999 as amended from time to time.*
5	*Air Quality and Noise*	*Roads leading to or at construction sites must be paved and blacktopped (i.e. metallic roads).* *No excavation of soil shall be carried out without adequate dust mitigation measures in place.* *No loose soil or sand or Construction & Demolition Waste or any other construction material that causes dust shall be left uncovered.* *Wind-breaker of appropriate height i.e. 1/3rd of the building height and maximum up to 10 meters shall be provided.* *Water sprinkling system shall be put in place.* *Dust mitigation measures shall be displayed prominently at the construction site for easy public viewing.* *Grinding and cutting of building materials in open area shall be prohibited. Construction material and waste should be stored only within earmarked area and road side storage of construction material and waste shall be prohibited. No uncovered vehicles carrying construction material and waste shall be permitted.* *Construction and Demolition Waste processing and disposal site shall be identified and required dust mitigation measures be notified at the site* *Dust, smoke and other air pollution prevention measures shall be provided for the building as well as the site.* *Wet jet shall be provided for grinding and stone cutting.* *Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.* *All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.* *All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.* *For indoor air quality the ventilation provisions as per National Building Code of India.*
5 (a)		*The location of the Genset and exhaust pipe height shall be as per the provisions of the statutory norms notified by Ministry of Environment, Forest and Climate Change* *The Genset installed for the project shall follow the emission limits, noise limits and general conditions notified by Ministry of Environment, Forest and Climate Change vide GSR 281(E) dated 7th March 2016 as amended from time to time.*
6	*Green Cover*	*A minimum of 1 tree for every 80* sq.mt. *of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.*

6 (a)		*Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.*
7	*Top Soil preservation and reuse*	*Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services.* *It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*
8	*Transport*	*The building plan shall be aligned with the approved comprehensive mobility plan (as per Ministry of Housing and Urban Affairs best practices guidelines (URDPFI)).*

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JIGMET TAKPA, Jt. Secy."

8. It is seen from the above that the substitute mechanism does not adequately provide for conducting environmental impact of housing projects on environment. There is no requirement of compiling relevant data of carrying capacity in terms of air and water and mitigation measures on account of adverse impact of such activity on recipient environment. It is well known that housing projects impact environment in a big way and unless such impact is appraised and mitigation measures adopted and monitored, environment will be compromised on precautionary and sustainable principles defeated to the detriment of right of clean environment and in breach of Constitutional obligation of the State to protect environment as mandated under public trust doctrine, Articles 48A and 21 of the Constitution which are to be statutorily enforced by this Tribunal under sections 15 and 20 the NGT Act, as held in earlier judgement to which reference is made hereunder.

Supreme Court judgements on the subject

9. Vide order dated **04.12.2001 in *Writ Petition (Civil) No. 725/1994, News Item "Hindustan Times" A.Q.F.M. Yamuna vs. Central Pollution Control Board & Anr*.**, while dealing with the issue of pollution of river Yamuna, the Hon'ble Supreme Court observed that while allowing extra construction, the impact of treatment of sewage

which is likely to be generated as a result of such construction must be suitably assessed as per the scheme of EP Act, 1986 and no construction should be allowed without such impact assessment. The observations in the said orders are reproduced below:-

> *"xxx ....xxx..................................xxx*
>
> *As of today, the sewage treatment capacity is 442.4 MGD which is likely to increase to 497.4 MGD by March, 2002. This is far less than the amount of sewage which exists and which requires treatment. Under these circumstances,* ***there is merit in the contention of the Amicus that unless this basic civic amenity of treating the sewage, which is generated, is made available, the Government cannot allow extra construction without there being corresponding increase in the civic amenities. Any such addition in the construction would lead to increased population and perhaps the extinction of the river Yamuna.***
>
> *The learned Solicitor General submits that in relation to town planning the* ***provisions of the Environment Protection Act, 1986 would be applicable and whenever any decision is taken in regard to town planning environment impact assessment must first be undertaken, clearance obtained and then the decision taken. Unfortunately, the Rules under Environment Protection Act as such do not cover town planning. In regard to this aspect, the learned Solicitor General wants to address arguments and give suggestions to the Court as to what effective orders can be passed with a view to prevent the river Yamuna from becoming history. The Central Government should also consider and inform the Court on the next date of hearing whether it should not amend the Rules under the Environment Protection Act so as to require the environment impact assessment for the purposes of the town planning Acts****.*
>
> *A formal notice in this behalf be also issued to the Ministry of Environment & Forests. The NCRB should also file an affidavit as to what steps they have taken in order to implement the provisions of the Act applicable to it.*
>
> *The Union of India and the Delhi Government are directed to show cause why there should be no stay of the construction of extra floors considering the fact that basic civic amenities including sewage for the existing dwelling units are not available."*

