

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

(By Video Conferencing)

Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)

Tanaji B. Gambhire

Appellant

Versus

Chief Secretary Government of Maharashtra & Ors.

Respondent(s)

Date of hearing: 24.05.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Nitin Lonkar, Advocate

ORDER

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m² with FSI 34,804.98m² and non-FSI 32,898.07 m². Building configuration is as follows:-

| Building Name | Number of floors | Height (Mtrs.) |
|----------------------|---|-----------------------|
| <i>Wing D</i> | <i>LG+GR+P1+P2+P3+P4+P5+24 Floors</i> | <i>95.7</i> |
| <i>Wing E</i> | <i>LG+GR+P1+P2+P3+P4+P5+24 Floors</i> | <i>95.7</i> |
| <i>Wing F</i> | <i>LG + GR + 4</i> | <i>18.90</i> |
| <i>Club House</i> | <i>G+1</i> | <i>6.45</i> |

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area

of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. *Ex-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon'ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*¹. There are further judgements of the Hon'ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*² and *Keystone developers v. Anil Tharthare*³. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

³ (2020) 2 SCC 666

4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon'ble Supreme Court and violations frequently being alleged, including the present case. A proper SOP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SOP to all SEIAAs in the country. In this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee

may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.

6. The applicant may serve set of papers on the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to facilitate the compliance of the above order.

A copy of this order be forwarded to the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB by email for compliance.

List for further consideration on 10.11.2021.

In view of order in the main appeal, no order is called for in I.A.s. which stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 24, 2021
Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)
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