10. It was in light of above observations, the MoEF&CC vide Notification dated 07.07.2004 made a provision for Impact Assessment of construction projects as follows:-

"xxx ………………………………xxx…………………………xxx

And ***whereas, the Orders of the Hon'ble Supreme Court in the Writ Petition (C) No.725 of 1994 with I.A. No.20, 21, 1207, 1183, 1216 and 1251 in Writ Petition (C) No.4677 of 1985 in the matter of news item published in Hindustan Times titled "And Quiet Flows the Maily Yamuna" vs. Central Pollution Control Board and Others have been duly considered;***

And whereas, the ***Orders of Hon'ble High Court of Madras in W.P. (C) No.33493 of 2003 and W.P. Nos.35205, 35517, 35691, 35692 and 35825 of 2003 and W.P. M.P. Nos.40556, 42562, 43720, 45348 to 45350, 42791, 42792, 43882, 43181, 43366 to 43369, 43544 and 43545 of 2003 between C.S. Kuppuraj and others Vs. the State of Tamil Nadu and others have also been duly considered;***

And whereas, all objections and suggestions received have been duly considered by the Central Government;

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 clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the notification number S.O. 60 (E), dated the 27th January 1994, namely:-

In the said notification, -

I. in paragraph 3

(i) in item (a), for the letters, word and figures "Nos.3,18 and 20", the letters, word and figures "Nos.3,18,20,31 and 32" shall be substituted;

(ii) after sub-para (f), ***the following shall be inserted, namely:-***

"(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.

(h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Explanation.–

- ***(i)*** ***New construction projects which were undertaken without obtaining the clearance required under this notification, and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July, 2004.***
- ***(ii)*** ***In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.***
- ***(iii)*** ***Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification";***

11. The above notification was by way of amendment to earlier notification dated 27.01.1994 on the subject of Impact Assessment.

12. We may further note that object of EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available. In ***Hanuman Laxman Aroskar vs. Union of India & Ors., (2019) 15 SCC 401,*** this aspect was discussed in light of Notifications dated 27.01.1994 and 14.09.2006, in paras 34,35,36,42 to 46. It was finally concluded as follows:-

> *"157.* ***The 2006 notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 notification is that in the area of environmental***

governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive."

13. In **Keystone Builders, (2020)** ***2 SCC 66*****, the Hon'ble Supreme Court dealt with the matter as follows:**

> "**The EIA Notification was adopted with the intention of restricting new projects and the expansion of new projects until their environmental impact could be evaluated and understood. It cannot be disputed that as the size of the project increases, so does the magnitude of the project's environmental impact. This Court cannot adopt an interpretation of the EIA Notification which would permit, incrementally or otherwise, project proponents to increase the construction area of a project without any oversight from the Expert Appraisal Committee or SEAC, as applicable. It is true that there may exist certain situations where the expansion sought by a project proponent is truly marginal or the environmental impact of such expansion is non-existent. ....**
>
> **........A core tenet underlying the entire scheme of the EIA Notification is that construction should not be executed until ample scientific evidence has been compiled so as to understand the true environmental impact of a project. By completing the construction of the project, the appellant denied the third and fourth respondents the ability to evaluate the environmental impact and suggest methods to mitigate any environmental damage."**

Earlier view of this Tribunal

14. This Tribunal earlier dealt with an identical issue vide judgment dated 08.12.2017 in *Society for Protection of Environment and Biodiversity Vs. Union of India & Ors. – 2018 NGTR (1) PB 1* and struck down similar provision as follows:-

> *"xxx ....xxx................................xxx*
>
> *14. … From the above comparative study of the two regimes, it is clear that the* ***regime in terms of the Notification dated 9th December, 2016 would considerably dilute the environmental safeguards provided not only under the***

Regulation of 2006 but even under the Act of 1986*. The Applicants have rightly placed reliance on the Principle of Non-regression. Under the International law, the doctrine of Non-regression is an accepted norm. It is founded on the idea that* ***environmental law should not be modified to the detriment of environmental protection. This principle needs to be brought into play because today environmental law is facing a number of threats such as deregulation, a movement to simplify and at the same time diminish, environmental legislation perceived as too complex and an economic climate which favours development at the expense of protection of environment. The draft amendment of the existing environmental laws should be done with least impact on environment protection that was available under the existing law or regime. The present amendment in the Notification particularly few clauses that we will refer hereinafter can lead to severe environmental impacts.***

15. ***The Precautionary Principle as propounded by the Hon'ble Apex Court is a cornerstone of environmental jurisprudence in the country as the environmental conditions imposed are not comprehensive enough and are only a tick-box exercise taken by the project proponent without any prior environment assessment process especially its impact on ecologically sensitive area and other environmental vulnerable area.***

The impugned notification, takes away the power of the Pollution Control Boards and Committee to grant/refuse Consent to Establish and Consent to Operate for building and construction projects up to an area of 1,50,000 sq meter. It further dilutes the entire environmental assessment framework under the EIA notification 2006, which has been periodically strengthened and amended by the numerous orders of this Hon'ble Tribunal.

The impugned notification has several deficiencies that go against the basic letter and spirit of EPA Act, 1986 and the EIA notification issued there under. ***Power under Section 3 read with Rule 5 of Environment (Protection) Act, 1986 can only be exercised by the central government or the authorities constituted by it. Whereas the impugned notification gives power to the State Government for constitution of an authority to exercise and perform such of the powers and functions as provide under Environment Protection Act, 1986, which Includes assessment and granting of environment clearance to the projects.*** *This would be apparently in conflict with the provisions of the Act of 1986. In this regard reference can also be made to the judgement of the constitutional bench of the Hon'ble Supreme Court in the case of LIC v. Escorts Ltd., (1986) 1 SCC 264, where the Hon'ble Supreme Court held that it may be open to a subordinate legislating body to make appropriate rules and regulations to regulate the exercise of a power which the Parliament has vested in it, or as to carry out the purposes of the legislation, but it cannot divest itself of the power.*

It is further stated that ***these conditions fall substantially below the prior environmental assessment procedure which was much detailed and brought within EIA framework after the direction of the Hon'ble Supreme Court in the Maily Yamuna Case (W.P.C No. 725 of 1994).***

16. The ***impugned notification provides that the local authorities such as the development authorities and Municipal Corporation may certify compliance of Environmental Conditions prior to issuance of completion certificate based on recommendations of the Environmental Cell to be constituted in the local authority. Further, the purpose of notification regarding integration of environmental conditions, the MoEF&CC through competent agencies would accredit Qualified Building Environmental Auditor (QBEA's) to assess and certify the building projects. It is clear from the above that the entire assessment procedure has been replaced over which the MoEF&CC has no control.***

17. ***The MoEF&CC has failed to produce any study, literature, evaluation of the reason for taking such a retrograde decision to go back to a pre-2004 situation wherein the failure of the local bodies was considered to be the primary reason for bringing building and constructions activity within the EIA framework. In pre-2004 the position was that the construction sector projects were only regulated through Bye Laws and no Environmental Clearance was required.***

18.… The said amendment notification is only a ploy to circumvent the provisions of environmental assessment under the EIA Notification, 2006 in the name of 'ease of doing responsible business' and there is no mechanism laid down under the amendment notification for evaluation, assessment or monitoring of the environment impact of the building and construction activity. The construction industry consumes enormous resources and has a significant energy footprint; the sector emits 22 per cent of India's total annual carbon-dioxide emission. The Hon'ble Tribunal in the matter of S.P. Muthuraman vs. Union of India & Anr. (supra) Observed:

> ***"In recent past, building construction activities in our country have been carried out without much attention to environmental issues and this has caused tremendous pressure on various finite natural resources. The green cover, water bodies and ground water resources have been forced to give way to the rapid construction activities. Modern buildings generally have high levels of energy consumption because of requirements of air-conditioning and lighting in addition to water consumption. In this scenario, it is necessary to critically assess the utilization of natural resources in these activities."***

19. The very purpose of including the construction projects in the EIA Notification was the failure of the local bodies to ensure compliance with environmental norms. The ULB's/DA's have always had specific stipulation on environmental concerns. However, such conditions were never adhered to or made a pre-requisite to such sanction. It was therefore the case of MoEF&CC that the local body have been approving new construction projects without adhering to environmental norms. Now, the MoEF&CC itself is taking a step in backward direction without there being any changes brought about in the capacity and technical competence of the local body to assess, evaluate and monitor the environmental norms or to ensure compliance.

20. The EIA Notification, 2006, has a comprehensive process for evaluating the impact on environment which will not be the case after the said notification. For instance, the EIA Notification, 2006 provides Expert Appraisal Committee at the Centre and the State Expert Appraisal Committee at the State level. The composition of these committees comprises as per Appendix-VI to EIA Notification, 2006 of independent experts, such as, Environment Quality Expert, Sectoral Expert in Project Management etc. But as per the amendment notification the same local body which is responsible for the stipulation of the condition would be responsible for ensuring the compliance of the same with the help of Environmental cell and QBEAs. This is in contravention of the principle of nemo judex in sua causa, which is a principle of natural justice, meaning that a person cannot be judge of his own cause. Also, there is no technical expertise or competence within the local bodies to either evaluate impact or to ensure compliance of environmental conditions.

As per the EIA Notification 2006, clause 1.3 states "what are the likely impacts of the proposed activity on the existing facilities adjacent to the proposed site? (Such as open spaces, community facilities). But as per the amended notification of 2016, no such provision is laid down.

xxx ....xxx................................xxx

23. The MoEF&CC has failed to fulfil its statutory responsibilities. By transferring the powers to ULBs/ Development Authority, it has created a situation of conflict of interest as all the powers have been vested with the same authority. National documents (CAG Report, 2016) also discourage such an integration of environment condition to the sanctioning authority under the urban local bodies instead of independent assessment by environmental experts of building and construction projects. Thus for example, the report by Comptroller and Auditor General of India (CAG Report, 2016) clearly states that urban local bodies have not been performing on environmental parameters. In most compliance audit, the environmental parameters including MSW, Waste minimisation, e-waste etc have been grossly violated.

xxx ....xxx...............................xxx

31.... If principle 15 to 17 of the Rio Declaration is read along with clauses of the Paris Agreement, 2015, particularly, in face of precautionary approach, preventing irreparable damage forming definite environmental impact assessment to examine adverse impact on the environment, reduction on the growth of is carbon emission and to adopt best practices and achieve the ambitious targets between the stipulated time then the adopting cumulative effect of the Notification dated 9th December, 2016 would have some element of derogation. The Notification also ignores some essential features like source of water, source of raw material, urban ecology, provision of no development zone and construction face impacts. These aspects have a direct bearing on protection of environment and keeping in line with the Principle of Sustainable Development. It is important that there should be development and particularly, when the development is guided by the social cause but that development should not be permitted to cause irreparable loss to the environment and ecology. Sustainable development has to be the ultimate criteria. The Hon'ble Supreme Court in the case of N.D. Dayal v. Union of India, (2004) 9 SCC 362 deliberated upon the Doctrine of Sustainable Development and while comparing with the economic growth and well being held as under:

> ***"24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work - 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.***
>
> ***25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the***

other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like intergenerational equity (State of Himachal Pradesh v. Ganesh Wood Products, [1995] 6 SCC 363), public trust doctrine (MC Mehta v. Kamal Nath, [1997] 1 SCC 388 and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

26. To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act') and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21.Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act-"to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its Order dated July 19, 1990 has to be viewed from this perspective".

Despite the above shortcomings of the Notification and some clauses suffering from legal infirmity, the impugned Notification has certainly good and effective aspects as well. As already noticed by us, it brings into effect a social cause of providing affordable housing to the poor strata of

the society. It also proposes to decentralize and bring authorities granting environmental clearance and those granting building permission together under a single window system so as to address environmental concerns. The concept of one window system is sought to be introduced. The Notification specifically provides for emphasis on the aspects that are required to be considered by the environmental cell with special focus on energy use, energy generated on site from on site renewable energy sources, water use and waste water generated, treated on site, waste segregated and treated on site, waste segregation and treated on site, tree plantation and maintenance. These are the few good features of the Notification which also do not suffer from element of illegality. 'Housing for all by 2022' is a purpose and object in conformity with the constitutional mandate. There would be collective and coordinated effort by the Environmental Cell, local and other authorities at the State level to expeditiously deal with en vironmental clearance."

Finding, conclusion and direction

15. Tested on the touch stone of statutory scheme under EP Act and the principles of 'Sustainable Development' and 'Precautionary' principle to be enforced by this Tribunal under Section 15 read with Section 20 of the NGT Act and also having regard to the judgements of the Hon'ble Supreme Court and earlier judgment of this Tribunal dated 08.12.2017 under similar circumstances, we are satisfied that the impugned Notification will result in diluting the existing mechanism for Impact Assessment by SEIAA and cannot thus be sustained. The same needs to be revisited in light of appropriate Expert studies to ensure that effective Impact Assessment takes place in respect of such projects so as to ensure that development of any such project takes place consistent with the 'Precautionary' and 'Sustainable Development' principles. We record our finding and conclusion accordingly.

16. We note that even though stay granted by this Tribunal and Delhi High Court has been operative for the last more than four years and the impugned Notification has not been acted upon, no steps have been taken by the MoEF&CC either to file any reply or to seek variation of the

order by this Tribunal or by Delhi High Court and none appears to contest the matter. Thus, there will be no prejudice if such stay continues till any further step is taken in the matter after an expert study and conscious decision, as per law.

The application is disposed of accordingly.

I.A. No. 52/2019 also stands disposed of accordingly.

A copy of this order be forwarded to MoEF&CC by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

December 23, 2022
Original Application No. 1017/2018
(I.A. No. 52/2019)
SN